

Introduced by Senator HarmanDecember 6, 2010

An act to add Section 12512.5 to the Government Code, relating to the Attorney General.

LEGISLATIVE COUNSEL'S DIGEST

SB 5, as introduced, Harman. Attorney General: defense of initiative statutes.

The California Constitution provides that the Attorney General is the chief law officer of the state with the duty to see that the laws of the state are uniformly and adequately enforced. Existing law requires the Attorney General to prosecute and defend all causes to which the state or state officers in their official capacities are parties.

This bill would require the Attorney General to defend against constitutional challenge, at the trial court level or as a respondent or appellant at the court of appeal or the Supreme Court, a constitutional amendment or an initiative statute that has been approved by the voters, unless an appellate court has made a determination that the amendment or statute is unconstitutional or otherwise in conflict with, or in violation of, federal law or regulation. The bill would authorize the proponents of the constitutional amendment or initiative statute, if any, to defend the amendment or statute in the place of the Attorney General, if he or she is disqualified. The bill would authorize the Attorney General to appoint special counsel if the proponents do not defend the amendment or statute when the Attorney General is disqualified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12512.5 is added to the Government
2 Code, to read:

3 12512.5. (a) The Attorney General shall defend against
4 constitutional challenge, at the trial court level or as a respondent
5 or appellant at the court of appeal or the Supreme Court, a
6 constitutional amendment or an initiative statute that has been
7 approved by the voters.

8 (b) The Attorney General shall not refuse to defend a
9 constitutional amendment or an initiative statute on the basis of it
10 being unconstitutional, or in conflict with, or in violation of, federal
11 law or regulation, unless an appellate court has made a
12 determination that the amendment or statute is unconstitutional or
13 otherwise in conflict with, or in violation of, federal law or
14 regulation.

15 (c) This section shall not apply if an appellate court determines
16 that the underlying action is frivolous.

17 (d) If the Attorney General is disqualified from defending a
18 constitutional amendment or initiative statute, the constitutional
19 amendment or initiative statute may be defended by its proponents,
20 if any, in place of the Attorney General. No other state officer or
21 entity is required to be a party to the court action. If the proponents
22 do not defend the constitutional amendment or initiative statute,
23 the Attorney General may employ special counsel to conduct that
24 defense.

25 (e) For purposes of subdivision (d), “proponent” means the
26 person or persons who submit a draft of a petition proposing the
27 constitutional amendment or initiative statute to the Attorney
28 General with a request that he or she prepare a title and summary
29 of the chief purpose and points of the proposed constitutional
30 amendment or initiative statute.