



September 15, 2020

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

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative regarding local government control (A.G. File No. 20-0002).

BACKGROUND

State-Local Relationship. The state, counties, and cities generally have different responsibilities, and fund and administer different services. Cities are responsible for local needs, such as planning, to accommodate needed housing, police and fire protection, and local roads. Counties provide similar services in areas outside of cities. In addition, counties run countywide services such as jails and courts and administer programs on behalf of the state, such as social service programs. Cities and counties—known as local governments—use a combination of local, state, and federal funds for these services. The California Constitution provides local governments (such as charter cities, which have voter-approved charters governing municipal affairs) control over local matters, thereby limiting the role of the state in the regulation of municipal activities.

Zoning, Land Use, and Housing. California's cities and counties make most decisions about when, where, and what type of housing will be built. Cities and counties enact zoning ordinances to set property-specific land use requirements. A community's zoning ordinance typically defines how each property can be used—such as single-family residential, multifamily residential, or commercial. State law requires local governments to carry out certain planning exercises that attempt to ensure they accommodate needed home building. State law also requires, in some limited cases, local governments to streamline housing approvals and build more dense housing. Nevertheless, local governments retain significant control over zoning, land use, and housing.

Funding Housing Construction and Rehabilitation. Private developers fund the vast majority of housing construction. The state and federal government help to subsidize the construction and rehabilitation of affordable housing development through tax credits for developers. The state provided \$600 million in 2020-21 for tax credits to encourage the


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development of affordable housing. While local governments control zoning and land use for housing construction, they have a limited role in the funding of construction and rehabilitation of housing.

Transportation Administration and Funding. The federal, state, regional, and local governments help fund, plan, construct, operate, and maintain transportation infrastructure, such as highways, streets, and roads. The state sets transportation policies and appropriates funding for transportation projects, while delegating the authority to select specific projects to various state entities and local governments. Cities and counties own, maintain, and provide funding for the local streets and roads in their jurisdictions. Local governments fund nearly half of all spending on highways, roads, and mass transportation.

Superior Court Operations and Funding. The California Constitution (1) provides a broad framework for judicial branch operations and (2) authorizes the Legislature and the judicial branch to enact policies to govern judicial operations. For example, the Constitution requires a superior court in every county that consists of at least one judge and authorizes the Legislature to determine the appropriate number of judges in each superior court. Individual superior courts have significant flexibility in how they operate and use their resources—including courthouse locations, what programs or services are offered, and whether hearing officers are employed to supplement their judges. The state is primarily responsible for funding superior court operations—a total of more than \$3.1 billion in 2020-21. This includes about \$760 million in statutorily required payments provided annually by counties. Certain counties provide some fiscal support for their superior courts beyond that funding. This includes funding for some judicial benefits or for mental health or other treatment services provided through collaborative courts.

Responsibility for Lower-Level Felonies Realigned From State to Counties. In 2011, responsibility for incarcerating and supervising certain people convicted of lower-level felonies was shifted—or realigned—from the state to the counties. Before the 2011 realignment, any adult convicted of a felony could be sentenced to state prison. Following realignment, those with no current or prior convictions for serious, violent, or sex offenses are generally ineligible for state prison. Instead, they serve their sentences under county jurisdiction. These sentences are served in county jail, in the community under the supervision of a county probation officer, or a combination of the two. To finance the responsibilities shifted to counties in 2011, the state annually allocates a portion of state sales tax revenue directly to counties. In 2020-21, the state will provide about \$1.2 billion in realignment revenue to counties.

County Jail Population Management. Jails—generally operated by county sheriffs—house people awaiting trial or sentencing as well as people convicted of lower-level felonies and less serious crimes. The total “rated capacity” of jails throughout the state is about 80,000. In 2019, the average daily jail population was about 70,800, though it can be higher or lower on any particular day and some counties have jail populations that sometimes exceed their rated capacity. Sheriffs have various options to manage jail populations including releasing pre-trial and sentenced inmates early. In addition, some jails have court-ordered population caps, which require them to release inmates when the population exceeds a level set by the court.

PROPOSAL

Requires State Fund Certain Local Activities. This measure amends the California Constitution to require the Legislature fund certain local services. Specifically, the measure would require the Legislature to fund “all services provided by the superior courts, the construction and maintenance of highways, and the construction and rehabilitation of housing infrastructure” within each county. The measure also allows counties to annually seek funding for those services.

Specifies Local Authority Related to Zoning and Land Use. The measure amends the California Constitution to specify that state law related to zoning and land use are not binding on cities and counties. Instead, state law may be used as a guideline by local governments to inform their own zoning and land use laws.

Requires Convenient and Speedy Access to Superior Court Services. This measure amends the California Constitution to require the Legislature ensure there are a sufficient number of state-funded judges in sufficient locations to make access to court services “convenient and speedy for all Californians.”

Allows State Prison Sentences for Lower-Level Felonies if County Jail Is Over Capacity. The measure changes state law to allow some people convicted of felonies who would otherwise be sentenced to county jurisdiction to instead be sentenced to state prison. Specifically, if the sheriff certifies to the court that the county jail system is at or above “maximum design capacity,” people in the county with no current or prior convictions for serious, violent, or sex offenses who are sentenced to a term of incarceration would instead be sentenced to state prison.

MAJOR FISCAL EFFECTS

Unknown, Potentially Significant Increase in State Costs. The measure increases state costs by shifting some current local costs related to courts, corrections, highways, and housing to the state. Depending on how the measure is interpreted and implemented, costs could potentially be significant. In addition, the measure could create new workload and costs for the state. For example, state courts could have new costs associated with hearings related to the certification that jails are over capacity. Some of these costs could be one time in nature, such as those related to establishing new courthouse locations.

Unknown Net Decrease in Local Government Costs. The measure could result in both decreases and increases in local government costs, depending on how it is interpreted and implemented. Local governments could experience a decrease in costs for services that they are currently funding that the measure would require the state to fund. Additionally, cities and counties could experience a decrease in costs associated with compliance with current state requirements that the measure makes nonbinding. For example, the measure could be interpreted to mean that cities and counties are no longer required to carry out certain planning exercises that attempt to ensure they accommodate needed home building. The measure could also increase local government costs. For example, this could happen if the state increases access to court services in ways that require local entities that are involved in court proceedings, such as district attorneys, to increase staffing levels to be available for court proceedings or to process more

cases. Overall, the net effect of these fiscal effects is likely to result in a decrease in city and county costs.

Summary of Fiscal Effects. We estimate that this measure would have the following major fiscal effects.

- Unknown, potentially significant increase in state costs because the state would assume financial responsibility over some local government services and/or costs.
- Unknown net decrease in local government costs associated with city and county costs that would shift to the state and some offsetting new costs.

Sincerely,

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Keely Martin Bosler
Director of Finance