

Official Title and Summary Prepared by the Attorney General**PUBLIC WORKS PROJECTS. USE OF PRIVATE CONTRACTORS FOR ENGINEERING AND ARCHITECTURAL SERVICES.**

Initiative Constitutional Amendment and Statute.

- Amends constitution to provide that in the design, development and construction of public works projects, state government may choose to contract with private entities for engineering and architectural services without regard to certain existing legal restrictions which apply to the procurement of other services.
- Specifies that local governments may also choose to contract with private entities for engineering, architectural services.
- Imposes competitive selection process, which permits but does not require competitive bidding, in awarding engineering and architectural contracts.

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

- Unknown fiscal impact on state spending for architectural and engineering services and construction project delivery. Actual impact will depend on how the state uses the contracting flexibility granted by the proposition in the future.
- Little or no fiscal impact on local governments because they generally can now contract for these services.

## BACKGROUND

Under California constitutional 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 architectural, engineering, and environmental impact studies. State and local governments enter into these contracts through a competitive process of advertising for the service, selecting the firm determined to be best qualified, and negotiating a contract with that firm. However, neither the state nor most local government entities use a bidding process for these services. By comparison, bidding generally is used to acquire goods and for construction of projects.

## PROPOSAL

This proposition amends the State Constitution to allow the state and local governments to contract with qualified private entities for architectural and engineering services for all phases of a public works project. Thus, governments could decide to contract out for these specific services in any case, rather than just on an exception basis.

The proposition also enacts statutory laws which:

- Define the term “architectural and engineering services” to include all architectural, landscape architectural, environmental, engineering, land surveying, and construction project management services.
- Specify that all projects in the State Transportation Improvement Program (STIP) are covered by the requirements of the proposition. The STIP is the state’s transportation plan that includes public works projects to increase the capacity of the state’s highways and provide transit capital improvements (such as new freeways, new interchanges, and passenger rail rights-of-way). The STIP is the state’s largest ongoing capital improvement program.

Thus, the proposition would probably have the greatest impact in the transportation area.

- Require architectural and engineering services to be obtained through a fair, competitive selection process that avoids conflicts of interest.

## FISCAL EFFECT

### Impacts on State Costs

Eliminating restrictions on contracting out for architectural and engineering services would make it easier for the state to enter into contracts with private individuals or firms to obtain these services. As a result, the state would likely contract out more of these services. This could affect state costs in two main ways.

**Cost of the Services.** The fiscal impact would depend on the cost of salaries and benefits for state employees performing architectural and engineering services compared to the cost of contracts with private firms. These costs would vary from project to project. In some cases, costs may be higher to contract out. It may still be in the state’s best interest to do so, however, because of other considerations. For instance, during times of workload growth (such as a short-term surge in construction activity), contracting for services could be faster than hiring and training new state employees. In addition, contracting can prevent the build-up of a “peak-workload” staff that can take time to reduce once workload declines.

For these reasons, the proposition’s net impact on state costs for architectural and engineering services is unknown, and would depend in large part on how the state used the flexibility granted under the measure.

**Impact on Construction Project Delivery.** The ability to contract for architectural and engineering services could also result in construction projects being completed earlier. As noted above, during times of workload growth, the ability to contract for these services could result in projects’ completion earlier than through the hiring and training of new state employees. This, in turn, could have state fiscal impacts—such as savings in construction-related expenses. In these cases, faster project completion would also benefit the public as capital improvements would be in service sooner.

### Impacts on Local Government Costs

There should be little or no fiscal impact on local governments because they generally can now contract for architectural and engineering services.

For text of Proposition 35 see page 65.

# 35 PUBLIC WORKS PROJECTS. USE OF PRIVATE CONTRACTORS FOR ENGINEERING AND ARCHITECTURAL SERVICES.

Initiative Constitutional Amendment and Statute.

