

September 23, 2011

Hon. Kamala D. Harris  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Dawn McFarland  
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative regarding public official conflicts of interests (A.G. File No. 11-0030). The measure does not specify whether it seeks to amend the State Constitution or statutes or both.

### **Proposal**

The measure deems state and local elected and appointed officials, candidates, judges, some public administrators, and some private sector contractors to be “offending politicians” if they use their position to promote government policies that benefit contributors or their personal or financial interests.

While the measure’s provisions are not clear, they appear to limit these individuals’ ability to vote on—or advocate for—government policies that “disproportionately benefit” a person or entity who gave them more than the amount a person would earn by working 40 hours at the minimum wage (about \$330). The measure is not clear whether this contribution limit applies to annual or cumulative lifetime contributions. The measure’s provisions also appear to limit these individuals’ ability to vote on or advocate for government matters that benefit “directly or indirectly, presently or in the future, any direct or indirect interest with which they were associated” before assuming their current position.

Under the measure, the vote of the “offending politician” would be automatically nullified and the individual would be subject to a wide range of sanctions, which appear to include:

- Being barred from voting or serving as a determining influence regarding any governmental matter for the remainder of his or her elected or appointed term of office.
- Forfeiting all future publicly funded retirement income, employee compensation, and employee benefits.
- Forfeiting all funds received from the contributor above the approved minimum amount.

***Authorizes Oversight Agencies.*** The measure creates two new agencies to monitor compliance with its terms, the Government Contribution Investigation and Oversight Organization (GCIOO) and the Distribution Agency. Under the measure, the GCIOO would perform investigations and ensure

compliance with its requirements. The Distribution Agency would collect any seized funds (amounts contributed to offending politicians in excess of the permitted amounts) and distribute them to the citizens of the state. Both agencies would be administered by elected directors and the managers of GCIOO also would be elected. The measure specifies that the number of staff working for the agencies should be approximately equal to one-third of the number of elected politicians in the state (GCIOO) and one-eighth of the number of elected politicians in the state (Distribution Agency).

**Other Provisions.** The measure also contains many other provisions that are not entirely clear. For example, it is not clear which government positions would be eliminated under the measure's requirement that "eliminates and prohibits any and all contractors, or grantees (by those or any other names/titles) who serve in an official or quasi-official managerial/decision making capacity of any 'tax supported, or fee-supported, public office' and/or who perform any official 'government businesses.'"

### **Fiscal Effect**

**Oversight Agencies.** Over 15,000 Californians serve as state or locally elected officials. Based on the provisions of the measure, administering the GCIOO and the Distribution Agency would require about 7,000 employees with legal, financial, and investigatory skills. Annual costs to administer these agencies could total roughly \$700 million. These costs could be borne by the state of California or shared in some fashion between the state and local governments.

**Significant Uncertainties.** Many other provisions of the measure could have a fiscal effect on state or local government, depending on how they are interpreted by the courts and implemented by government officials and other parties. In addition, some provisions of the measure could be subject to significant legal challenges. For example, the measure's provisions eliminating retirement income for certain individuals likely would face claims that it impairs pension and other contracts with current and past public employees.

**Fiscal Summary.** The measure would have the following major fiscal impact:

- Increased state or local government costs to administer two new oversight agencies, potentially totaling \$700 million annually.
- Potential additional fiscal effects depending on how the provisions of the measure are interpreted by the courts and implemented.

Sincerely,

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Mac Taylor  
Legislative Analyst

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Ana J. Matosantos  
Director of Finance