

December 7, 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 statutory initiative related to the calling of a state constitutional convention (A.G. File No. 09-0067).

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. Further, the Constitution does not specify what subjects a convention may address. In addition, the Constitution specifies that delegates to a convention must be elected from districts as nearly equal in population as may be practicable.

Proposal

Proposal Calls a State Constitutional Convention. As described above, an initiative measure such as this one currently cannot call a constitutional convention. Consistent with the authority that would be granted under a separate proposed initiative constitutional amendment (A.G. File No. 09-0066), however, this measure calls for a convention to revise or amend the Constitution.

Convention Commission and Convention Clerk Would Oversee Convention Process. This measure creates a five-member Constitutional Convention Commission (“convention commission”), which is charged with the administration of the convention, selection of the convention clerk, oversight of the delegate selection processes, and the provision of training and information for delegates, among other duties. The convention commission consists of members of the Fair Political Practices Commission. The convention clerk is charged with preparing and revising a budget to fund the convention; providing a two-day workshop for delegates on convention rules, ethics, U.S. Voting Rights Act requirements, and other relevant information; preparing rules of procedure; serving as temporary chair until delegates select a chair; maintaining the convention’s official Web site, and otherwise overseeing the administration of the convention.

Delegates Selected at Random by Assembly District, by Local Officials, and by Indian Tribe. The convention’s 466 delegates would be selected in three ways:

- Three “assembly district” delegates to be chosen at random from each of the state’s 80 assembly districts.
- Based on current populations, 222 county delegates to be chosen by local government committees and city councils.
- Four delegates chosen by California’s federally recognized Indian Tribes.

To select assembly district delegates, the State Auditor would select at random the names of 400 residents in each Assembly district, compiling names by self-nomination or using any database that the Auditor deems appropriate (which may include voter registration, taxpayers lists, and telephone directories). Once the Auditor sends letters of invitation and instructions, the 400 selected individuals could choose whether to participate and respond to the letter. From the pool of respondents, the State Auditor would select 50 people in each Assembly district to receive a second invitation to attend a two-day session conducted by the convention commission. At the two-day session, those attending from each assembly district would elect three delegates and two alternates from among themselves.

County delegates would be selected at the county level. There would be one county delegate for every 175,000 persons residing in each county. There would be at least one delegate in every county. County delegates would be chosen by a county delegate selection committee made up of two members of the county's board of supervisors, two members representing cities within the county, and one person representing governing boards of the county's school districts. The selection committee would choose its delegates and alternate delegates from a pool of individuals who apply. In cities with more than 1,000,000 people, the city council would be able to appoint delegates and alternate delegates for their share of the county's delegate allocation using a similar public application process as the county committees (with the rest of the county's allocation to be chosen by the county selection committee). Currently, cities affected by these provisions are Los Angeles, San Diego, and San Jose.

Indian tribes in each of the four federal judicial districts of the state would meet to select one delegate and two alternate delegates to represent them.

Scope of Convention. This measure specifies what areas that the convention may consider when revising or amending the Constitution. These are:

- Government effectiveness—such as methods for periodically reviewing state departments to assess their performance.
- Elections and the reduction of “special interest influence”—such as considering changes to initiative and referendum processes, election of state officeholders, campaign finance, term limits, and ways to change the Legislature.
- Spending and budgeting—such as the state budget process and related requirements, voting thresholds for the state budget, and spending requirements.
- Governance—such as the relationship between state and local governments and the structure of legislative and executive branches of government.

Further, the measure prohibits any revision or amendment from the convention that imposes or reduces any taxes or fees, sets the frequency at which real property is assessed, or defines “change in ownership” as it relates to any tax or fee. The convention also would prohibit revisions or amendments related to marriage or abortion rights, gambling or casinos, affirmative action, freedom of the press, freedom of religion, immigration rights, or the death penalty.

Convention Procedures. The measure proposes broad outlines for procedures and rules of the convention. The convention commission would determine the time and location of the convention, to start no later than June 3, 2011. The measure further outlines some rules (such as majority approval to adopt proposals), procedures, and schedule of the convention, and ways in which those rules, procedures, and schedule may be altered by delegates. The measure further stipulates that all sessions—including committee or subcommittee sessions—of the convention would be made open to the public. The convention would have to adjourn on or before July 1, 2012.

Payment of Various Convention Expenses. The measure outlines various costs that the state would pay for the holding of the convention. During the time the convention is in session, delegates would be paid a rate equal to the lowest-paid members of the Legislature (\$95,291 annually, effective in December 2009). The measure provides that at least \$1.75 per California resident—currently about \$67 million—and no more than \$95 million would be paid from the state’s General Fund to cover convention costs. The measure authorizes the state’s Department of Finance to adjust the funds provided for convention expenses for inflation.

Voters Must Approve Convention’s Recommendations. In order to take effect, the state’s voters must approve the convention’s revisions and amendment recommendations no later than November 6, 2012.

Fiscal Effect

\$95 Million Maximum Cost for State. This measure would affect the finances of state government directly as a result of expenses required under this measure concerning a constitutional convention, the selection and training of delegates, and the compensation of delegates. One-time state expenses would not exceed \$95 million, as stated in the measure.

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 indirectly could result in higher or lower revenues for state or local governments. It could also result in more or less state and local spending on particular public programs. For instance, this could be the case if the convention proposed lowering the vote threshold for new taxes or a major realignment of state-local functions. The fiscal effects resulting from the convention would depend on a number of factors—including the decisions of the convention itself, the response of voters to the convention’s recommendations, and the actions of future elected state officials.

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

- One-time increase of state government spending up to \$95 million to administer a constitutional convention.
- Potentially major changes in state and local governments if voters approve the convention's recommendations, including higher or lower revenues or greater or less spending on particular public programs.

Sincerely,

Mac Taylor
Legislative Analyst

Michael C. Genest
Director of Finance