February 18, 2009

Hon. Edmund G. Brown Jr.
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Krystal Paris
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional amendment related to the enactment of the state budget (A.G. File No. 09-0001, Amdt. #1-NS).

Background

Process for Passing a Budget. The Constitution vests the Legislature with the sole power to appropriate funds (and make midyear adjustments to appropriations). The annual state budget is the Legislature's primary method of authorizing expenses for a particular year. Specifically, the Constitution requires that (1) the Governor propose a budget by January 10 for the next fiscal year (beginning July 1) and (2) the Legislature pass a budget by June 15. The Governor may then either sign or veto the budget bill. The Governor may also reduce certain individual appropriations in the budget before signing the measure.

Late Budgets. When a fiscal year begins without a state budget, most expenses do not have authorization to continue. Over time, however, a number of court decisions and legal interpretations of the Constitution have expanded the types of payments that may continue to be made when a state budget has not been passed. Consequently, when there is not a state budget, payments now continue for: (1) state employees (payments are made at the prior fiscal year's wage level and do not include pay for state legislators or the Governor); (2) debt service; and (3) various programs authorized by the Constitution, federal law, or voter-approved initiatives. Any payments which are withheld are paid upon passage of the budget.

Proposal

Withholds Salaries of the Governor and Legislature. The measure requires that 25 percent of the Governor's pay and 25 percent of the Legislature's pay be withheld at the beginning of each fiscal year. Those funds would be paid upon completion of the next fiscal year's budget approval process.

Terminates the Governor's and Legislators' Terms. The measure requires that all legislators' and the Governor's terms in office be terminated if: (1) by midnight June 15, a California State budget bill fails to pass the Legislature, or (2) by midnight June 30, the budget approval process is not completed.

If Terminated, Prohibits Governor and Legislators From Holding State Offices for Two Years. The measure prohibits the Governor and the members of the Legislature who were removed from office due to a late budget from holding any state elected or appointed position for a period of two years starting from the date they are terminated from office.

Late Budgets. The measure requires that when the budget process is not completed by June 30th, the most recently enacted budget would stay in effect. The level of expenditures would be modified proportionate to projected revenues of the new fiscal year.

Fiscal Effect

Costs for State and Local Elections. The measure would have an impact on state and local election-related costs if passage of the budget is delayed in any year. State and local governments would incur increased costs—potentially over $100 million for each such year—to hold elections to replace the terminated officials. Costs would depend on the timing and number of runoff elections required to elect new officials.

Governor and Legislative Salaries. The initiative could potentially reduce state expenditures for the salaries of the Governor and the Legislature in years when passage of the budget is delayed beyond June 15. This is because these elected officials would be terminated and payments of salaries would stop for a period of time until new officials were elected. This reduction in costs would likely be in the low millions of dollars. In addition, while the measure's requirement to withhold a portion of legislators' and the Governor's salaries would not have an annual fiscal impact, it could affect who chooses to run for these offices since payment of a portion of their annual salary might be delayed for up to a year.

Risk of Termination. The risk of termination from office could potentially increase the likelihood that a budget will be passed "on time." In some years, this could affect the content of the budget and related appropriations. For instance, spending priorities in a given budget could be different. The extent of the impacts would depend on a number of factors—including the state's financial circumstances, the composition of the Legislature, and its future actions.

State Spending. The proposal could have an impact on state spending if passage of the budget is delayed. During the delay, spending based on the prior-year's budget would continue, as adjusted for changes in revenues. This would likely increase spending during a budget impasse (since all expenses would have the authorization to be paid). The effect on total spending for the fiscal year, however, is unknown and would depend on a variety of factors such as the length of the impasse, year-to-year revenue changes, and the Legislature's future actions.

Fiscal Summary. This measure would have the following direct fiscal effects on state and local governments:

- Increase in state and local election costs in any year in which the Governor and all 120 members of the Legislature are terminated when the budget process is not completed on time. These costs could potentially exceed $100 million in any such year.
- Unknown state fiscal impacts from changes in the content of the annual budget as a result of the measure's provisions related to a late budget.

Sincerely,

Mac Taylor
Legislative Analyst

Michael C. Genest
Director of Finance