

Official Title and Summary

STATE OFFICIALS, ETHICS, SALARIES. OPEN MEETINGS. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Prohibits legislators, statewide elected officers from accepting honoraria, or accepting compensation for representing another before a state board or agency. Directs Legislature to enact laws applicable to legislators, statewide elected officers, implementing honoraria and compensation prohibitions, limiting acceptance of gifts, strengthening conflict laws, prohibiting receipt of income from lobbying firms, and prohibiting lobbying for compensation within 12 months after leaving office. Repeals current provisions setting salaries, benefits of legislators, elected statewide officials; establishes seven-member Commission, appointed by Governor, to annually establish salaries, benefits. Mandates open meetings of Legislature, with specified exceptions. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: Unknown costs to state General Fund, depending on levels of salaries, benefits established by Citizens Compensation Commission. Relatively minor costs to state for support of Commission and enforcing provisions of this measure.

Final Vote Cast by the Legislature on SCA 32 (Proposition 112)

Assembly: Ayes 68 Senate: Ayes 33
 Noes 7 Noes 3

Analysis by the Legislative Analyst

Background

The California Constitution includes a number of requirements regarding the duties and responsibilities of the Legislature. For example, the Constitution requires the Legislature to enact laws to prohibit its Members from engaging in activities or having interests which conflict with the proper discharge of their duties. Current law generally requires that the proceedings of the Legislature and its committees be open to the public.

The Constitution provides that the salaries of all elected state officers shall be set by statute. Salaries of Members of the Legislature cannot be increased by more than five percent per year.

Proposal

This constitutional amendment prohibits Members of the Legislature and other elected state officers from receiving any honoraria. It also imposes restrictions on gifts, lobbying activity, and the sources of income of these officers. In addition, it creates a Citizens Compensation Commission, which shall have the exclusive power to set the salaries and all fringe benefits, except retirement, for these elected state officers.

The state officers that are affected by this measure include all Members of the Legislature, the Governor, Lieutenant Governor, Attorney General, Controller, Insurance Commissioner, Secretary of State, Superintendent of Public Instruction, Treasurer, and the members of the Board of Equalization.

The specific provisions of this measure are:

Prohibition on Honoraria and Restrictions on Gifts

- Prohibits Members of the Legislature and other elected state officers from accepting honoraria.
- Requires the Legislature to enact laws that ban or strictly limit the acceptance of gifts by elected state

officers if the acceptance of the gifts might create a conflict of interest.

Restrictions on Lobbying

- Restricts Members of the Legislature and other elected state officers from accepting compensation for appearing before a *state* board or agency.
- Permits Members of the Legislature and other elected state officers to accept compensation for appearing on behalf of another person before any *local* board or agency. However, Members or state officers who accept this compensation may not participate, for the following 12 months, in any action or decision that uniquely affects a financial interest of that person.
- Prohibits Members from receiving any compensation from a lobbyist, or from any person who has been under contract with the Legislature during the previous 12 months. Also prohibits elected state officers from receiving any compensation from a lobbyist, or from any person who has been under contract during the previous 12 months with their state agency.
- Requires the Legislature to enact laws to prohibit a Member from lobbying, for compensation, before the Legislature for 12 months after the Member leaves office. This provision would affect Members whose terms begin on or after December 3, 1990.
- Requires the Legislature to enact laws to prohibit state officers, or heads of state agencies who are appointed by the Governor, from lobbying for compensation before the executive branch government for 12 months after leaving office. This provision would affect state officers and heads of agencies who are holding office on or after January 7, 1991.

Compensation

- Creates the California Citizens Compensation Commission with the exclusive authority to set the annual salaries, and the medical, dental, insurance, and other similar benefits of Members of the Legislature and the following elected state officers: the Governor, Lieutenant Governor, Attorney General, Controller, Insurance Commissioner, Secretary of State, Superintendent of Public Instruction, Treasurer, and the members of the Board of Equalization.
- The Governor must appoint the seven members of the commission within 30 days after the June election.
- The commission membership must include three public members: one member who has experience in employee compensation; one member who is a representative of a nonprofit public interest organization; and one member who is a representative of the general population. The commission membership must also include two members with experience in the business community and two members who are representatives of labor organizations. No current or former officer or employee of the state is eligible for appointment to the commission.

