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State-Funded Design and Engineering Services. Initiative Constitutional Amendment.

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State-Funded Design and Engineering Services. Initiative Constitutional Amendment.

Official Title and Summary Prepared by the Attorney General

STATE-FUNDED DESIGN AND ENGINEERING SERVICES. INITIATIVE CONSTITUTIONAL AMENDMENT.

- Prohibits contracting where performance of work by civil service employees is less costly unless urgent need for contract.
- Prohibits contracts which Controller or awarding agency determines are against public interest, health, safety or where quality of work would be lower than civil service work.
- Contractors must indemnify state in suits related to performance of contracts.
- Requires defined competitive bidding of state-funded design and engineering contracts over \$50,000, unless delay from bidding would endanger public health or safety.
- Provisions severable and should be harmonized with similar measures on subject.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Unknown impact on state and local government costs to obtain construction-related services. Impact would depend largely on factors included in the cost comparison analyses required by the proposition.
- Administrative costs to the State Controller—one-time costs of probably less than \$500,000 and annual costs of up to \$2 million.

Analysis by the Legislative Analyst

BACKGROUND

Under California law, services provided by state agencies generally must be performed by state civil service employees. These services cover a broad range of activities—such as clerical support, building maintenance and security, and legal services. In some cases, however, the state may *contract* with private firms to obtain services. Such contracting is allowed, for example, if services needed by the state are: (1) of a temporary nature, (2) not available within the civil service, or (3) of a highly specialized or technical nature. Unlike the state, local governments are not subject to constitutional restrictions on contracting for services.

The state and local governments frequently contract with private firms for construction-related services, which include architecture, engineering, and environmental impact studies. State and local governments enter into these contracts through a process of advertising for the service, selecting the firm that is determined to be best qualified, and negotiating a contract with that firm. Neither the state nor local governments competitively bid for these services. By comparison, competitive bidding generally is used to acquire goods and for construction of projects.

PROPOSAL

This proposition, a constitutional amendment, requires public entities to use a new process prior to awarding a contract for the following construction-related services: engineering, architecture, landscape architecture, surveying, environmental studies, and geologic studies.

(The proposition would not affect contracting out for other types of services.) The new process would apply to:

- All state agencies, except the University of California and the California State University.
- Many local governments and private entities (see below).

What Is Involved in This New Contracting Process?

The Cost Comparison. Under the process established by the proposition, the State Controller would be required to prepare an analysis for each proposed contract and compare the following:

- The cost of contracting with a private firm for the services. This would include the anticipated amount a private firm would charge to provide the services plus the cost to bid, award, administer, and monitor the contract.
- The “additional direct costs” if state employees provide the same services.

Generally, the service could be contracted out if the Controller’s analysis indicated that the contract was *less costly* than using state employees. On the other hand, the work would have to be done by state employees if the analysis showed they could do it at lower cost.

Competitive Bidding. As noted earlier, public entities currently negotiate contract terms for construction-related services. This proposition requires that such contracts costing more than \$50,000 be competitively bid to select the lowest qualified bidder. Competitive bidding would not have to be used if it would delay a project *and* the delay would endanger public health or safety.

What Contracts Are Covered Under the Proposition?

Direct Contracting by the State. State agencies would have to use this new process if they wanted to contract for construction-related services. In recent years, state agencies have averaged about \$150 million annually in spending on these types of contracts. This amount varies annually depending on the state's level of construction activity.

Contracts Awarded by Local Governments and Private Entities. Local governments and private entities would also have to use this new process in the following situations:

- **State Funding of Services for Local Government or Private Projects.** Historically, the state has provided significant funding to local governments for various types of facilities—K-12 schools, local roads, community colleges, jails, and parks. Under the proposition, a local government would have to use the new process if it uses state funds to pay a private firm for any part of a construction-related service.
- **State Ownership, Liability, or Responsibility for a Project.** In many cases, the state assumes ownership, liability, or responsibility for construction, operation, or maintenance of a local project. This is the case, for example, with regard to the building of K-12 and community college buildings and many locally funded highway projects.

