

July 30, 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 calling of a state constitutional convention (A.G. File No. 09-0019).

Background

State Law Distinguishes Between Constitutional Revisions and Amendments. California law distinguishes between *amendments* and *revisions* to the State Constitution. A constitutional revision generally is broader in scope than an amendment. A revision, for example, may substantially alter the basic governmental framework of the state. Constitutional amendments may be placed before the voters either by a vote of the Legislature or by an initiative petition signed by a requisite number of voters. Proposed revisions, by contrast, may be placed before voters after either a vote of the Legislature or, as described below, a constitutional convention.

Calling a Constitutional Convention. The Constitution provides that only the Legislature, with a two-thirds vote of each house, may submit to voters the question of whether to call a constitutional convention. If a majority of voters approve such a proposal, the Legislature must provide for the convention within six months. The Constitution does not specify how and under what circumstances the convention's proposals subsequently must be placed before voters.

Proposal

Provides Specific Rules for Convention. As described above, an initiative measure such as this one cannot call a constitutional convention. Consistent with the authority that would be granted under a separate proposed initiative constitutional amendment (A.G. File No. 09-0018), this measure:

- Calls a state constitutional convention.
- Specifies rules for the election of 400 convention delegates (five from each State Assembly district).
- Outlines procedures of the convention.
- Provides for state payment of various convention expenses.
- Mandates a process for approval or rejection of the convention's constitutional amendments and revisions.

The convention would be held in Pacific Grove in Monterey County.

Convention Could Consider Any Article of the Constitution. This measure specifies that *all* articles of the Constitution may be reviewed by convention delegates for revision, amendment, repeal, or addition. Accordingly, subject to requirements of the U.S. Constitution and federal law, the convention would have virtually unlimited authority to propose constitutional revisions for California.

Specific Procedures for the Qualification of Delegates. This measure provides for specific election procedures for delegates. For example, the measure specifies that the election be nonpartisan. It would also grant each qualified candidate \$200,000 in public campaign financing. The measure further prohibits delegates to seek contributions from any other source. Further, all candidates are required to disclose all expenditures of public moneys. There is no limit on the amount of independent expenditures—that is expenditures by a third party made on behalf of (but without the involvement of) the candidates.

New Election Procedures and Equipment Required. This measure makes a number of changes to electoral procedures and equipment requirements related to the constitutional convention elections. It requires all counties to use the same election procedures. It further prohibits the use of absentee voting. The measure requires the use of voting equipment that uses open-source code software. It also requires county election officials to perform mandatory audits and retabulations of ballots by hand and to deliver the election results to the Secretary of State within 15 days of the election. The measure also requires the Secretary of State to certify the election results within 30 days of the election.

Special Election Procedures Detailed for Constitutional Vote. This measure specifies the rules and procedures for a special election to approve or reject the recommendations of the convention. The Secretary of State would specify the date of the election 90 days after the conclusion of the convention. If the convention recommendations were defeated, they would be put before the voters again at the next regularly scheduled election.

New Constitution Library to Preserve Records and Proceedings. This measure requires the construction of a Constitution Library to preserve various materials related to the convention and its proposed Constitution.

Fiscal Effect

Direct Effects on State and Local Finances. This measure would affect the finances of state and local governments directly as a result of expenses required under the measure concerning a constitutional convention delegate election, the convention itself, the subsequent election to approve or reject the convention's recommendations, and the required Constitution Library. One-time state and local expenses would total in the hundreds of millions of dollars.

Possible Effects if Voters Approve Convention's Recommendations. The outcome of the convention, if approved by the voters, could change the structure of state and local governments substantially. This could result in higher or lower state and local taxes and other revenues. It also could result in more or less state and local spending on particular public programs. The fiscal effects resulting from a convention would depend on a number of factors—including the decisions of the convention itself, the response of voters to the convention's recommendations, the state's financial circumstances, and the actions of future elected state officials.

Fiscal Summary. This measure would have the following major fiscal effects:

- Direct, one-time increase of state and local government spending in the hundreds of millions of dollars related to the constitutional convention.
- Potentially major fiscal changes in state and local governments if voters approve the convention's recommendations, including higher or lower taxes or greater or less spending on particular public programs.

Sincerely,

Mac Taylor
Legislative Analyst

Michael C. Genest
Director of Finance