- The commission would have until December 3, 1990, to set the salaries and benefits which would be effective for one year beginning on that date.
- In the following years, the commission could adjust annually the salaries and benefits for elected state officers.

Other Legislative Rule Changes

- Limits the ability of the Legislature to close sessions of the Legislature or its committees to the public.
- Requires the President pro Tempore of the Senate, the Speaker of the Assembly, and the minority leader of each house to report to the Senate or Assembly at the beginning of each session on the goals and objectives of each house during the session. At the end of the session, these individuals would have to report to each house on the progress made toward meeting the goals and objectives.

Fiscal Effect

This measure would result in unknown costs to the state General Fund. The amount of these costs would depend on the levels of salaries and benefits established by the Citizens Compensation Commission.

The cost to the state of supporting the commission and enforcing the provisions of the measure would probably be relatively minor.

Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment 32 (Statutes of 1989, Resolution Chapter 167) expressly amends the Constitution by repealing and adding sections thereto and amending sections thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be inserted or added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO ARTICLES III, IV AND V

First—That Section 22 is added to Article IV thereof, to read:

SEC. 22. It is the right of the people to hold their legislators accountable. To assist the people in exercising this right, at the convening of each regular session of the Legislature, the President pro Tempore of the Senate, the Speaker of the Assembly, and the minority leader of each house shall report to their house the goals and objectives of that house during that session and, at the close of each regular session, the progress made toward meeting those goals and objectives.

Second—That Section 5 of Article IV thereof is amended to read:

SEC. 5. (a) Each house shall judge the qualifications and elections of its ~~members~~ Members and, by rollcall vote entered in the journal, two thirds of the membership concurring, may expel a ~~member~~ Member.

(b) No Member of the Legislature may accept any honorarium. The Legislature shall enact laws that implement this subdivision.

(c) The Legislature shall enact laws that ban or strictly limit the acceptance of a gift by a Member of the Legislature from any source if the acceptance of the gift might create a conflict of interest.

(d) No Member of the Legislature may knowingly accept any compensation for appearing, agreeing to appear, or taking any other action on behalf of another person before any state government board or agency. If a Member knowingly accepts any compensation for appearing, agreeing to appear, or taking any other action on behalf of another person before any local government board or agency, the Member may not, for a period of one year following the acceptance of the compensation, 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 that person 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. However, a Member may engage in activities involving a board or agency which are strictly on his or her own behalf, appear in the capacity of an attorney before any court or the Workers' Compensation Appeals Board, or act as an advocate without compensation or make an inquiry for information on behalf of a person before a board or agency. This subdivision does not prohibit any action of a partnership or firm of which the Member is a member if the Member does not share directly or indirectly in the fee, less any expenses attributable to that fee, resulting from that action.

(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) The Legislature shall enact new laws, and strengthen the enforcement of existing laws, to ~~prohibit prohibiting members~~ Members of the Legislature from engaging in activities or having interests which conflict with the proper discharge of their duties and responsibilities; ~~provided that~~. However, the people reserve to themselves the power to implement this requirement pursuant to ~~Section 22 of this article~~ Article II.

Third—That subdivision (c) of Section 7 of Article IV thereof is amended to read:

(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.

(B) To consider matters affecting the safety and security of Members of the Legislature or its employees or the safety and security of any buildings and grounds used by the Legislature.

(C) To confer with, or receive advice from, its legal counsel regarding pending or reasonably anticipated, or whether to initiate, litigation when discussion in open session would not protect the interests of the house or committee regarding the litigation.

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measured by the percentage change in average daily attendance. However, in any fiscal year, there shall be no adjustment for decreases in enrollment between the prior fiscal year and the current fiscal year unless there have been decreases in enrollment between the second prior fiscal year and the prior fiscal year and between the third prior fiscal year and the second prior fiscal year.