FISCAL EFFECTS

The potential fiscal effects of this proposition on the state and local governments are discussed below.

Impact on the Cost of Providing Services

The fiscal impact would depend in large part on the determination of which cost factors to use in comparing the cost of contracting out a service with the "additional direct cost" of the state providing the service. The cost of contracting for a service would be determined from the bid submitted by the private firm. On the other hand, because the term "additional direct costs" is not defined in the proposition, the Controller would have to determine which cost factors associated with using state employees should be included in order to prepare the required analyses.

What Are "Additional Direct Costs?" Because the proposition does not define "additional direct cost" there is not a clear answer to this question. Figure 1 lists some of the cost factors the Controller would need to review to determine if they should be counted as additional direct costs.

Cost Analysis on Contract-by-Contract Basis. A cost analysis would be required on each *individual* contract basis. Thus, a cost analysis may not reflect the accumulation of administrative costs if the state workforce increases to meet workload demand. For example, additional clerical and managerial positions or additional office space for state employees may not be needed for *any one* contract, but could be needed if work on *many* projects were assigned to state employees rather than private firms.

Fiscal Effect Depends on Cost Comparisons. The impact of the proposition on state and local costs would depend on the extent to which the cost analyses include all state costs associated with providing these services using state employees. For example:

- If more of the costs associated with using state employees are included in the analyses, it is more likely that they would provide an "apples-to-apples" comparison of total costs. In this case, the proposition could result in savings. This is because public entities would no longer contract in situations where it is *more costly*. These savings, however, probably would not be significant.
- On the other hand, if fewer of the state's costs are counted as "additional direct costs," the analyses would not reflect a true "apples-to-apples" comparison of total costs. In this case, the proposition could result in costs. This is because state employees would be used to perform work where contracting would have been *less costly*.

Because of the uncertainties discussed above, it is difficult to predict the fiscal effect of this proposition. However, a strict interpretation of additional direct costs (for example, only those identified in Figure 1 as "likely to be counted") could result in significant costs to state and local governments.

Figure 1

What Cost Factors Might Be Counted As "Additional Direct Costs?"

Cost Factors Likely to Be Counted

- Salaries and benefits of *additional* state employees needed to perform a service.
- Office space, furniture, equipment, and travel expenses for the additional employees.

Cost Factors Likely Not to Be Counted

- State agency overhead costs ("top management").
- Other state agency overhead costs—such as payroll, accounting, and personnel functions.

May or May Not Be Counted

- Hiring and training costs for any additional state employees needed to perform a service.
- Increased construction costs due to project delays caused by time needed to hire and train additional state employees.
- Costs of maintaining excess state staff if workload declines.

Other Fiscal Impacts

The proposition would have other fiscal effects on the state and local governments. For instance, the Controller would have costs to perform the required cost analyses. These costs would depend on the number of requests from state agencies and local governments. We estimate the Controller would have both one-time costs of probably less than \$500,000 and ongoing costs of up to \$2 million annually.

The proposition would affect the state and local governments in other ways. For example, it would take time to develop and implement the new process for evaluating contracts. This would lead to one-time delays in certain public sector construction projects, resulting in possible added inflation-related costs for those projects.

For the text of Proposition 224 see page 70



State-Funded Design and Engineering Services. Initiative Constitutional Amendment.

Argument in Favor of Proposition 224

Vote YES on:

- COMPETITIVE BIDDING
- CONTRACTOR RESPONSIBILITY
- COST SAVINGS through COST COMPARISONS
- Improved SAFETY of our state freeways and bridges
- STOP POLITICAL FAVORITISM AND WASTE

Proposition 224, the "Competitive Bidding Initiative," ends the politicians' practice of giving huge, overpriced, no-bid state engineering contracts to their campaign contributors. By requiring competitive bidding from qualified contractors and holding contractors responsible and financially liable for their own mistakes, it will improve the safety of our freeways, bridges, and other public works. By requiring a cost analysis before contracts are awarded, it ensures that taxpayers get the best value for their dollar. Fair, objective competitive bidding will break the link between campaign contributions and state politicians who give overpriced, no-bid contracts to their contributors.

