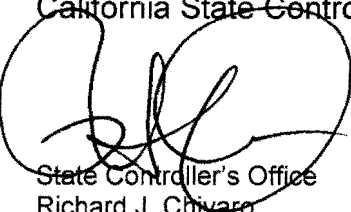


Memorandum

To : John Chiang
California State Controller

Date: June 1, 2011

From : 
State Controller's Office
Richard J. Chivaro
Chief Counsel

Subject: CALIFORNIA CONSTITUTION ARTICLE IV, SECTION 12 -
STATE LEGISLATOR'S PAY

The purpose of this memorandum is to address recent questions raised regarding the impact of Article IV, section 12 of the California Constitution, as amended by Proposition 25, on the salaries of legislators after June 15, 2011. More specifically, the question addressed herein is whether members of the Legislature forfeit salary and any reimbursement for travel or living expenses when they fail to pass a budget in which projected General Fund revenues meet or exceed General Fund expenditures as required by Proposition 58. The answer is yes.

Proposition 58, approved by the voters on March 2, 2004, added subdivision (f)¹ to Article IV, section 12 of the Constitution. Subdivision (f) provided in relevant part:

“[T]he Legislature may not send to the Governor for consideration, nor may the Governor sign into law, a budget bill that would appropriate from the General Fund, for that fiscal year, a total amount that . . . exceeds General Fund revenues for that fiscal year estimated as of the date of the budget bill's passage. That estimate of General Fund revenues shall be set forth in the budget bill passed by the Legislature.”

Stated simply, subdivision (f) prohibits the Legislature from sending a budget bill to the Governor for approval unless the proposed budget is “balanced.”

Proposition 25, titled the “On-Time Budget Act of 2010,” was approved by the voters on November 2, 2010. Proposition 25 amended subdivision (f) to subdivision (g) and added subdivision (e) and subdivision (h) to Article IV, section 12 of the Constitution. In doing so, Proposition 25 and Proposition 58 formed the basis of what is now Article IV, section 12.

¹ All subdivision references are to subdivisions of Art. IV, Sec. 12.

The substantive amendments of Proposition 25 made two important changes: first, the vote requirement for budget passage was lowered from two-thirds to a simple majority; and, second, the members of the Legislature were required to forfeit their pay if they failed to pass a budget by midnight on June 15.

Subdivision (e), which lowered the vote requirement for budget passage from two-thirds to a simple majority, states in relevant part:

“[T]he budget bill and other bills providing for appropriations related to the budget bill may be passed in each house by roll call vote entered in the journal, a majority of the membership concurring, to take effect immediately upon being signed by the Governor or upon a date specified in the legislation.”

Subdivision (h), the provision in question here, states in part:

“Notwithstanding any other provision of law or of this Constitution, . . . in any year in which the budget bill is not passed by the Legislature by midnight on June 15, there shall be no appropriation from the current budget or future budget to pay any salary or reimbursement for travel or living expenses for Members of the Legislature during any regular or special session for the period from midnight on June 15 until the day that the budget bill is presented to the Governor. No salary or reimbursement for travel or living expenses forfeited pursuant to this subdivision shall be paid retroactively.”

It is, of course, settled that in interpreting a voter-enacted initiative, courts apply the same principles that govern statutory construction. The goal, therefore, is to determine and effectuate voter intent. To determine intent, courts turn first to the language of the initiative, giving the words their ordinary meaning, and if the language is not ambiguous, then the plain meaning of the language governs. The language must be construed in the context of the initiative and the overall statutory scheme. (*People v. Rizo*, 22 Cal.4th 681.)

When Article IV, section 12, as amended by both Proposition 58 and 25, are viewed in the manner required under the principles of construction, it is relatively clear that subdivision (h) requires members of the Legislature to forfeit their pay beginning June 15, unless, or until such time, a “balanced” budget bill is presented to the Governor. In other words, one subdivision cannot be read to the exclusion of the other subdivisions. Rather, subdivisions (e), (g), and (h) must be harmonized so as to give effect to all of them.

