

# Measure F305

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## **INSTRUCTIONS:**

Please carefully read the following description of a ballot measure that was written by a disinterested expert. Feel free to take notes or outline passages as you read.

This should take approximately 10 minutes.

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## **BALLOT MEASURE F305**

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### **BACKGROUND**

The state and local governments collect information on race, color, ethnicity, or national origin of their employees and other individuals for various purposes. In most cases, the federal government requires this information to ensure compliance with federal nondiscrimination laws (particularly equal employment opportunity laws) and as a condition of receiving various federal funds. For example, state and local government agencies collect race-related information on adopted children and include this information in reports required by the federal government. In some cases, however, state and local agencies collect this type of information when not required by the federal government. For instance, state government collects race-related information on students applying to state universities for admission (whether or not they eventually enroll). The California Constitution currently allows the collection and use of race-related information. In the areas of public employment, public education, and public contracting, the Constitution, however, prohibits state and local governments from providing "preferential treatment" based on race, color, ethnicity, or national origin.

### **PROPOSAL**

This measure restricts, effective January 1, 2005, state and local governments from "classifying" information on a person's race, ethnicity, color, or national origin for the purposes of public education, public contracting, public employment, and other government operations. "Classifying" would include the collection by a governmental entity of an individual's race-related information. It would also affect to an unknown extent (as discussed below) the use of race-related information by governmental entities. In our discussion, we use the phrase "collection and use" in place of the measure's term "classifying."

**Exemptions.** The collection and use of race-related information by state and local governments would be prohibited unless specifically exempted. The measure allows the continued collection and use of race-related data for a variety of reasons, including:

- To comply with federal law.
- To remain eligible to receive money from the federal government.
- To comply with a court order in force as of the effective date of the measure.
- To allow law enforcement agencies to describe individuals.

- To place prisoners and assign undercover law enforcement officers.
- To collect and use information related to medical research subjects and patients.
- To allow the Department of Fair Employment and Housing (DFEH) to collect certain race-related information through 2014.

In addition, for those government operations unrelated to public education, public contracting, and public employment, the measure allows the Legislature to pass (by a two-thirds vote of each house) and the Governor to sign, legislation approving the collection and use of such data to serve a "compelling state interest."

## **PROGRAMMATIC EFFECTS**

### **Information Collected for Most Programs Would Continue**

Much of the race-related information collected by state and local government agencies could continue to be collected under the measure's exemptions. The majority of this information is currently required by the federal government. For example:

- Government agencies collect race-related information on job applicants and employees to meet federal equal employment opportunity requirements.
- Public schools (kindergarten through grade 12) collect race-related information on students. The federal government requires most of this information to monitor and evaluate (1) specific educational programs and (2) student test results and achievements.
- The University of California (UC), California State University (CSU), and California Community Colleges collect race-related information on enrolled students and employees to meet federal funding requirements.
- State and local government agencies collect race-related information on individuals who receive services related to cash assistance, alcohol and drug treatment, mental health, and food stamps. Most of this information is required by the federal government.
- Law enforcement agencies collect and compile race-related information to meet various federal requirements.

The DFEH enforces the state's equal opportunity laws. Many of the department's race-related activities are required by the federal government. To the extent that DFEH's race-related activities are not required by the federal government, the measure allows DFEH to continue this work through 2014 (at which time the Legislature could vote to continue these activities).

### **Information Collected for Some Programs Would Be Restricted**

State and local government agencies also collect and use race-related information independently of federal requirements. To the extent these activities are not covered by the measure's other exemptions, this information could no longer be collected. For instance, agencies could no longer collect race-related information associated with:

- Companies doing business with the state.
- Public school students participating in a limited number of specific state education programs and tests.
- Prospective UC and CSU students.
- High school students participating in some UC educational outreach programs.

- College students participating in the state's loan forgiveness program.
- Students taking state teacher credentialing exams.

In those areas where agencies were restricted in their activities, state and local governments would have reduced race-related information. In such cases, the measure could have some impact on future public policy decisions.

### **Effects on Some Programs Uncertain**

For some current government activities, the effect of the measure is unknown and would depend on future interpretation of the measure's language by courts and future actions by the Legislature. For instance, the federal government compiles demographic information on the state's population (primarily through the Census). This information generally is aggregated—that is, not tied to specific individuals. Many state and local agencies then use this information for a variety of purposes. It is unclear under the measure whether state and local agencies could continue to use the race-related components of this information for evaluation, program, and reporting purposes.

Under the measure, state and local agencies could continue to collect race-related information to meet federal requirements. The measure, however, is not clear whether these entities could then continue to sort and analyze the information for other purposes.

In the area of law enforcement, the measure allows officers to describe individuals by race-related classifications (such as during a search for a criminal suspect). It is unclear if the measure also would allow law enforcement agencies to then use the information in other ways—such as analyzing crime trends by race.

In addition, the state and local agencies collect a variety of public health information through the use of surveys of the public which may include race-related information. It appears that this activity might be allowed to continue under the measure's medical research exception. Future court and/or legislative actions could affect the measure's implementation in this regard.



**STOP!**

Please go to the online survey, enter the 4-character code for this ballot measure (printed at the top and bottom of this page) and answer the survey questions.