



April 18, 2017

Hon. Xavier Becerra
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional initiative regarding gender identity (A.G. File No. 17-0003).

Background

Sex, Gender, and Gender Identity. Sex generally refers to a person being biologically male, female, or intersex. The attitudes, feelings, and behaviors that a given culture associates with these biological designations are generally known as gender. Gender identity generally refers to an individual's internal sense of being male, female, or something else. For example, transgender individuals have gender identities that differ from the sex assigned to them at birth.

Federal and State Law. Both federal and state law prohibit discrimination or preferential treatment based on sex and/or gender identity. For example, existing state law requires that students in public schools be permitted to use facilities consistent with their gender identity regardless of what sex is listed on their birth certificate. State law, however, does permit the segregation of government programs by sex under certain circumstances. For example, state and local correctional facilities may separate inmate populations by sex and schools are permitted to offer separate male and female sports teams.

Proposal

The measure adds the following language to the State Constitution: "Free exercise and enjoyment of gender identity without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State. The Legislature shall make no law respecting an establishment of gender identity. A person is not incompetent to be a witness or juror because of his or her own gender identity."

Fiscal Effect

The fiscal effects of this measure would primarily depend upon how the definition of gender identity is interpreted by the courts, as well as how state and local governments implement the measure.

If the courts ruled, for instance, that the prohibition against laws establishing gender identity applied to distinctions on biological sex, state and local governments could incur costs. For example, if state prisons and local jails were no longer able to assign inmates based on sex (such as to male and female facilities), governments could incur increased costs to integrate their facilities. State and local governments could also incur costs if restrooms or facilities designated for a particular sex were no longer permitted. The magnitude of such costs would depend on how government entities responded to this restriction, such as whether they simply removed restroom signs or renovated existing facilities into ones designed for use by a single individual.

On the other hand, if the courts interpreted gender identity as not prohibiting such current distinctions based on biological sex, the fiscal impact of the measure on state and local governments would potentially be minimal, as state and local governments have fewer practices and policies that needed to be changed.

Summary of Fiscal Effects. This measure would have the following major fiscal effect:

- Unknown fiscal impact on state and local governments—ranging from relatively minor impacts to costs—depending on how the measure is interpreted and implemented.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance