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January 6, 2000

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

Attention: Ms. Diane Calkins
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative constitutional amendment cited as the "Initiative Rights Amendment" (File No. SA 1999 RF 0064).

Proposal

This measure would amend the California Constitution with respect to the legal defense of statutes and constitutional amendments adopted by voters and provide specific roles to the Attorney General and proponents of the measures. Presumably, the measure would affect both measures placed on the ballot through the initiative process, as well as those placed on the ballot by the Legislature.

Attorney General. The measure requires the Governor to direct the Attorney General to defend any statute or constitutional amendment adopted by voters against any legal challenges. Such defense would have to continue through the highest court of appeal so long as any challenge remains. Currently, the Attorney General generally defends such measures when they are challenged in court.

Proponents. The measure provides special status for the proponent of any statute or constitutional amendment adopted by the voters to defend the measure. Such status does not exist under current law. Specifically, the proponent, defined as the person who set forth the written request to the Attorney General for a title and summary of the proposed measure, would have standing in any court to intervene in the initiative's defense. The state would be liable for the proponent's attorney fees and costs incurred in the defense. In addition, the proponent would have the right to bring suit against any appropriate agent or agency of government to compel the agent or agency to enforce the measure.

Losing Parties. Finally, the measure provides that in any lawsuit challenging the validity or constitutionality of a statute or constitutional amendment adopted by the voters, the losing party shall pay all reasonable attorney's fees and costs.

Fiscal Effect

The measure could result in additional costs to the state for the Attorney General to defend measures through the entire appellate process that the state would not have otherwise defended in the absence of this measure. To the extent that the state defense is successful, the state could recover its attorney's fees and costs from the challenging party. To the extent that the state defense is not successful, however, the state could incur costs to pay for the challenger's attorney's fees and costs.

The amount of these additional costs is unknown but would probably not be significant in the context of overall state expenditures.

Summary. This measure would result in potential unknown state costs. The magnitude of these costs are probably not significant in the context of overall state expenditures.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

B. Timothy Gage
Director of Finance