"Private contractors receive millions of dollars in work without competition. Reforms are needed to protect the public interest."—State Auditor Kurt Sjoberg

"No-bid contracts are always suspect."—Contra Costa Times

Although state highway and freeway construction contracts are competitively bid, contracts for construction inspection, design, and other services aren't. Instead, Sacramento politicians simply give out these contracts, to their campaign contributors, at twice what they should cost. Proposition 224 ends this political spoils system by requiring competitive bidding.

END THE WASTE OF YOUR TAX DOLLARS

Official government documents prove that *more than half a billion dollars has been wasted* since 1990 on excessive costs of no-bid contracts under the current system. When contractors walk away from their inferior work, the taxpayers get stuck with the bill for doing it over and repairing the mistakes. Proposition 224 requires *impartial cost analyses* to prove cost effectiveness before contracts are awarded, followed by *competitive bidding* and *contractor responsibility* to ensure that tax dollars are spent wisely.

IMPROVE HIGHWAY SAFETY

"Proposition 224 will mean safer highways for all of us."—Dan Terry, President, California Professional Firefighters

No-bid contracts contributed to corruption and street collapses in Los Angeles, thousands of defects in San Diego bridges, and higher tolls in the Bay Area. While money was being wasted on overpriced, no-bid contracts to campaign contributors, the earthquake strengthening of our freeway bridges was delayed. As a result, bridges which hadn't been strengthened collapsed in earthquakes. Proposition 224 improves highway safety by awarding contracts only to qualified firms through competitive bidding and holding contractors responsible and financially liable for their own mistakes.

"The ultimate responsibility for faulty workmanship has to be on the part of the contractors hired to do the job. They, not taxpayers, should foot the bill for redoing the work."—San Diego Union-Tribune

The politicians even allowed a contractor to hire its own inspectors, resulting in more than 10,000 defective welds on a bridge strengthening project!

"When the state of California lets the foxes guard the hen house, no one should be surprised when the chickens get eaten."—San Diego Union-Tribune

Join with law enforcement, firefighters, teachers, seniors, and small businesses.

VOTE YES ON COMPETITIVE BIDDING:

SAVE LIVES, SAVE MONEY, AND END POLITICAL CRONYISM!

VOTE YES ON PROPOSITION 224!

DON BROWN

*President, California Organization of
Police & Sheriffs, COPS*

BEN HUDNALL

Business Manager, Engineers & Scientists of California

WOODY ALLSHOUSE

President, CDF Firefighters

Rebuttal to Argument in Favor of Proposition 224

deception: *n.* the practice of deceiving or misleading

The STATE BUREAUCRATS BEHIND PROPOSITION 224 and their political cronies are trying to deceive you.

Ask yourself: Would a state bureaucrats group (mostly Caltrans employees) really spend millions of dollars on a ballot measure to protect YOUR interests? Not likely.

—Will Proposition 224 save taxpayers money? No. Proposition 224 SHIFTS PRIVATE SECTOR JOBS TO the PUBLIC PAYROLL. BIGGER GOVERNMENT. HIGHER TAXES. That's why the CALIFORNIA TAXPAYERS' ASSOCIATION and other MAJOR TAXPAYER GROUPS OPPOSE IT.

—Will it make bidding more competitive? No. Talk about the ULTIMATE DECEPTION! DISGUISED as "competitive bidding," Proposition 224 RIGS the SYSTEM to PROTECT STATE BUREAUCRATS AGAINST COMPETITION from the private sector by virtually PROHIBITING STATE and LOCAL GOVERNMENTS FROM CONTRACTING OUT design, engineering and environmental work.

