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May 21, 1996

Hon. Daniel E. Lungren
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Kathleen F. DaRosa
Initiative Coordinator

Dear Attorney General Lungren:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative amended by proponents on April 15, 1996 (File No. SA96RF0010, Amendment No. 1). The initiative would establish longer prison sentences for offenders convicted of grand theft, embezzlement, or forgery in specified cases.

The primary provisions of the initiative and their fiscal implications are discussed below.

Proposal

Longer Prison Sentences for Certain Financial Crimes. The initiative increases prison sentences for grand theft, embezzlement, embezzlement by a public official, and forgery in cases when the prosecutor has proven that the victim has suffered a large financial loss. The measure establishes the following prison sentences:

- Thirty years to life when a victim's financial loss exceeded $50 million.

- Twenty years to life when a victim's financial loss exceeded $1 million but did not exceed $50 million.

- Fifteen years to life when a victim's financial loss exceeded $200,000 but did not exceed $1 million.

The measure ties each of the above penalties to a single crime committed by an offender, and does not provide for aggregating the losses suffered by multiple victims of the same offender.

Under current law, an offender convicted for one of the specified crimes involving this magnitude of loss to a victim could receive a prison sentence ranging from three to eight years.

Limitation on Credits to Reduce Prison Time. Under existing law, most state prisoners who participate in educational and work programs can receive credits that reduce the amount of time they must stay in prison. For some offenders, the credits reduce their prison time by up to 50 percent, while certain other offenders specified in state law may reduce their prison time by no more than 15 percent or 20 percent. This initiative specifies that an offender sent to prison for crimes punishable under this new law would be eligible to have his or her prison time reduced through credits by no more than 10 percent.

Statute of Limitations on Prosecution. Under existing law, prosecution of an offender for the crimes specified in this initiative would have to commence within three years after commission of the offense. This initiative provides that prosecution of any cases specified in the measure could occur up to 20 years after the commission of the offense.

Ban on Plea Bargaining. Existing law generally permits prosecutors to conduct plea bargaining of criminal cases, in which a lesser punishment is imposed on an offender in exchange for his or her guilty plea, except those crimes specified by law as being serious offenses. Grand theft, embezzlement, embezzlement by a public official, and forgery are not deemed to be serious offenses, and thus are currently subject to plea bargaining agreements. This measure prohibits prosecutors from engaging in plea bargaining in regard to the offenses specified in the initiative.

Mandatory Minimum Bail Requirements. Existing law specifies that the amount of bail that may be set for an alleged criminal offender is set by the judge presiding over the criminal case. This measure provides that, for the offenses specified in the initiative, the amount of bail must, at a minimum, equal 25 percent of the total amount alleged to

have been fraudulently obtained by the person charged with the crime from his or her victims.

Criminal Trial Procedure Specified. Under existing law, an offender convicted by a judge or jury of the offenses specified in this initiative would receive the sentence determined by a judge at the conclusion of the case. Under this measure, a different legal process would apply to an offender found guilty of the offenses specified in this initiative if the financial loss to the victim exceeded $50 million. Following conviction, the measure provides for a second legal proceeding in which a jury would determine whether the offender would receive the specified prison sentence of 30 years to life.

Fiscal Effect

Currently, there are few offenders who commit financial crimes of the magnitude specified in this measure. In addition, the current practice is that some of those offenders would probably be prosecuted under federal law rather than under state law.

The initiative would establish significantly longer prison terms than are provided under current law for the specified list of offenses. However, because few offenders are likely to be convicted and sentenced for the major financial crimes specified in its provisions, the impact on the state prison system is likely to be minor.

For the same reason, the measure will probably have only a minor cost impact on county criminal justice agencies for adjudication of these cases by the courts, district attorneys, and court-appointed counsel or public defenders.

Thus, in summary, the fiscal effect of this measure would probably be minor.

Sincerely,

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Elizabeth G. Hill
Legislative Analyst

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Craig L. Brown
Director of Finance