## Argument in Favor of Proposition 35

**TRAFFIC GRIDLOCK, OVERCROWDED SCHOOLS: DOESN'T IT JUST MAKE SENSE TO PUT EVERYONE TO WORK TO SOLVE THESE PROBLEMS?**

• Proposition 35, the Fair Competition Initiative, simply gives state and local governments the choice to hire qualified private sector engineers and architects where it makes sense to do so—SOMETHING MANY OTHER STATES DO ALREADY.

*Why is Proposition 35 needed?*

**BEEN STUCK IN TRAFFIC LATELY?**

According to the state's independent Legislative Analyst, last year traffic congestion cost California consumers \$7.8 million a day! *There is a huge BACKLOG of transportation projects needed to REDUCE CONGESTION and PREPARE OUR HIGHWAYS, BRIDGES AND OVERPASSES FOR THE NEXT EARTHQUAKE.*

• PROP. 35 WILL ALLOW US TO USE PRIVATE EXPERTS TO GET TRANSPORTATION PROJECTS COMPLETED ON TIME AND ON BUDGET—AND KEEP TAXES DOWN.

*How did we get into this mess?*

A small group of Caltrans bureaucrats—concerned only with their self-interests—filed several lawsuits that essentially banned the state from hiring private architects and engineers. *They even terminated 15 existing earthquake retrofit contracts with private engineering firms.*

• PROP. 35 WILL ALLOW CALIFORNIA TO ONCE AGAIN MAKE USE OF PRIVATE SECTOR EARTHQUAKE EXPERTS TO ENSURE THE SAFETY OF OUR HIGHWAYS AND BRIDGES.

But the problem doesn't end there: *school districts, cities, counties and other local agencies' ability to choose both private and public sector architects and engineers is at risk, too.*

Prop. 35 would simply restore state and local agencies' choice to utilize private experts—using the same fair selection process on the books today—to select the most qualified architects or engineers to get these projects designed and built on time and on budget.

• PROP. 35 MEANS WE DON'T HAVE TO RELY ONLY ON CALTRANS.

The state's independent Legislative Analyst recommended Caltrans contract out more work.

Why? Caltrans simply cannot do all the work alone. *Plus, 17% of the Caltrans engineers have less than 3 years experience. And Caltrans is hardly a model of efficiency—a recent university study shows Caltrans spends more on administration than on maintenance of our roads and highways!*

• THE CALIFORNIA TAXPAYERS' ASSOCIATION and other taxpayer groups SUPPORT PROP. 35 because it could SAVE CALIFORNIANS \$2.5 BILLION ANNUALLY and CREATE 40,000 JOBS over the next ten years.

California's population is growing, creating the need for more schools, roads, transit, hospitals and other vital services. *THERE'S PLENTY OF WORK FOR BOTH PUBLIC AND PRIVATE ENGINEERS AND ARCHITECTS to relieve traffic congestion, accommodate growing school needs and retrofit our aging highway system.*

• COMMON SENSE TELLS US PUBLIC-PRIVATE PARTNERSHIPS ARE THE MOST COST-EFFECTIVE WAY TO MEET THESE NEEDS and SAVE TAXPAYERS MONEY.

*With so much at stake, WE NEED ALL HANDS ON DECK.*

*Join with:*

- California Taxpayer Protection Committee
- Coalition for Adequate School Housing
- California Minority and Women's Business Coalition
- California Chamber of Commerce
- California Society of Professional Engineers
- National Federation of Independent Business
- J. E. Smith, Former Commissioner of the California Highway Patrol

*And hundreds of school districts, cities, counties, water districts, transportation agencies and earthquake engineers.*

**VOTE YES on 35.**

LARRY MCCARTHY, *President*

*California Taxpayers' Association*

LORING A. WYLLIE, JR., *Past President*

*Earthquake Engineering Research Institute*

TODD NICHOLSON, *President*

*Californians for Better Transportation*

## Rebuttal to Argument in Favor of Proposition 35

Proposition 35's backers use buzzwords: "gridlock," "overcrowded schools." BUT THEY DON'T SAY WHAT IT ACTUALLY DOES.