—Will it save lives? No. It virtually ELIMINATES the USE of PRIVATE SEISMIC EXPERTS, DELAYING and COMPROMISING ALREADY OVERDUE EARTHQUAKE RETROFITTING of HIGHWAYS, SCHOOLS and HOSPITALS.

"Proposition 224 will also delay construction of additional classrooms needed to reduce class sizes and accommodate the growth in student population."—California State PTA

—Will it increase accountability? No. Proposition 224 LETS STATE BUREAUCRATS OFF THE HOOK! Current law already holds *private* contractors fully liable for their mistakes. Proposition 224 could also hold them responsible for DANGEROUS HIGHWAY AND BRIDGE DESIGN MISTAKES MADE BY CALTRANS EMPLOYEES (the bureaucrats promoting this deceptive initiative).

BIGGER GOVERNMENT.

HIGHER TAXES.

LESS ACCOUNTABILITY.

DON'T LET THE BUREAUCRATS GET AWAY WITH IT!

IF YOU SUPPORT COMPETITIVE BIDDING . . .

VOTE "NO" on PROPOSITION 224!

PROFESSOR PAUL FRATESSA

Former Chair, Seismic Safety Commission

ALLAN ZAREMBERG

President, California Chamber of Commerce

JANE ARMSTRONG

State Chairman, Alliance of California

Taxpayers and Involved Voters

State-Funded Design and Engineering Services. Initiative Constitutional Amendment.



Argument Against Proposition 224

BEWARE: Proposition 224 is NOT what it pretends to be. It's a wolf in sheep's clothing.

That's why EARTHQUAKE SAFETY EXPERTS, CITIES, COUNTIES, SCHOOL DISTRICTS, HOSPITALS, BUSINESSES, LABOR, TEACHERS, PARENTS and TAXPAYER GROUPS throughout California **OPPOSE PROPOSITION 224!**

—WHO'S BEHIND PROPOSITION 224? WHY HAVE THEY DISGUISED ITS REAL PURPOSE?

A group of state bureaucrats (primarily Caltrans employees) spent millions to put Proposition 224 on the ballot. Why? They want you to believe it's to save taxpayers money. Would a state bureaucrats group really spend millions of their OWN dollars to save YOU money? Hardly.

Read the fine print! **DISGUISED** as a "competitive bidding" initiative, Proposition 224 creates a **RIGGED** formula that virtually **PROHIBITS STATE GOVERNMENT, CITIES, COUNTIES, and SCHOOL DISTRICTS FROM CONTINUING TO CONTRACT** for design, environmental and engineering work with the private sector.

—PROPOSITION 224 VIRTUALLY PROHIBITS THE CONTINUED USE OF PRIVATE SECTOR SEISMIC EXPERTS TO MAKE HIGHWAYS, OVERPASSES AND BRIDGES EARTHQUAKE-SAFE.

Contracting out design work for seismic retrofitting, schools, hospitals, highways and bridges keeps the government payroll from ballooning and permits the use of private expertise. Proposition 224 would essentially halt this practice. The bureaucrats behind Proposition 224 want more work brought *in-house*, **CREATING MORE PUBLIC PAYROLL JOBS.**

—PROPOSITION 224 REPRESENTS A HUGE SHIFT OF JOBS FROM THE PRIVATE SECTOR TO THE PUBLIC PAYROLL. MORE STATE BUREAUCRATS! BIGGER GOVERNMENT! HIGHER TAXES!

Economic analysis reveals it would mean thousands of **LOST PRIVATE SECTOR JOBS** and force California to **HIRE** up to 15,600 **NEW BUREAUCRATS** at a **TAXPAYER COST** of \$1,700,000,000 **ANNUALLY**—that's **BILLION**, with a "B".

—LOCAL GOVERNMENTS OPPOSE PROPOSITION 224. IT TAKES AWAY LOCAL CONTROL. CREATES COSTLY BUREAUCRATIC DELAYS AND GIVES ONE POLITICIAN ENORMOUS NEW POWERS.

