

February 1, 2016

California Department of Justice
PO Box 944255
Sacramento, CA 94244-2550
Attn: Ashley Johansson, Initiative Coordinator

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

R: 15-0125, "Honest Legislator Program Act" – Amended version

Dear Ms. Johansson:

Please use the attached amended language of my proposed initiative to prepare a title and summary. After my amended initiative, is a listing of the parts of the initiative that changed from the original version submitted on December 29, 2015.

Thank you for your assistance in this matter.

Sincerely,



Robert Owen Bernstein
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SECTION 1. Title.

This Act shall be known and may be cited as the Honest Legislator Program Act.

SECTION 2. Findings and Declarations.

The People of the State of California hereby find and declare that:

- a. The State Senate has been a disgrace to the people of California after 3 members were convicted of or plead guilty to, various crimes, including lying about their primary residence.
- b. Several Legislators have left the Legislature during their term to take high paying jobs with companies that have lobbied the Legislature.
- c. Voters have lost confidence in the Legislature.

SECTION 3. STATEMENT OF PURPOSE.

To ensure that Legislators are open and honest with the people of California, the People hereby amend the Constitution to:

- a. Require Legislators and candidates for the legislature, to take lie detector tests in order to provide truthful information to the citizens of California.
- b. Require the immediate non-paid suspension of any legislator who is indicted for any felony.
- c. Allow the Fair Political Practices Commission to recommend to the State Supreme Court the removal from office of any Legislator who may have committed a felony or not upheld their oath of office.
- d. Clarify that Legislators are not employees and have no rights as employees and no contractual rights.
- e. Remove constitutional special treatment for legislators.
- f. Remove power from certain Legislators.
- g. Remove any privacy rights as it relates to issues that influence Legislative actions.

SECTION 4. Amendments to Article I of the California Constitution.

Section 4.1. Section 3 (b)(6) of Article I of the California Constitution is amended to read:

~~SEC. 3(b)(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.~~

Section 4.2. Section 31 (i) of Article I of the California Constitution is added to read:

Article 1, SEC. 31. (i) The State shall not grant preferential treatment to any current or former elected individual in the operation of public employment, public education, or public contracting.

SECTION 5. Amendments to Article III of the California Constitution.

Section 5.1 Section 4(c)(1) of Article 3 is added to read:

SEC. 4. (c)(1) Legislators do not receive normal salaries and are not employees. (2) Legislators are volunteer public servants that are paid, but they do not have any rights, benefits or privileges that are part of a paid position, including, but not limited to: vacation credits/pay, sick leave credits/pay, state retirement benefits, unemployment insurance, disability insurance or other normal employment benefits. (3) Their compensation will be taxed as if it is a normal salary for state income tax purposes. (4) Legislators have no contractual rights or protections.

SECTION 6. Amendments to Article IV of the California Constitution.

Section 6.1 Section 2(c) is amended to read:

SEC. 2. (c) A person is ineligible to be a member of the Legislature unless the person is an elector and has been a resident in their sole primary residence, of the legislative district for one year, and a citizen of the United States and a resident of California for 3 years, immediately preceding the filing deadline for the election, and service of the full term of office to which the person is seeking to be elected would not exceed the maximum years of service permitted by subdivision (a) of this section. Persons elected to such office must continue to live in their sole primary residence, in the legislative district they were elected to represent during their term of office, or they shall be removed from office.

Section 6.2 Section 3(b) and (c) is amended to read:

SEC. 3. (b) The Legislature session shall not adjourn until at least ten days after they have taken at least one vote on every bill introduced in their respective houses.

(bc) On extraordinary occasions the Governor by proclamation may cause the Legislature to assemble in special session. When so assembled it has power to legislate only on subjects specified in the proclamation but may provide for expenses and other matters incidental to the session.

Section 6.3 Section 4(a) is amended to read:

SEC. 4. (a) To eliminate any appearance of a conflict with the proper discharge of his or her duties and responsibilities, no Member of the Legislature may knowingly receive any salary, wages, commissions, or other similar earned income from a lobbyist or lobbying firm, as defined by the Political Reform Act of 1974, or from a person who, during the previous 48 months, has been under a contract with the Legislature or from any person or business who has contacted any member of the Legislature during the previous 48 months, about supporting or opposing or amending any current or proposed legislation. The Legislature shall enact laws that define earned income. However, earned income does not include any community property interest in the income of a spouse. Any Member who knowingly receives any salary, wages, commissions, or other similar earned income from a lobbyist employer, as defined by the Political Reform Act of 1974, shall be removed from office. Any member who receives any salary, wages, commissions, or other similar earned income from any person or business who has contacted any member of the Legislature during the previous 48 months, about supporting or opposing or amending any current or proposed legislation may not, for a period of ~~one~~ four years following its receipt, vote upon or make, participate in making, or in any way attempt to use his or her official position to influence an action or decision before the Legislature, ~~other than an action or decision involving a bill described in subdivision (c) of Section 12 of this article, which he or she knows, or has reason to know,~~ would have a direct and significant financial impact on the person or business from whom they received the income ~~lobbyist employer and would not impact the public generally or a significant segment of the public in a similar manner.~~ As used in this subdivision, "public generally" includes an industry, trade, or profession.

Section 6.4 Sections 5(e) through (h) are amended to read:

SEC. 5. (e) The Legislature shall enact laws that prohibit a Member of the Legislature whose term of office commences on or after December 3, 1990, from lobbying, for compensation, as governed by the Political Reform Act of 1974, before the Legislature for 12 months after leaving office.

(f) Any member of the Legislature who is elected after November 7, 2018 shall be prohibited from lobbying before the Legislature and any statewide elected official, for 12 years after leaving office.

(fg) The Legislature shall enact new laws, and strengthen the enforcement of existing laws, prohibiting Members of the Legislature from engaging in activities or having interests which conflict with the proper discharge of their duties and responsibilities. However, the people reserve to themselves the power to implement this requirement pursuant to Article II.

Section 6.5 Section 7(c)(1)(A) is amended to read:

SEC. 7 (c) (1) The proceedings of each house and the committees thereof shall be open and public. However, closed sessions may be held solely for any of the following purposes:

(A) To consider the appointment, employment, evaluation of performance, or dismissal of a public officer or employee, to consider or hear complaints or charges brought against a ~~Member of the Legislature or other~~ public officer or employee, or to establish the classification or compensation of an employee of the Legislature.

Section 6.6 Section 10(c) is amended to read:

SEC. 10. (c) ~~Any bill introduced during the first year of the biennium of the legislative session that has not been passed by the house of origin by January 31 of the second calendar year of the biennium may no longer be acted on by the house. No bill may be passed by either house on or after September~~ October 1 of an even-numbered year except statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes, and bills passed after being vetoed by the Governor.

Section 6.7 Section 15 is amended to read:

SEC. 15. A person who seeks to influence the vote or action of a member of the Legislature in the member's legislative capacity by bribery, promise of reward, intimidation, sexual acts, or other dishonest means, directly or indirectly, or a member of the Legislature so influenced, is guilty of a felony.

Section 6.8 Section 18 (c) is added to read:

SEC. 18 (c) (1) Members of the Legislature shall be temporality and immediately, suspended from office, without pay, when they are indicted for any felony. A member suspended pursuant to this paragraph shall not exercise any of the rights, privileges, duties, or power of his or her office, or utilize any resources of the Legislature, during the period the suspension is in effect. (2) Any Legislator that is convicted at trial or pleads guilty to a felony shall be immediately and permanently removed from office.

SECTION 7. Addition of Article XXII of the California Constitution.

Article 22 of the California Constitution is added to read:

SEC. 1

- (a) The people of California have the right to an honest Legislature. The people of California acknowledge that currently lie detector devices are not perfect and some results may be inconclusive.
- (b) The people of California require that every candidate for the Legislature and every current Legislator must prove their honesty and their character to the people of California.
- (c) All candidates for the Legislature do so voluntarily and agree to give up any privacy rights they may otherwise have, when those rights concern issues that may influence any actions they would take as a Legislator. This includes all questions candidates and Legislators must answer that are listed in this Article.
- (d) No person has any right to hold elected Legislative office. The only rights are those under the state constitution. This constitution specifically states that holding legislative office is a privilege and voluntary and is not a right. Persons that hold legislative office must do so under the terms and conditions in this constitution and their only alternative to those conditions is to resign.
- (e) The people of the State of California hereby establish the Honest Legislator Program (HLP), which shall be run by the California Fair Political Practices Commission (FPPC). The FPPC shall implement regulations for the HLP.

SEC. 2

- (a) Any issues with Honest Legislator Program shall go directly to the California Supreme Court.
- (b) The Fair Political Practices Commission shall contract for sufficient approved lie detector operators and equipment to carry out the requirements of this Article.
- (c) The FPPC shall review and approve the lie detector operators and lie detector equipment for HLP and shall annually review new technology for this program.

