

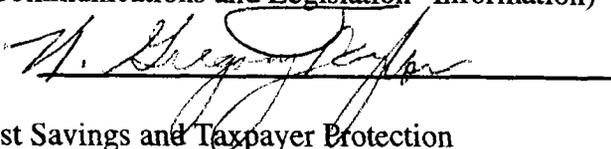


MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

9-14

April 27, 1998

To: Board of Directors (Comm. on Communications and Legislation--Information)
From: General Counsel 
Subject: Proposition 224--Government Cost Savings and Taxpayer Protection
Amendment to California Constitution

RECOMMENDATION(S)

For information only.

EXECUTIVE SUMMARY

Proposition 224 would, if approved by the voters, in June, amend the California Constitution to establish a process for the award of engineering, architectural, landscape architectural, surveying, environmental and engineering geology services by the State or any state agency to any public or private entity. All such contracts in excess of \$50,000 as adjusted by the consumer price index, would be subject to a State Controller analysis comparing the cost of performing the work using state civil service employees and the cost of the contract. In evaluating the former costs, the State Controller could only consider the additional direct costs to the State of using such employees. If such costs are lower than the cost of the contract then the contract could not be awarded unless the services were of such an urgent nature that public interest, health, or safety required contract award. The State Controller or the contracting entity could also prevent award of the contract if either determined it not to be in the public interest, have an adverse impact on public health or safety, or result in lower quality work than if state civil service employees performed the services. Any contract awards would be through competitive bidding. The contractor would have to assume full responsibility and liability for its performance of the contract.

Proposition 224 would not directly impact Metropolitan unless it desired to contract to provide any of the specified services or unless it used state funding to pay for part of a construction-related project. The proposition could indirectly impact Metropolitan to the extent it impairs the ability of agencies such as the Department of Water Resources to efficiently have performed the specified services. The required process would almost certainly increase administrative costs and cause delays to the detriment of Metropolitan and other State Water Contractors.

JO:gm
#10133

Attachment

| Proposition 224 | Analysis |

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

Proposition 224 - Full Text of the 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.