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July 28, 1999

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Connie Lemus
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative cited as the "Judicial Accountability Initiative Law" (File No. SA 1999 RF 0026).

The initiative proposes a constitutional amendment that would enact changes to the existing immunity provided to judges for actions taken within the scope of their judicial capacity. It does so by creating "special grand juries" with the power to find that a judge should not be protected by such immunity, thereby barring it as a defense in any future litigation. In addition, it would provide that three such findings by the special grand jury would result in permanent removal of a judge from the bench. The specific provisions of the measure are discussed below.

Special Grand Juries. The measure creates three special grand juries, each of which would have statewide jurisdiction. Each grand jury would have 25 members, and a majority of 13 would be required to decide any matter. The jurors would be drawn by public lot by the Secretary of State from the voter rolls, and would serve for one year. Elected and appointed officials, members of the State Bar, judges, judicial, prosecutorial, and law enforcement personnel would be ineligible for service on the special grand

juries. Jurors would be paid a salary commensurate with the salary of a superior court judge, prorated based on the number of days actually served.

The annual operational budget for the three juries would be equal to twice the combined annual salaries of 75 jurors serving full time. The Legislature would be required to deposit this amount into a trust account administered by the State Controller, whose total balance could not fall below the annual gross salaries of 50 superior court judges.

The initiative provides that the grand juries be funded from five funding sources:

- 2.5 percent of the gross annual salaries of all judges to be deducted and deposited into the account.
- A filing fee to be collected for claims filed with the special grand juries equal to the filing fee due in a civil appeal to the State Supreme Court.
- Retirement benefits of judges which are forfeited due to removal subject to the initiative.
- Fines imposed in criminal cases brought by the special grand jury.
- Surcharges on civil court filing fees of corporate litigants as necessary to supplement the other four funding sources.

Limitations on Judicial Immunity. Current law provides that judges are completely immune from civil claims based on actions taken within the scope of their judicial performance. As a result, perceived abuses by a judge within the scope of his or her judicial performance can only be remedied by appealing the action in question to obtain a reversal, filing a complaint with the Commission on Judicial Performance, or petitioning the Legislature to impeach the judge. None of these remedies allow the complainant to seek civil damages. Judges are currently subject to criminal prosecution for criminal acts taken within the scope of their judicial duties, for example taking a bribe, but the “victim” of such an offense cannot seek a civil remedy against a judge for any negative consequences of the criminal action.

This measure would provide a mechanism for plaintiffs to overcome this immunity in certain cases by filing a claim with the three newly created special grand juries who would have jurisdiction to determine whether a civil suit fell within certain immunity exclusions set forth in the initiative. Judges would no longer be immune from civil liability in cases in which they intentionally violate due process of law, deliberately disre-

gard material facts, block the lawful conclusion of a case, or deliberately violate the U.S. or California Constitutions. In any case in which the special grand jury finds that a suit would fall within these exclusions, its finding acts as a bar against the judge raising the defense of judicial immunity in any future proceeding involving that claim. In addition, each adverse immunity decision is considered a "strike" against that judge, and any judge who has received three strikes must be permanently removed from judicial office and would be subject to forfeiting at least half of his retirement benefits.

Powers of the Special Grand Juries Relative to Criminal Law. In addition to the power to find that judges are not immune from civil litigation, the special grand juries would also have the authority to bring criminal indictments in cases where it finds probable cause of criminal conduct on the part of a judge against whom a claim has been filed with the grand jury. It shall then impanel a trial jury and select a special non-governmental prosecutor and a sworn state judge to prosecute and try the case. The special trial jury would have the exclusive power to convict and impose a sentence.

In addition, a complaint of criminal conduct by a judge could be brought directly to the special grand jury if a number of prerequisites concerning exhaustion of other efforts to bring criminal charges through traditional avenues were satisfied. Any criminal conviction is also considered a strike and thus subjects the judge to removal and forfeiture of benefits as discussed above.

Fiscal Effect

The creation of the three special grand juries would result in costs to the state that are specified in the initiative. As previously mentioned, these costs could be partially to fully financed through five different specified mechanisms. Also, the additional litigation generated as a result of narrowing judicial liability could cause an increase in costs to the state to handle the additional court cases, however the magnitude of these costs is unknown.

Operating Budget for the Special Grand Juries. The initiative specifies that the annual operating budget for the three new juries shall be equal to twice the combined salaries of 75 jurors serving full time, and the salaries of a juror are to be equal to the salary of a superior court judge (currently \$113,377 annually). Thus, at present salary levels, the total operating budget as specified in the initiative proposal would be about \$17 million.

Initially, the Legislature is required to deposit the full annual operating budget amount into the special fund for the grand juries. After that point, a balance must be

maintained in the account equal to 50 times the gross salary of a superior court judge. To the extent that the trust fund balance in subsequent years exceeds the annual operating budget amount for the next year, that surplus is to be returned to the state treasury.

Financing Mechanisms. The initiative provides for several financing mechanisms to offset the state's costs of supporting the special grant juries. However, it is not clear how much money each of these mechanisms would generate to offset the costs of the juries.

First, the measure provides that the juries be supported by a 2.5 percent deduction made by the Legislature from the gross judicial salaries of all judges. Based on the current salaries of all judges, commissioners, and referees, this would generate about \$5.4 million towards the operating budget of the special grand juries. The initiative also defines as "judges" a number of other quasi-judicial officers such as arbitrators, mediators, and private judges. As a result, 2.5 percent of their gross salaries would also go towards the special grand juries. At this time we have no information on the total number of these officers or their gross salaries so the additional amount of this funding cannot be estimated. If the Legislature were to fully compensate judges for the reduction in salaries, this financing mechanism would not result in a net offset to the state's overall costs of the juries.

Second, the initiative proposes requiring complainants who file a claim with the special grand jury to pay a filing fee equal to the filing fee due in a civil appeal to the California Supreme Court. Currently, that fee is \$200. We estimate that this funding mechanism would not likely result in more than a few hundred thousands of dollars to offset the costs of the juries.

Third, the initiative provides that any judge removed from office as a result of obtaining three strikes from the special grand jury must forfeit at least half of his or her retirement benefits, and that these forfeited benefits are to be transferred to the special grand jury operating trust fund. In addition, any criminal fines imposed on a judge as a result of a prosecution initiated by the special grand jury would also revert to that fund. It is not clear how much money these provisions would generate to offset the costs of the juries because of uncertainties regarding the number of judges who would be removed or fined.

Fourth, the initiative provides that if these sources of funding are not sufficient to meet the operating budget, then "the Legislature shall impose appropriate surcharges upon civil court filing fees of corporate litigants as necessary to make this Amendment self-supporting." The ultimate effect of this passage is uncertain, as the initiative pro-

vides no definition of "corporate litigants," nor does it specify which types of civil filing fees would be subject to the surcharge. Thus, it is not clear how much money such fees will ultimately generate to offset the costs of the juries.

Court Costs. To the extent that the special grand juries make adverse immunity findings that allow civil suits against judges to proceed that would otherwise have been barred, this initiative will result in some increase in the total volume of litigation moving forward in the courts. Such an increase in workload could result in additional costs to the state which is primarily responsible for paying for the operations of the courts. The magnitude of these costs is unknown, however, and would depend on the number of such cases brought to court.

Summary

This measure will result in costs to the state of about \$17 million for the operation of special grand juries. These costs could be partially to fully offset by a number of sources specified in the measure. To the extent that the measure results in additional civil cases being filed against judges in court, the measure could also result in unknown additional costs to the state for support of the courts.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

B. Timothy Gage
Director of Finance