SEC. 3

- (a) All candidates for the Legislature must take a lie detector test when they sign up to run for the Legislature, or by the deadline to register to run. Each candidate will be asked two questions:
 - (1) Have you lived within the boundaries of the Legislative District that you are running in and was it always used as your sole main residence for at least 365 days prior to the final filing date for this office?
 - (2) Was all information provided on your nomination forms to run for this office, complete and accurate?
- (b) The FPPC may grant extensions in areas where there is a shortage of approved lie detector operators to administer the lie detector tests, or in rural areas where candidates may have to travel long distances to find a qualified lie detector operator.
- (c) If the test results are inconclusive, the FPPC may require the candidate to take the test again. If the test results indicate that the candidate is lying, then the candidate may, at their own expense, take the test again with a different lie detector operator. Both sets of results must be included in any and all FPPC reports all of which shall be released to the public.

(d) The FPPC shall investigate the residence and/or information supplied in the candidates nomination forms for every candidate that fails the test. The FPPC may also investigate candidates with inconclusive results. After investigating the candidate, The FPPC, by a two thirds vote, shall recommend to the California Supreme Court the disqualification of Legislative candidates that it determines did not meet the qualifications for office or provided false information in their nomination papers. The Supreme Court shall vote on each recommendation within 30 days and a majority vote is needed to disqualify any candidate.

SEC. 4

(a) All current members of the Legislature must take a lie detector test between October first and December first, inclusive, in every odd-numbered year.

(b) Each Legislator will be asked the following questions:

(1) Has any person sought to influence your vote or action in your legislative capacity by bribery, promise of reward, intimidation, gift of anything of value including campaign donations or non-monetary assistance, or other dishonest means during the past two years?

(2) Have you committed any felonies during the past two years?

(3) Have you faithfully upheld the constitution of the State of California and your oath of office during the last two years?

(4) Have you been under the influence of any drugs, legal or illegal, including alcohol narcotics, opiates or other drugs that effect your ability to think clearly, while you have conducted Legislative business, were in the capitol building, or while driving a motor vehicle, at any time during the past two years?

Have you been under the influence of any drugs, including alcohol or narcotic drugs, at any time while you have conducted any Legislative business or driven any motor vehicle, during the last two years?

(5) Have you or any of your campaign staff violated any campaign or financial disclosure laws during the past two years?

(6) Even if not married, did you have sex with any other Legislator or legislative staff member or lobbyist, during the last two years, excluding your spouse?

(7) If you are married, did you have sex with any person other than your spouse during the last two years?

SEC. 5

(a) All Lie detector results will be sent to the FPPC as soon as possible and the FPPC will make all results public.

(b) Any Legislator, at their own expense, may retake the lie detector test with a different approved lie detector operator, and all such results must be included in all results published by the FPPC.

(c) If any results indicate that the Legislator may have violated the constitution or state law, then the FPPC shall investigate the issue and by a two thirds vote may require the Legislator to take additional lie detector tests.

(d) After investigation, the FPPC shall, by a majority vote, send each of the following types of cases to the California Supreme Court: Violations of Article IV, Section 6.1 Section 2(c); (2) violations of Article IV, Section 6.3 Section 4(a); (3) Violations of Article IV, Section 6.7 Section 15; (4) Article XXII, Section 4 or

(5) Felony violations of State law, which by a vote of at least five Supreme Court Justices, may temporarily suspend the Legislator from office if the Supreme Court finds that the plurality of evidence sustains any of the alleged violations in this section.

(e) The Legislature and Governor shall fully fund The Honest Legislator Program and the FPPC may take any funding disputes directly to the California Supreme Court which has the authority to change funding amounts for this program.

(f) It is a felony to attempt to influence or change the results of any lie detector results under the HLP.

SEC. 6 Legislators may not seek or discuss employment with any company or individual that has ever directly or indirectly lobbied the Legislature during the previous 24 months, until after the general election in which the Legislator has been replaced.

SEC. 7

(1) Article 22, Section 4, shall be effective for all Legislators elected to office after November 7, 2018.

(2) Any Legislator that refuses to comply with Article 22 must resign from the Legislature. The people of California are not providing any other alternatives.

SECTION 8. GENERAL PROVISIONS.

(a) If any provision of this measure or any part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable.

(b) This measure is intended to be comprehensive. It is the intent of the People that in the event this measure or measures relating to the same subject shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

(c) If a different Article XXII is required in a different measure that passes at the same time or prior to this measure, then a different Article number shall be assigned for that portion of this measure.