It forces cities, counties and school districts to seek the state controller's approval before contracting out design work on school, road, hospital, water treatment and other building projects. That's **TOO MUCH POWER** to give **ONE POLITICIAN**. It would **DELAY VITAL PROJECTS** and **REDUCE TAXPAYER ACCOUNTABILITY.**

—THESE AND HUNDREDS OF OTHER GROUPS SAY: VOTE NO on PROPOSITION 224!

California Taxpayers' Association **OPPOSES**

Alliance of California Taxpayers and Involved Voters **OPPOSES**

Responsible Voters for Lower Taxes **OPPOSES**

Howard Jarvis Taxpayers Association **OPPOSES**

Structural Engineers Association of California **OPPOSES**

American Institute of Architects **OPPOSES**

League of California Cities and over 100 cities and counties **OPPOSE**

California Teachers Association **OPPOSES**

California School Boards Association **OPPOSES**

California State PTA **OPPOSES**

National Federation of Independent Business **OPPOSES**

California Association of Homes and Services for the Aging **OPPOSES**

California Healthcare Association **OPPOSES**

California Building Industry Association **OPPOSES**

California Chamber of Commerce **OPPOSES**

Consulting Engineers and Land Surveyors of California **OPPOSES**

California Minority & Women Businesses Coalition **OPPOSES**

California Council for Environmental and Economic Balance **OPPOSES**

California Association of School Business Officials **OPPOSES**

Association of California Water Agencies **OPPOSES**

California Park and Recreation Society **OPPOSES**

State Building and Construction Trades Council of California, **AFL-CIO OPPOSES**

Operating Engineers, Local 3, **AFL-CIO OPPOSES**

California Association of Realtors **OPPOSES**

Associated General Contractors **OPPOSES**

and

HUNDREDS of SEISMIC ENGINEERS OPPOSE PROPOSITION 224!

LARRY McCARTHY

President, California Taxpayers' Association

LORING A. WYLLIE, JR.

Past President, Earthquake Engineering Research Institute

RON BATES

President, League of California Cities

Rebuttal to Argument Against Proposition 224

90% OF THE OPPOSITION'S CAMPAIGN MONEY COMES FROM CONSULTANTS WHO RECEIVE NO-BID GOVERNMENT CONTRACTS! Of course, they oppose Prop. 224's requirements for cost effectiveness, competitive bidding, and contractor responsibility! If it passes, their gravy train will run out of gravy! All the pork will be gone from their political pork barrel!

THE SAME GANG THAT OPPOSED PROPOSITION 13 OPPOSES PROPOSITION 224! The Chamber of Commerce (big business), the League of Cities (local politicians), CalTax and others. Voters ignored them and approved Proposition 13, saving billions for taxpayers. Vote yes on Prop. 224!

"We are very strong supporters of privatization, but the only way it is going to work is to have open bidding," Joel Fox, President, Howard Jarvis Taxpayers Association; San Bernardino Sun, 9/12/95.

REAL EARTHQUAKE SAFETY EXPERTS, THE ENGINEERS WHO DESIGN AND BUILD OUR BRIDGES, SUPPORT PROPOSITION 224. So do the Engineers and Architects Association, and the Council of Engineers and Scientists Organizations.

America is based on competition. **COMPETITIVE BIDDING AMONG QUALIFIED FIRMS** saves money and cuts bureaucracy. **HOLDING**

CONTRACTORS RESPONSIBLE for their work improves highway and bridge safety. Claims that competitive bidding will raise taxes, cause delays, or prohibit contracting out are ridiculous! Will competitive bidding **SAVE TAXPAYERS MONEY? OF COURSE IT WILL!**

"We need competitive bidding. The current system favors the big boys, excludes small companies, promotes corruption, and wastes tax dollars."

