



November 17, 2021

Hon. Rob Bonta  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Anabel Renteria  
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed a proposed constitutional and statutory initiative that would make changes to California's initiative process (A.G. File No. 21-0024, Amendment No. 1).

## **BACKGROUND**

***Department of Justice (DOJ).*** The Attorney General is an elective office established in the State Constitution. As the chief attorney and law enforcement official for the state, the Attorney General (1) serves as litigation counsel to state officers and, with some exceptions, to state agencies and (2) serves as the chief executive of DOJ. DOJ is also a statewide investigative law enforcement. In 2021-22, the department's total budget was \$1.1 billion with 4,887 authorized positions.

***Legislative Analyst's Office (LAO).*** The Legislative Analyst is established in state statute and the Joint Rules of the Legislature. The Legislative Analyst is appointed by the Joint Legislative Budget Committee (JLBC). Since its creation in 1941, the LAO has provided independent and nonpartisan analysis and advice to the California Legislature on fiscal and policy issues. The LAO's responsibilities include analyzing the state budget, responding to information requests from Members of the Legislature, preparing fiscal analyses of proposed state ballot initiatives, and preparing impartial analyses of each state ballot measure. Requests from individual Members, pursuant to Joint Rules, are considered confidential unless the LAO receives written permission from the requesting Member to share the work. The LAO's budget is paid from the Senate and Assembly budgets. In 2021-22, the LAO's total budget is about \$10.7 million to support about 50 positions.

***Statewide Ballot Measures.*** California voters decide whether or not to approve statewide ballot measures. These measures may be put on the ballot by the Legislature or may be voter-initiated. The types of voter-initiated measures include proposals to make changes to state law or the State Constitution (an initiative), disapprove of a law passed by the Legislature (a referendum), or remove an elected official from office (a recall). In order for a voter-initiated

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measure to qualify for the ballot, proponents must circulate petitions and collect a sufficient number of verified signatures of registered voters.

***Role of the Legislative Analyst and Attorney General in the Preparation of the Statewide Ballot.*** Under state law, DOJ and the LAO have responsibilities related to measures proposed for and appearing on the state ballot. When an initiative is first proposed by a voter, a circulating petition is used by proponents to collect signatures to qualify the measure for the ballot. The circulating petition includes (1) a title and summary prepared by the Attorney General, which summarizes the “chief purpose and points” of the initiative, and (2) an estimate of the fiscal effects of the measure on state and local governments prepared by the LAO and the Department of Finance. When a measure qualifies for and appears on the ballot, (1) the Attorney General prepares the ballot title and summary, which summarizes the chief purpose and points of the initiative, and (2) the Legislative Analyst prepares a fiscal impact statement, a summary of the fiscal effect of each measure, a description of what a “yes” or “no” vote on each measure means, and a description and fiscal analysis of each measure that appears in the *Voter Information Guide*.

***Legal Challenges of Ballot Materials.*** The circulating and ballot work prepared by the Attorney General and the Legislative Analyst can be challenged in court on the claim that the work is “false” or “misleading.” In the case of ballot materials, these challenges occur during a 30-day public examination period. When determining whether to order changes to the ballot materials, courts give deference to the two offices, meaning that the court defers to the offices’ interpretation of the ballot materials so long as that interpretation is reasonable. The Office of Legislative Counsel (OLC) serves as legal counsel to the LAO.

***Public Access to LAO Records.*** Public access to records produced by LAO staff is defined and limited by the Legislative Open Records Act (LORA) rather than the Public Records Act that applies to other state employees. Under LORA, certain types of records are exempt from public inspection, including preliminary drafts, notes, or legislative memoranda and correspondence of and to legislative Members and staff.

***Limitations on Legislature’s Budget.*** The Legislature’s budget is paid from the state’s General Fund. Proposition 140, approved by voters in 1990, placed a constitutional limit on the Legislature’s budget. Specifically, the measure reduced the level of expenditures that could be made to support legislative offices and operations by 38 percent in 1991-92 and limited the future growth of the Legislature’s expenditures.

## **PROPOSAL**

***Shifts Attorney General Ballot Responsibilities to the Legislative Analyst.*** The measure would amend the Constitution and statute so that the work currently performed by DOJ at the circulating and ballot phases of the initiative process would, instead, be performed by the LAO. In addition, the title and summary of measures put on the ballot by the Legislature would be written by the Legislative Analyst under the measure. The measure would place various new requirements on the title and summary prepared by the Legislative Analyst. The measure also would require the LAO to make available on its website features that currently are made

available on the DOJ website, including the ability for the public to submit comments on initiatives. We discuss the major changes proposed by the measure below.

***Changes to the Ballot Materials and Legal Standard.*** The measure would require the title and summary to reflect the “primary changes in law” proposed by the measure rather than the chief purpose and points required under current law. In order for a court to make changes to ballot materials, petitioners must demonstrate the materials are “false or misleading.” The measure would provide criteria for this standard, specifically requiring that the materials are “accurate, impartial, and understandable.” In addition, the measure would not allow the courts to give the LAO deference in its review of the ballot materials.

***Requires Legislative Analyst to Post Specified Communications on Website.*** During the 30-day examination period of ballot materials, the measure would require that the LAO post on its website all written materials “attempting to influence” the preparation of the ballot label and title and summary received by the LAO. The measure specifies that this requirement would be notwithstanding LORA. This means that some communications received from Members of the Legislature or legislative staff that currently are treated as confidential may be subject to this requirement. The measure specifies that attorney-client privileged communications would be exempt from the requirement.

***Establishes Continuous Appropriation of \$650,000 to Legislative Analyst.*** The measure would continuously appropriate from the state’s General Fund \$650,000 to the LAO. Beginning in 2024-25, the measure would require that the appropriation level be adjusted annually to reflect any increase or decrease in the California Consumer Price Index. The measure does not specify whether this appropriation would be considered part of legislative appropriations—and therefore subject to the constitutional limit—or not.

## FISCAL EFFECTS

***Whether the LAO’s Proposed Ballot Responsibilities Would Be Paid From the Legislature’s Budget Is Unclear.*** The measure does not amend the constitutional limitations on the Legislature’s budget. Accordingly, whether the \$650,000 continuous appropriation would be considered inside or outside of the Legislature’s constitutionally limited budget is unclear. The interpretation of the measure’s appropriation—as well as future legislative decisions about funding for the LAO’s proposed ballot responsibilities—would affect the measure’s fiscal effect.

***Likely Increased Workload for OLC.*** The OLC would experience increased workload resulting from (1) providing legal counsel to the LAO while completing the new ballot workload, (2) representing the LAO in court when ballot work is challenged, and (3) defending a higher legal standard than currently exists. This increased workload likely would result in increased costs for OLC, potentially above those currently borne by DOJ. The magnitude of these costs is not known but likely would not be significant.

***Overall State Fiscal Effect Likely Not Significant.*** The measure would transfer workload from DOJ to the LAO (and OLC). Consequently, DOJ costs for existing workload would decrease. There could be some minor ongoing state savings if the LAO’s new ballot responsibilities were determined to be part of the Legislature’s budget because growth in the

Legislature's budget is limited by the Constitution. Alternatively, if costs for these new responsibilities were considered outside of the Legislature's budget, costs largely would shift from DOJ to the LAO.

*Summary of Fiscal Impacts.* We estimate that the measure would have the following fiscal effects:

- Depending on how the measure were implemented, there could be minor state savings or costs.

Sincerely,

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for Gabriel Petek  
Legislative Analyst

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for Keely Martin Bosler  
Director of Finance