They say we need to give government "the choice" to contract with private engineering corporations. But that choice ALREADY EXISTS.

**FACTS:**

• CALIFORNIA ALREADY USES BOTH PUBLIC AND PRIVATE ENGINEERS. Just like other states, THOUSANDS OF GOVERNMENT CONTRACTS ARE ANNUALLY AWARDED to private firms of every kind. This year, Caltrans will spend \$150,000,000.00 on contracts with private engineers.

• PUBLIC-PRIVATE PARTNERSHIPS ALREADY EXIST. For example, when the Northridge earthquake knocked down the Santa Monica Freeway, a partnership of Caltrans engineers and private construction companies rebuilt it in record time.

So why is Proposition 35 on the ballot?

The REAL PURPOSE is to benefit engineering consultants who paid to put Proposition 35 on the ballot.

• Proposition 35 AMENDS THE CONSTITUTION TO EXEMPT JUST THIS ONE INDUSTRY from legal requirements that apply to every other business that contracts with state government.

• Proposition 35 REQUIRES A NEW SELECTION PROCESS WHICH IT DOES NOT DEFINE. How will engineering contracts be awarded? Proposition 35 doesn't say.

Because Proposition 35 doesn't define the process, it will cause CONFUSION, LITIGATION AND COSTLY ROAD AND SCHOOL CONSTRUCTION DELAYS while new regulations are created and challenged in court.

California Federation of Teachers says Proposition 35 will delay construction needed for class size reduction. Howard Jarvis Taxpayers Association says Proposition 35 will COST TAXPAYERS HUNDREDS OF MILLIONS OF DOLLARS.

Don't let a special interest change the Constitution for its benefit, not yours.

**VOTE NO ON PROPOSITION 35!**

LENNY GOLDBERG, *Executive Director*

*California Tax Reform Association*

MARY BERGAN, *President*

*California Federation of Teachers*

HOWARD OWENS, *President*

*Consumer Federation of California*

# PUBLIC WORKS PROJECTS. USE OF PRIVATE CONTRACTORS FOR ENGINEERING AND ARCHITECTURAL SERVICES. **35**

Initiative Constitutional Amendment and Statute.

## Argument Against Proposition 35

You've seen it before, and here we go again. PROPOSITION 35 IS ANOTHER MISLEADING, SELF-SERVING, SPECIAL INTEREST INITIATIVE.

### WHO'S BEHIND PROPOSITION 35?

According to official reports, huge engineering corporations paid millions to place Proposition 35 on the ballot and they are spending millions more to mislead you into voting for it. Are they really spending all that money to help you, the taxpayer? Of course not!

PROPOSITION 35 CHANGES CALIFORNIA'S CONSTITUTION so large engineering corporations don't have to abide by the rules that apply to every other business that contracts with government in California. Every year, state and local governments spend billions of dollars on contracts with thousands of businesses.

PROPOSITION 35 CREATES A SPECIAL INTEREST EXEMPTION FOR ONLY ONE GROUP—ITS SPONSORS!

### HOW DOES PROPOSITION 35 AFFECT YOU?

Independent experts agree that PROPOSITION 35 WILL DELAY CONSTRUCTION OF ROADS, SCHOOLS, HEALTH CARE FACILITIES, and other needed projects for years.

A top regulatory expert says Proposition 35 will bring public contracting to a "crawl, if not a complete halt" while a NEW BLOATED STATE BUREAUCRACY develops a NEW SET OF STATE REGULATIONS and IMPOSES THEM ON OUR CITIES, COUNTIES, AND SCHOOL DISTRICTS!

Independent legal analyses say LAWSUITS WILL CAUSE EVEN MORE DELAYS!