Edmundo Lopez, President, Hispanic Contractors Association

BREAK THE LINK BETWEEN CAMPAIGN CONTRIBUTIONS AND NO-BID CONTRACTS.

COMPETITIVE BIDDING MAKES SENSE. YES ON PROPOSITION 224!

ARTHUR P. DUFFY

Chairman, Taxpayers for Competitive Bidding

LOIS WELLINGTON

President, Congress of California Seniors

EDMUNDO LOPEZ

President, Hispanic Contractors Association

Text of Proposed Laws—Continued

- (1) General administration.
- (2) Instructional resources supervision.
- (3) Supervision of instruction.

CHAPTER 5. FISCAL ADMINISTRATION

46654. Notwithstanding any other provision of law, for the 1998–99 fiscal year and each fiscal year thereafter, each school district shall develop as part of its budget a system that indicates the intended contribution of each projected expenditure to the achievement of a specific performance outcome objective pursuant to the school district's effort to improve pupil achievement.

46655. For the 2004–05 fiscal year and every five fiscal years thereafter, the governing board of each school district shall contract to have an independent general organizational management audit which shall include a performance audit and fiscal efficiency review undertaken to determine the degree to which the school district has complied with this part, including the effect upon pupil achievement of the expenditures of the school district.

CHAPTER 6. REPORTING REQUIREMENTS

46656. (a) For the 1996–97 fiscal year and each fiscal year thereafter through the 1999–2000 fiscal year, each school district shall report to the State Board of Education the total expenditures under the following reporting categories as defined by the State Department of Education:

(1) District administration as reported in column 3 of Form J380 (EDP Nos. 400 and 401) as that form existed on June 30, 1994 or any equivalent successor to this reporting category or any subsequent form(s) which report the same class of expenditures.

(2) Instructional administration as reported in column 3 of Form J380 (EDP No. 375) as that form existed on June 30, 1994 or any equivalent successor to this reporting category or any subsequent form(s) which report the same class of expenditures.

(3) Special projects administration and direct support costs as reported in column 3 of Form J380 (EDP No. 398) as that form existed on June 30, 1994 or any equivalent successor to this reporting category or any subsequent form(s) which report the same class of expenditures.

(4) Centralized data processing as reported in column 3 of Form J380 (EDP No. 402) as that form existed on June 30, 1994 or any equivalent successor to this reporting category or any subsequent form(s) which report the same class of expenditures.

(5) Maintenance and operations administration (EDP No. 408/6) as that form existed on June 30, 1994 or any equivalent successor to this reporting category or any subsequent form(s) which report the same class of expenditures.

(b) For the 1996–97 fiscal year and each fiscal year thereafter through the 1999–2000 fiscal year, each school district shall compute the percentage of funds expended in each fiscal year for the categories set forth in subdivision (a) to the total aggregate expenditures of all funds received from state, federal, and local sources, including, but not limited to, all state and federal funds received for categorical programs. Each school district annually

shall publish the percentage calculated under this subdivision in a form that is easily understood by the general public and shall make the publication readily available to the general public.

(c) For purposes of this section and notwithstanding Section 46652 or any other provision of law, a school district may use the standardized account code structure published by the State Department of Education pursuant to Chapter 237 of the Statutes of 1993.

(d) For the 2000–01 fiscal year and each fiscal year thereafter, each school district shall compute the sum of expenditures under general administration, supervision of instruction, and instructional resources supervision as defined in Section 46652 as a percentage of the total aggregate expenditures of all funds received from state, federal and local sources, including, but not limited to, all state and federal funds received for categorical programs. Each school district annually shall publish the percentage calculated under this subdivision in a form that is easily understood by the general public and shall make the publication readily available to the general public.

CHAPTER 7. SANCTIONS

46657. Any school district that fails to comply with this part shall be subject to sanctions as described in this chapter. The State Board of Education shall fine each school district 25 dollars per unit of ADA, or five percent of basic per-ADA revenue limit times total ADA, whichever is the greater, computed on the ADA basis of the fiscal year preceding the finding of noncompliance. There shall be public notice of violations at a regular governing board meeting.

