

September 23, 2011

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th 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 retirement benefits for certain elected and appointed public officials and administrators (A.G. File No. 11-0032). The proposal does not specify whether it seeks to amend the State Constitution, statutes, or both.

Background

Some Elected Officials Are Members of a Public Pension System. Some elected public officials are members of one or more of California's public pension systems, and some may be eligible for retiree health benefits. Under Proposition 140, however, Members of the Legislature first elected on or after November 7, 1990 participate in the federal Social Security program for the period during their legislative service and in no other retirement system. This measure also appears to concern certain senior career government administrators, most of whom are eligible for pension benefits and some of whom are eligible for retiree health benefits.

Proposal

The measure intends to restrict pension and other post-employment benefits that can be received by elected and certain appointed public officials and administrators. (There would be considerable uncertainty as to how many such administrators would be subject to this measure's provisions.) Specifically, the measure appears to require that these individuals' pension and other post-employment benefits be determined using the same benefits and pension formulas used to calculate these benefits for the "least compensated worker category" within that official's organization. In some cases, this may result in reductions to benefits currently offered to these officials and administrators. The various limitations described often are not clear and would be subject to considerable interpretation.

Vote Needed for Certain Compensation Increases. One part of the measure could be interpreted to require elected officials' base pay to be approved by voters. The voter-approved base pay would appear to be used for purposes of calculating affected employees' pension

benefits. It is not clear whether this would repeal existing processes and restrictions related to the pay of the Governor, Legislature, and other state and local officials.

Retroactivity. The measure purports to retroactively reduce retirement benefits being collected by certain current and former elected and appointed public officials and administrators. Such changes, among others in this measure, would be subject to legal challenges by affected current and past employees.

Fiscal Effects

This measure could change how the state and local governments compensate certain elected and appointed public officials and administrators. The fiscal effects of these changes would depend on how the measure is interpreted by the courts and the Legislature and implemented by both state and local governmental entities. The measure appears to intend to reduce state and local costs by limiting current and future retirement benefits for the affected individuals. The magnitude of any future savings would depend on how broadly the measure is applied to governmental employees.

In order to offset any decreased retirement benefits resulting from this measure, governmental entities probably would increase other forms of compensation for some affected employees in order to remain competitive in the labor market. These other forms of compensation include salaries, contributions to employee retirement funds, health benefits, and other employment benefits. The overall magnitude of these added costs would be determined by various factors, including labor market conditions and choices made by governmental entities.

Fiscal Summary. This measure would have the following major fiscal effects on the state and local governments:

- Possible reductions in state and local pension and retiree health costs. The magnitude of the savings would depend on a variety of legal and implementation uncertainties and would be offset to an unknown extent by increases in other state and local employee compensation costs.

Sincerely,

Mac Taylor
Legislative Analyst

Ana J. Matosantos
Director of Finance