THESE DELAYS COST YOU MONEY! The former State Auditor General, California's independent fiscal watchdog, identified MORE THAN \$8 BILLION of school, road, and hospital projects that will be delayed at a cost of HUNDREDS OF MILLIONS OF DOLLARS! Taxpayer dollars—YOUR DOLLARS!

Project delays mean TRAFFIC CONGESTION WILL GET WORSE. That's why the Engineers and Scientists of California and public

safety organizations—including the California Association of Highway Patrolmen and the California Professional Firefighters—oppose Proposition 35.

PROPOSITION 35 WILL DELAY CONSTRUCTION OF NEW CLASSROOMS NEEDED TO REDUCE CLASS SIZE AND IMPROVE EDUCATION. That's why educators, including school districts throughout California and the California School Employees Association, oppose Proposition 35.

PROPOSITION 35 WILL DELAY CONSTRUCTION OF HEALTH CARE FACILITIES, increasing the cost of health care. That's why health care professionals and seniors groups—including the California Nurses Association and the Congress of California Seniors—oppose Proposition 35.

*Jon Coupal, President of the HOWARD JARVIS TAXPAYERS ASSOCIATION, says "Taxpayers should be very concerned with this proposal and its potential costs. We urge voters to vote NO on Proposition 35."*

Don't let a few huge, greedy corporations mislead you into voting to change the Constitution to give them a special exemption so they can waste your tax dollars! Please join with the Howard Jarvis Taxpayers Association, the California Tax Reform Association, the Consumer Federation of California, the California Small Business Roundtable, law enforcement, firefighters, teachers, seniors, nurses, labor and many, many others who OPPOSE PROPOSITION 35.

VOTE NO ON PROPOSITION 35!

JEFF SEDIVEC, *President*

*California State Firefighters' Association*

LOIS WELLINGTON, *President*

*Congress of California Seniors*

MARLAYNE MORGAN

*Engineers and Scientists of California*

## Rebuttal to Argument Against Proposition 35

They're at it again. *The CALTRANS BUREAUCRATS WHO ARE BANKROLLING THE CAMPAIGN AGAINST PROP. 35 will stop at nothing.*

First they filed lawsuits to terminate government's ability to contract with private sector architects and engineers. Then they brought *more* lawsuits to deny you the opportunity to vote on Prop. 35.

Now that it's on the ballot, those same bureaucrats are using their political allies in Sacramento and discredited studies to try to deceive you.

We invite you to read Prop. 35 yourself. IT'S THE MOST STRAIGHTFORWARD INITIATIVE ON THE BALLOT.

*Prop. 35 will simply restore the ability of state and local government to use qualified private sector engineers and architects where it makes sense to do so—something many other states do already.*

PROP. 35 DOESN'T CREATE ANY NEW COMPLICATED REGULATIONS OR DELAYS. *On the contrary, it restores the public/private partnerships needed to speed up the delivery of thousands of backlogged public works projects.*

That's precisely why hundreds of local governments, schools, transportation agencies, engineers, earthquake safety experts and *more than a dozen taxpayer groups URGE A YES VOTE ON PROP. 35.*

Working together, the public and private sectors can GET THE JOB DONE SOONER, SAFELY and MORE EFFICIENTLY.

*It's a simple question really:*

- If you want to preserve the Caltrans status quo of delays, vote no.
- If you want to see the PUBLIC AND PRIVATE SECTORS WORKING TOGETHER to speed up project delivery, SAVE taxpayers \$2.5 BILLION ANNUALLY and create 40,000 new jobs . . . VOTE YES on PROP. 35.

MIKE SPENCE, *President*

*California Taxpayer Protection Committee*

RON HAMBURGER, *President*

*Structural Engineers Association of California*

MICHAEL E. FLYNN, *President*

*Taxpayers for Fair Competition—a coalition of taxpayers, engineers, seniors, schools, local government, business, labor, highway safety experts and frustrated commuters*