(h) Subparagraph (B) of paragraph (3) of subdivision (b) may be suspended for one year only when made part of or included within any bill enacted pursuant to Section 12 of Article IV. All other provisions of subdivision (b) of this section may be suspended for one year by the enactment of an urgency statute pursuant to Section 8 of Article IV, provided that no urgency statute enacted under this subdivision may not be made part of or included within any bill enacted pursuant to Section 12 of Article IV.

Ninth—That Section 8.5 of Article XVI thereof is amended to read:

SECTION 8.5. Allocations to State School Fund

SEC. 8.5. (a) In addition to the amount required to be applied for the support of school districts and community college districts pursuant to Section 8(b) 8, the Controller shall during each fiscal year transfer and allocate all revenues available pursuant to paragraph 1 of subdivision (a) of Section 2 of Article XIII B up to a maximum of four percent (4%) of the total amount required pursuant to Section 8(b) of this Article, to that portion of the State School Fund restricted for elementary and high school purposes, and to that portion of the State School Fund restricted for community college purposes, respectively, in proportion to the enrollment in school districts and community college districts respectively.

(1) With respect to funds allocated to that portion of the State School Fund restricted for elementary and high school purposes, no transfer or allocation of funds pursuant to this section shall be required at any time that the Director of Finance and the Superintendent of Public Instruction mutually determine that current annual expenditures per student equal or exceed the average annual expenditure per student of the ten 10 states with the highest annual expenditures per student for elementary and high schools, and that average class size equals or is less than the average class size of the ten 10 states with the lowest

class size for elementary and high schools.

(2) With respect to funds allocated to that portion of the State School Fund restricted for community college purposes, no transfer or allocation of funds pursuant to this section shall be required at any time that the Director of Finance and the Chancellor of the California Community Colleges mutually determine that current annual expenditures per student for community colleges in this state equal or exceed the average annual expenditure per student of the ten 10 states with the highest annual expenditures per student for community colleges.

(b) Notwithstanding the provisions of Article XIII B, funds allocated pursuant to this section shall not constitute appropriations subject to limitation; but appropriation limits established in Article XIII B shall be annually increased for any such allocations made in the prior year.

(c) From any funds transferred to the State School Fund pursuant to paragraph subdivision (a) of this section, the Controller shall each year allocate to each school district and community college district an equal amount per enrollment in school districts from the amount in that portion of the State School Fund restricted for elementary and high school purposes and an equal amount per enrollment in community college districts from that portion of the State School Fund restricted for community college purposes.

(d) All revenues allocated pursuant to subdivision (a) of this section, together with an amount equal to the total amount of revenues allocated pursuant to subdivision (a) of this section in all prior years, as adjusted if required by Section 8(b)(2) of Article XVI, shall be expended solely for the purposes of instructional improvement and accountability as required by law.

(e) Any school district maintaining an elementary or secondary school shall develop and cause to be prepared an annual audit accounting for such funds and shall adopt a School Accountability Report Card for each school.

Tenth—That the amendment of the Constitution made by this measure shall take effect on July 1 next following the date on which this measure is approved by the electors.

Proposition 112: Text of Proposed Law

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(2) A caucus of the Members of the Senate, the Members of the Assembly, or the Members of both houses, which is composed of the members of the same political party, may meet in closed session.

(3) The Legislature shall implement this subdivision by concurrent resolution adopted by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by statute, and shall prescribe that, when a closed session is held pursuant to paragraph (1), reasonable notice of the closed session and the purpose of the closed session shall be provided to the public, except as provided by statute or by concurrent resolution, when such resolution is adopted by a two-thirds vote of the members of each house, provided, that if there is a conflict between such a statute and concurrent resolution and statute, the last adopted or enacted shall prevail.

Fourth—That Section 4 of Article IV thereof is amended to read:

SEC. 4. Compensation of members of the Legislature, and reimbursement for travel and living expenses in connection with their official duties, shall be prescribed by statute passed by rollcall vote entered in the journal, two-thirds of the membership of each house concurring. Commencing with 1967, in any statute enacted making an adjustment of the annual compensation of a member of the Legislature the adjustment may not exceed an amount equal to 5 percent for each calendar year following the operative date of the last adjustment, of the salary in effect when the statute is enacted. Any adjustment in the compensation may not apply until the commencement of the regular session commencing after the next general election following enactment of the statute.

