

AMENDED IN SENATE APRIL 12, 2011

**SENATE BILL**

**No. 5**

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**Introduced by Senator Harman**

December 6, 2010

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~~An act to add Section 12512.5 to the Government Code, relating to the Attorney General. An act to add Section 387.5 to the Code of Civil Procedure, relating to civil actions.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 5, as amended, Harman. ~~Attorney General: defense of initiative statutes. Intervention: initiatives.~~

*Under existing law, upon timely application, any person who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding. An intervention takes place when a 3rd person is permitted to become a party to an action or proceeding between other persons, as specified.*

*This bill would provide that the proponent, as defined, of a state initiative statute or constitutional amendment that has been approved by the voters shall have the right to intervene and participate in any court action challenging the constitutionality of that initiative statute or constitutional amendment.*

~~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-no. State-mandated local program: no.

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

1     *SECTION 1. The Legislature finds and declares that the court*  
 2     *has sole discretion under existing law as to which interested parties*  
 3     *can intervene in a case challenging the constitutionality of an*  
 4     *initiative passed by the people. This act would make that*  
 5     *intervention a right, not a courtesy, under the law. Accordingly,*  
 6     *it is the intent of the Legislature, in enacting this act, to ensure*  
 7     *that the parties responsible for placing the initiative statute or*  
 8     *constitutional amendment on the ballot have the ability to*  
 9     *participate in any court action challenging the constitutionality*  
 10    *of the measure, thereby ensuring the right of the voters to zealous*  
 11    *representation.*

12    *SEC. 2. Section 387.5 is added to the Code of Civil Procedure,*  
 13    *to read:*

14    387.5. (a) *The proponent of a state initiative statute or*  
 15    *constitutional amendment that has been approved by the voters*  
 16    *shall have the right to intervene and participate in any court action*  
 17    *challenging the constitutionality of that initiative statute or*  
 18    *constitutional amendment.*

19    (b) *For purposes of this section, “proponent” means the person*  
 20    *or persons who submit a draft of a petition proposing the measure*  
 21    *to the Attorney General with a request that he or she prepare a*  
 22    *title and summary of the chief purpose and points of the proposed*  
 23    *measure.*

24    ~~SECTION 1. Section 12512.5 is added to the Government~~  
 25    ~~Code, to read:~~

1 ~~12512.5. (a) The Attorney General shall defend against~~  
2 ~~constitutional challenge, at the trial court level or as a respondent~~  
3 ~~or appellant at the court of appeal or the Supreme Court, a~~  
4 ~~constitutional amendment or an initiative statute that has been~~  
5 ~~approved by the voters.~~

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

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

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

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