GENERAL PROVISIONS

SEC. 2. IMPLEMENTATION

The provisions of this initiative shall be implemented as quickly as possible. Agencies of the state are prohibited from taking any action which delays implementation of this initiative or of any provision thereof. Any delay in implementation shall not invalidate this initiative or any provision thereof. The Legislature may amend this act only to further its purpose by a bill passed by a vote of two-thirds of the Legislature and signed by the Governor.

SEC. 3. LIMITATION OF ACTIONS

Any action or proceeding contesting the validity of this initiative, any provision of this initiative or the adoption of this initiative shall be commenced within six months of the date of the election at which this initiative is approved; otherwise this initiative and all of its provisions shall be held valid, legal and uncontestable. However, this limitation shall not of itself preclude an action or proceeding to challenge the application of this initiative or any of its provisions to a particular person or circumstance.

SEC. 4. SEVERABILITY

If any provision of this initiative or the application thereof to any person or circumstance is held invalid, the remaining provisions and their applications shall remain in force. To this end, the provisions of this initiative are severable.

Proposition 224: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure expressly amends the Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE VII

SECTION 1. TITLE

This measure shall be known and may be cited as the Government Cost Savings and Taxpayer Protection Amendment.

SECTION 2. PURPOSE AND INTENT

It is the intent of the People of the State of California in enacting this measure that engineering, architectural, and similar services provided by the State and certain other entities

be furnished at the lowest cost to taxpayers, consistent with quality, health, safety, and the public interest; that contracts for such services be awarded through a competitive bidding process, free of undue political influence; and that contractors be held fully responsible for the performance of their contracts.

SECTION 3. REQUIREMENTS FOR CONTRACTS FOR ENGINEERING, ARCHITECTURAL, AND SIMILAR SERVICES

Section 12 is added to Article VII of the Constitution, to read:

SEC. 12. (a) This section shall apply to contracts for engineering, architectural, landscape architectural, surveying, environmental, or engineering geology services awarded by the State of California or by any state agency to any public or private entity. As used in this section, "state agency" means every state office, officer, agency, department, division, bureau, board, and commission but does not include the University of

California, the California State University and Colleges, and local public entities. "State agency" also includes a state agency acting jointly with another state agency or with a local public entity. As used in this section, "local public entity" means any city, county, city and county, including a chartered city or county, public or municipal corporation, school district, special district, authority, or other public entity formed for the local performance of governmental and proprietary functions within limited boundaries. "Local public entity" also includes two or more local public entities acting jointly.

(b) This section shall also apply to contracts for services specified in subdivision (a) awarded by private entities or local public entities when the contract awarded by the public or private entity involves expenditure of state funds or involves a program, project, facility, or public work for which the State or any state agency has or will have ownership, liability, or responsibility for construction, operation, or maintenance. As used in this section, "state funds" means all money appropriated by the Legislature for expenditure by the State or a state agency and all money included in special funds that the State or a state agency controls.

(c) Prior to the award of any contract covered by this section, the Controller shall prepare and verify an analysis of the cost of performing the work using state civil service employees and the cost of the contract. In comparing costs, the cost of performing the work using state civil service employees shall include only the additional direct costs to the State to provide the same services as the contractor, and the cost of the contract shall include all anticipated contract costs and all costs to be incurred by the State, state agencies, and the contracting entity for the bidding, evaluation, and contract award process and for inspecting, supervising, verifying, monitoring, and overseeing the contract.

(d) The contract shall not be awarded if either of the following conditions is met: (1) the Controller's analysis concludes that state civil service employees can perform the work at less cost than the cost of the contract, unless the services are of such an urgent nature that public interest, health, or safety requires award of the contract; or (2) the Controller or the contracting entity concludes that the contract would not be in the public interest, would have an adverse impact on public health or safety, or would result in lower quality work than if state civil

service employees performed the services.

