

June 26, 2009

Hon. Edmund G. Brown Jr.  
Attorney General  
1300 I Street, 17<sup>th</sup> 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 statutory initiative related to drug and alcohol testing for Members of the California Legislature (A.G. File No. 09-0014).

### **Proposal**

*Drug and Alcohol Testing Every Two Years for All Legislators.* This measure would amend state law to require that the 120 Members of the California Legislature be tested for illegal drug use and habitual alcohol use on the first Monday in December every two years (the first day of the Legislature's two-year regular sessions). Testing would be performed according to procedures established by the U.S. Department of Transportation for testing of federal employees. Staff of the California Highway Patrol (CHP) would administer this testing program.

*Legislative Service Would Be Suspended if a Member Tests Positive.* The measure states that if a Member of the Legislature tests positive for illegal drug use or the habitual use of alcohol (or if he or she refuses to be tested), his or her legislative service would be effectively suspended. The suspension would continue until the legislator has completed a substance abuse treatment program identified by CHP and, subsequently, tests negative for illegal drug use and the habitual use of alcohol. The individual Senator or Assembly Member would be required to pay for the costs of the treatment program. The Senator or Assembly Member would not be entitled to collect a salary or payments for travel or living expenses during the suspension. (The measure, however, does not specify whether the legislator would be able to collect these salary and expense payments retroactively after the suspension ends.)

*Legislative Service Would End if a Member Tests Positive Twice.* If, after completion of the substance abuse treatment program described above, the Senator or Assem-

bly Member again tests positive for illegal drug use or the habitual use of alcohol (or if he or she again refuses to be tested), his or her service as a legislator would end. The measure provides that this person would never again be able to serve in the same office.

*Exception for Approved Medical Marijuana Users.* The measure exempts from its penalties Senators or Assembly Members who test positive for marijuana use and who are using marijuana that is approved by a licensed physician.

### **Fiscal Effect**

*Possible Minor Net Increase in State Costs.* The testing required under the measure would result in thousands of dollars of additional state costs every two years, as well as any follow-up tests. (The measure does not specify whether these costs would be paid from the Legislature's budget—which is limited under the Constitution—or that of CHP, which would administer the testing program.)

*Offsets to These Cost Increases Possible, but Uncertain.* These costs could be offset depending in part on whether its provisions are interpreted to allow Members to collect back pay and expense payments after any period of suspension for alcohol use or drug abuse. If legislators are required to permanently forfeit any salary and expense payments during a suspension period, this could generate savings that may more than offset the costs described above in some years. In a year when a legislator tests positive twice, state and local costs could increase for a special election to elect a replacement Senator or Assembly Member.

### **Summary of Fiscal Effect**

The measure would have the following fiscal effect:

- Probably no significant change in state costs in most years.

Sincerely,

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Mac Taylor  
Legislative Analyst

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Michael C. Genest  
Director of Finance