Read together, subdivision (e) grants the Legislature authority to pass a budget bill by a simple majority, subdivision (g) then puts restrictions on the content of the budget bill, and subdivision (h) sets forth consequences for failure to pass an on time budget. Because subdivision (g) prohibits any budget bill from being enacted

unless the budget is “balanced,” subdivision (h) must be read to require passage of a “balanced” budget bill. Construing the subdivisions in a manner which allows the Legislature to receive pay without passing a “balanced” budget would essentially negate the restrictions imposed by subdivision (g).

Moreover, a reasonable construction of subdivision (h) would seem to require that the budget “passed” be presentable to the Governor. Specifically, subdivision (h) states that legislators must forfeit their pay “from midnight on June 15 until the day that the budget bill is presented to the Governor.” Pursuant to subdivision (g), no budget may be presented to the Governor unless it is “balanced.” Therefore, the language of subdivision (h), when read in the context, requires a forfeit of a legislator’s pay after June 15, and until such time as they present a “balanced” budget to the Governor.

Equally as important to this determination are the ballot summary, arguments and analysis presented to the electorate in connection with a particular measure which may be taken into account by a court in order to ascertain the intent of the voters. In this instance, it is worth noting that the analysis provided in the Official voter information guide by the Legislative Analyst relative to Proposition 25 stated:

“In any year when the Legislature has not sent a budget bill to the Governor by June 15, this measure would prohibit Members of the Legislature from collecting any salary or reimbursements for travel or living expenses.” (Emphasis added.)

In reliance on this statement, the voters would have understood that the enactment of Proposition 25, in part, would prohibit the Legislature from receiving pay unless they sent a budget to the Governor on time.

It has been suggested in various media reports that legislators may, in fact, be entitled to receive their full compensation after June 15, 2011, so long as a budget has been passed and without regard to whether the requirements of Proposition 58 have been satisfied. In other words, payments would continue to be made regardless of whether the budget bill passed could actually be presented to, or signed by the Governor in the manner otherwise contemplated by Article IV, section 12, when read together in its entirety. Because such an interpretation disregards the findings and declarations and Purpose and Intent contained in Proposition 25 and ultimately renders subdivisions (e) and (h) as mere surplusage, the suggestion would appear to lack merit and should be disregarded.

With regard to the findings and declarations, Proposition 25 states in relevant part:

“2. Late budget passage can have a sudden and devastating effect on individual Californians and California businesses. Individuals and families can be deprived of essential governmental services and businesses are subject to protracted delays in payments for services rendered to the State.

“5. A second major cause of the inability of the Legislature to pass a budget on time is that individual legislators have no incentive for doing so. Whether they adopt a budget on time or not has no effect upon those elected to represent the voters. In order to give the Legislature an incentive to pass the annual state budget on time, legislators should not be paid or reimbursed for living expenses if they fail to enact the budget on time. This measure requires incumbents to permanently forfeit their salaries and expenses for each day the budget is late.”

Additionally, Proposition 25 states as its purpose and intent:

“The people enact this measure to end budget delays by changing the legislative vote necessary to pass the budget from two-thirds to a majority vote and by requiring legislators to forfeit their pay if the Legislature fails to pass the budget on time.” (Emphasis added.)

It cannot seriously be argued that the finding of harm to Californians as stated in paragraph 2, which results from the enactment of an untimely budget, would be avoided or alleviated in any way by passage of a budget that could not otherwise be constitutionally presented to, or signed by, the Governor. To the contrary, paragraphs 2 and 5, as well as the statement of purpose, make clear that the attenuating harm can only be avoided by having a budget in place and that the impetus for ensuring the on-time budget is the forfeiture of salaries and expenses.

In summary, Propositions 25 and 58 provide both a carrot in the form of a simple majority vote requirement, as well as the stick in the form of forfeiture. Both are integral parts of Article IV, section 12 and cannot be disregarded absent a court determination to the contrary.

Please let me know whether you have any questions regarding this matter.

RJC/ac