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March 7, 2000

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

Attention: Ms. Tricia Knight
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed measure cited as the "Repeal of Proposition 209" initiative (File No. SA 2000 RF 0010). As Section 9005 directs, our review addresses the potential effects of the initiative on state and local government costs and revenues.

Proposal

This initiative repeals Section 31 of Article I of the California Constitution. Section 31 was added to the Constitution by voter approval of Proposition 209 in November 1996. Section 31 prohibits (with certain exceptions) state and local government entities from discriminating against or giving preferential treatment to individuals or groups in public education, public employment, or public contracting on the basis of race, sex, color, ethnicity, or national origin.

Background. Prior to the passage of Proposition 209, state and local governments operated many programs that provided preferential treatment based on factors such as

sex, race, and ethnicity. These were commonly called “affirmative action” programs. Examples of these programs included:

- Specific goals for the participation of women- and minority-owned companies on work involved with state contracts.
- Public college and university programs such as financial aid, tutoring, and outreach targeted toward minority or women students.
- Goals to encourage the hiring of members of “underrepresented” groups for state government jobs.

In our analysis of Proposition 209, we noted that state and local programs that were costing in excess of \$125 million annually could be affected by Proposition 209. We also pointed out the actual amount of this spending that might be saved could be considerably less for various reasons, such as (1) court rulings on what types of activities are considered “preferential treatment” and (2) changing affirmative action programs to target factors other than those prohibited by Proposition 209.

We are not aware of any significant cost savings as a result of the passage of Proposition 209. Some programs, such as K-12 voluntary desegregation, have not been challenged. Some, like the state’s affirmative action goals, have been challenged but continue, pursuant to state law, pending a court decision. Other programs, such as those at the University of California and California State University, have been modified to target disadvantaged groups—based on academic performance or socioeconomic indicators—that are underrepresented in enrollment.

Fiscal Effect

Under this initiative, state and local governments could operate preference-based programs. The fiscal effect of allowing this is unknown. As discussed above, the prohibition of preference-based programs has not appeared to have resulted in significant savings. Conversely, the restoration of the authority to operate these types of programs could, but may not, result in added costs. This is because (1) existing programs could be restructured to again involve preferential treatment at no added cost or (2) costs could increase by expanding or adding programs involving preferential treatment. Thus, this initiative could result in costs to state and local governments, depending on future action at the state and local levels.

Fiscal Summary. This initiative could result in state and local government costs, depending on future action by the state and local governments to either restructure existing programs or expand or add new preference-based affirmative action programs.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

B. Timothy Gage
Director of Finance