(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 12 months, has been under a contract with the Legislature. 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, may not, for a period of one year 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 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.

(b) Travel and living expenses for Members of the Legislature in connection with their official duties shall be prescribed by statute passed by rollcall vote entered in the journal, two-thirds of the membership of each house concurring. A Member may not receive travel and living expenses during the times that the Legislature is in recess for more than three calendar days, unless the Member is traveling to or from, or is in attendance at, any meeting of a committee of which he or she is a member, or a meeting, conference, or other legislative function or responsibility as authorized by the rules of the house of which he or she is a member, which is held at a location at least 20 miles from his or her place of residence.

(c) The Legislature may not provide retirement benefits based on any portion of a monthly salary in excess of 500 five hundred dollars (\$500) paid to any member Member of the Legislature unless the member Member receives the greater amount while serving as a member Member in the Legislature. The Legislature may, prior to their retirement, limit the retirement benefits payable to members Members of the Legislature who serve during or after the term commencing in 1967.

When computing the retirement allowance of a member Member who serves in the Legislature during the term commencing in 1967 or later, allowance may be made for increases in cost of living if so provided by statute, but only with respect to increases in the cost of living occurring after retirement of the member Member, except that However, the Legislature may provide that no member Member shall be deprived of a cost of living adjustment based on a monthly salary of 500 five hundred dollars (\$500) which has accrued prior to the commencement of the 1967 Regular Session of the Legislature.

Fifth—That Section 14 is added to Article V thereof, to read:

SEC. 14. (a) To eliminate any appearance of a conflict with the proper discharge of his or her duties and responsibilities, no state officer 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 12 months, has been under a contract with the state agency

under the jurisdiction of the state officer. 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 state officer 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, may not, for a period of one year 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 agency for which the state officer serves, other than an action or decision involving a bill described in subdivision (c) of Section 12 of Article IV, which he or she knows, or has reason to know, would have a direct and significant financial impact on the 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.

(b) No state officer may accept any honorarium. The Legislature shall enact laws that implement this subdivision.

(c) The Legislature shall enact laws that ban or strictly limit the acceptance of a gift by a state officer from any source if the acceptance of the gift might create a conflict of interest.

(d) No state officer may knowingly accept any compensation for appearing, agreeing to appear, or taking any other action on behalf of another person before any state government board or agency. If a state officer knowingly accepts any compensation for appearing, agreeing to appear, or taking any other action on behalf of another person before any local government board or agency, the state officer may not, for a period of one year following the acceptance of the compensation, make, participate in making, or in any way attempt to use his or her official position to influence an action or decision before the state agency for which the state officer serves, other than an action or decision involving a bill described in subdivision (c) of Section 12 of Article IV, which he or she knows, or has reason to know, would have a direct and significant financial impact on that person 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. However, a state officer may engage in activities involving a board or agency which are strictly on his or her own behalf, appear in the capacity of an attorney before any court or the Workers' Compensation Appeals Board, or act as an advocate without compensation or make an inquiry for information on behalf of a person before a board or agency. This subdivision does not prohibit any action of a partnership or firm of which the state officer is a member if the state officer does not share directly or indirectly in the fee, less any expenses attributable to that fee, resulting from that action.

(e) The Legislature shall enact laws that prohibit a state officer, or a secretary of an agency or director of a department appointed by the Governor, who has not resigned or retired from state service prior to January 7, 1991, from lobbying, for compensation, as governed by the Political Reform Act of 1974, before the executive branch of state government for 12 months after leaving office.

(f) "State officer," as used in this section, means the Governor, Lieutenant Governor, Attorney General, Controller, Insurance Commissioner, Secretary of State, Superintendent of Public Instruction, Treasurer, and member of the State Board of Equalization.

Sixth—That Section 8 is added to Article III thereof, as follows:

SEC. 8. (a) The California Citizens Compensation Commission is hereby created and shall consist of seven members appointed by the Governor. The commission shall establish the annual salary and the medical, dental, insurance, and other similar benefits of state officers.