(e) Except for contracts for which a delay resulting from the competitive bidding process would endanger public health or safety, every contract, including amendments, covered by this section that exceeds fifty thousand dollars (\$50,000), adjusted annually to reflect changes in the appropriate consumer price index as determined by the Controller, shall be awarded through a publicized competitive bidding process involving sealed bids. Each contract shall be awarded to the lowest qualified bidder. If the contract cost based on the lowest qualified bid exceeds the anticipated contract costs the Controller estimated pursuant to subdivision (c), the Controller shall prepare and verify a revised analysis using the contract bid cost, and that revised analysis shall be used in applying subdivision (d).

(f) For every contract covered by this section, the contractor shall assume full responsibility and liability for its performance of the contract and shall defend, indemnify, and hold the State, the contracting entity, and their agents and employees harmless from any legal action resulting from the performance of the contract.

(g) This section shall not be applied in a manner that will result in the loss of federal funding to the contracting entity for contracts for services.

SECTION 4. SEVERABILITY

If any provision of this amendment or its application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the amendment which can be given effect without the invalid provision or application, and to this end the provisions of this amendment are severable.

SECTION 5. APPLICABILITY OF CURRENT LAW

Nothing in this amendment shall expand or restrict the State's constitutional authority, as determined by decisions of the California Supreme Court and California Courts of Appeal in effect on the effective date of this amendment, to enter into contracts with private or public entities.

SECTION 6. RELATIONSHIP TO OTHER MEASURES

To the extent that any other measure on the same subject shall be on the ballot at the same election, it is the intent of the voters that this measure be deemed, to the maximum extent possible, not to be in conflict with such other measure, but rather that this measure should be harmonized with the other measure.

Proposition 225: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure adds sections to the Elections Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

Whereas, Career politicians dominating Congress have a conflict of interest which prevents them from enacting meaningful term limits and making Congress what the Founders intended, the branch of government closest to the People; and

Whereas, Career politicians, while refusing to heed the desire of the People for meaningful term limits, amassed a nearly five trillion dollar national debt by not only voting year after year to spend far more than they have taken in, but also by voting to dramatically increase their own pay; also provided lavish million-dollar pensions for themselves and granted themselves numerous other privileges at the expense of the People; and

Whereas, Such irresponsible actions on the part of career politicians have mortgaged the future of not only every American citizen, but also their children and grandchildren; and

Whereas, The abuse of power, the corruption, and the appearance of corruption brought about by political careerism is ultimately destructive to representative government by making Congress increasingly distant from the People; and

Whereas, The President of the United States is limited to two terms in office by the 22nd Amendment to the U.S.

Constitution, and governors in 40 states are limited by state laws to two terms or less, and

Whereas, Voters have established term limits for more than 2,000 state legislators, as well as more than 17,000 local officials across the nation, including state legislators and statewide elective officeholders in California, and

Whereas, In 1992, the People of the State of California enacted, by an overwhelming majority, an amendment to the state law limiting service in the U.S. House of Representatives to three terms and in the U.S. Senate to two terms, which state-imposed congressional term limits were ruled unconstitutional by the U.S. Supreme Court, and

Whereas, Congress has ignored the desire of the People for meaningful term limits by refusing to pass an amendment instituting congressional term limits, and by proposing exceedingly long limits for its own members; and

Whereas, It is the People themselves, not Congress, who should set term limits; and

Whereas, The People have a sovereign right and a compelling interest in the creation and preserving of a citizen Congress that will more effectively protect their freedom and prosperity, which interest and right may not be as effectively served in any way other than that proposed by this initiative; and

Whereas, With foresight and wisdom our Founders, under Article V of the U.S. Constitution, did provide the People with a procedure by which to circumvent congressional self-interest, by which procedure the People may call a convention to propose amendments to the U.S. Constitution when two-thirds or 34 states expressly call for such a convention; and