(b) The commission shall consist of the following persons:

(1) Three public members, one of whom has expertise in the area of compensation, such as an economist, market researcher, or personnel manager; one of whom is a member of a nonprofit public interest organization; and one of whom is representative of the general population and may include, among others, a retiree, homemaker, or person of median income. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974.

(2) Two members who have experience in the business community, one of whom is an executive of a corporation incorporated in this state which ranks among the largest private sector employers in the state based on the number of employees employed by the corporation in this state and one of whom is an owner of a small business in this state.

(3) Two members, each of whom is an officer or member of a labor organization.

(c) The Governor shall strive insofar as practicable to provide a balanced representation of the geographic, gender, racial, and ethnic diversity of the state in appointing commission members.

(d) The Governor shall appoint commission members and designate a chairperson for the commission not later than 30 days after the effective date of this section. The terms of two of the initial appointees shall expire on December 31, 1992, two on December 31, 1994, and three on December 31, 1996, as determined by the Governor. Thereafter, the term of each member shall be six years. Within 15 days of any vacancy, the Governor shall appoint a person to serve the unexpired portion of the term.

(e) No current or former officer or employee of this state is eligible for appointment to the commission.

(f) Public notice shall be given of all meetings of the commission, and the meetings shall be open to the public.

(g) On or before December 3, 1990, the commission shall, by a single resolution adopted by a majority of the membership of the commission, establish the annual salary and the medical, dental, insurance, and other similar benefits of state officers. The annual salary and benefits specified in that resolution shall be effective on and after December 3, 1990.

Thereafter, at or before the end of each fiscal year, the commission shall, by a single resolution adopted by a majority of the membership of the commission, adjust the annual salary and the medical, dental, insurance, and other similar benefits of state officers. The annual salary and benefits specified in the resolution shall be effective on and after the first Monday of the next December.

(h) In establishing or adjusting the annual salary and the medical, dental, insurance, and other similar benefits, the commission shall consider all of the following:

(1) The amount of time directly or indirectly related to the performance of the duties, functions, and services of a state officer.

(2) The amount of the annual salary and the medical, dental, insurance, and other similar benefits for other elected and appointed officers and officials in this state with comparable responsibilities, the judiciary, and, to the extent practicable, the private sector, recognizing, however, that state officers do not receive, and do not expect to receive, compensation at the same levels as individuals in the private with comparable experience and responsibilities.

(3) The responsibility and scope of authority of the entity in which the state officer serves.

(i) Until a resolution establishing or adjusting the annual salary and the medical, dental, insurance, and other similar benefits for state officers takes effect, each state officer shall continue to receive the same annual salary and the medical, dental, insurance, and other similar benefits received previously.

(j) All commission members shall receive their actual and necessary expenses, including travel expenses, incurred in the performance of their duties. Each member shall be compensated at the same rate as members, other than the chairperson, of the Fair Political Practices Commission, or its successor, for each day engaged in official duties, not to exceed 45 days per year.

(k) It is the intent of the Legislature that the creation of the commission should not generate new state costs for staff and services. The Department of Personnel Administration, the Board of Administration of the Public Employees' Retirement System, or other appropriate agencies, or their successors, shall furnish, from existing resources, staff and services to the commission as needed for the performance of its duties.

(l) "State officer," as used in this section, means the Governor, Lieutenant Governor, Attorney General, Controller, Insurance Commissioner, Secretary of State, Superintendent of Public Instruction, Treasurer, member of the State Board of Equalization, and Member of the Legislature.

Seventh—That Section 12 of Article V thereof is repealed.

SEC. 12. Compensation of the Governor, Lieutenant Governor, Attorney General, Controller, Secretary of State, Superintendent of Public Instruction, and Treasurer shall be prescribed by statute but may not be increased or decreased during a term.

Eighth—That subdivision (b) of Section 5 of, and subdivision (c) of Section 7 of, Article IV, and subdivision (b) of Section 14 of Article V, of the California Constitution, as added or amended by this measure, shall become operative on the first day of the 1991-92 Regular Session of the Legislature.