

August 4, 2014

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional initiative regarding voter approval of certain revenue bonds (A.G. File No. 14-0009).

Background

Bonds Are One Source of Funding for Government Projects. Bonds are a way the state and local governments borrow money. Governments sell bonds to investors to provide “up-front” funding for projects (such as infrastructure projects) and then commit to repay the investors, with interest, over a period of time. Governments use bonds to fund projects for a variety of reasons. For instance, bonds are sometimes used to help pay for costly projects that may be difficult to pay for all at once. Bonds spread the costs of projects over time, which may make sense when projects provide services over many years. In addition to bonds, governments in California often use a variety of other funding sources (such as grants, taxes, and fees) to help pay for projects.

Voters Must Approve Some Types of Bonds. General obligation bonds and revenue bonds are two types of bonds issued by state and local governments in California. State general obligation bonds are guaranteed by the state government’s full faith and credit and are generally repaid using the state’s general tax revenues. Local general obligation bonds are typically funded by increased property taxes. The California Constitution requires voter approval of state and local general obligation bonds.

Unlike general obligation bonds, revenue bonds are not guaranteed directly by state or local government taxing powers. Instead, revenue bonds are repaid using designated funding streams generally associated with the projects they finance. For example, funding generated by fees or other charges paid by users of a project (such as bridge tolls) are sometimes used to repay the project’s revenue bonds. In addition, in some cases, governments pay for a type of revenue bond called a “lease revenue bond,” often through a lease or rent paid from a government’s general tax or special fund revenues. Unlike general obligation bonds, revenue bonds do not require voter approval under existing state law. Some examples of projects that are often funded by revenue bonds include public office buildings, bridges, and water treatment facilities.

Public Information About Bonds. Under existing state law, the Legislative Analyst’s Office (LAO) is required to prepare for the voters impartial analyses of all state ballot measures, including all state general obligation bonds. State law requires that such analyses include certain information, such as a description of the measure and the fiscal effects it will have on state and local governments. In addition, the administration maintains websites, which provide the public with some information on how state bonds are being utilized, including information on the cost and status of projects.

Proposal

Requires Voter Approval for Certain Revenue Bonds. The measure requires statewide voter approval for revenue bonds for projects that meet all of the following conditions:

- The total amount of revenue bonds sold for the project would exceed \$2 billion.
- The project funded by the revenue bonds would be funded, owned, or operated at least partially by the state.
- Repayment of the revenue bonds would require the imposition, extension, or increase of any tax, fee, rate, toll, rent, or other charge.

The measure defines a project as including “any project, object, or work” and prohibits subdividing projects to avoid the above \$2 billion threshold. The measure further specifies that the \$2 billion threshold be adjusted annually based on the Consumer Price Index.

Requires Certain Information in LAO Ballot Analyses of Bonds. The measure requires the LAO to include certain information in its analysis of each bond measure (revenue and general obligation) put before voters at statewide elections. Specifically, the LAO analysis would be required to include project descriptions, costs, repayment schedules, funding sources, and any audit and oversight procedures included in the bond measure.

Requires Additional Information on Bonds to Be Posted Online. The measure requires each government agency responsible for bond-funded projects approved in statewide elections to post certain project information on their websites. This includes annually updated information on project status, costs, and schedule.

Fiscal Effects

The fiscal effects of this measure on state and local governments are subject to substantial uncertainty. In particular, it is unclear (1) how certain provisions of the measure would be interpreted by government agencies and the courts, which could affect the number of projects subject to the measure’s voter requirements; and (2) how affected governments would respond to the measure and election outcomes. As a result, there is substantial uncertainty regarding the fiscal impacts of the measure on state and local governments. Specifically, it is:

- ***Uncertain Which Projects Would Be Affected by Measure.*** As mentioned previously, the measure defines a project as a project, object, or work. This definition could potentially be construed in various ways. For example, the definition of a project could be limited to what is built on a given site at a specific time (such as an individual medical building) or could include larger systems of improvements constructed over time (such as a medical center with multiple buildings). A broader

definition of a project would result in more instances in which the \$2 billion threshold is reached, thus triggering the measure's voting requirements. It is also unclear how the measure's provision related to projects fully or partially funded, owned, or operated by the state would apply to certain local projects funded by revenue bonds. For example, it is unclear whether a local project where its only state funding is a small grant or a loan would be subject to the measure's voter requirements. Including such local projects could increase the number of projects requiring statewide voter approval.

- ***Uncertain How Affected Entities Would Respond to Measure.*** Governments could vary in how they respond to the requirements of the measure, as well as the results of future elections. For example, the voter requirement might discourage certain project proponents from pursuing projects due to the additional costs and uncertainty associated with the voter approval process. The measure could also result in some projects being funded through other financing methods rather than revenue bonds. For example, some projects might rely more heavily on up-front spending.

Impact on Projects. The fiscal impacts to state and local governments associated with the measure would depend heavily on the issues described above. In any case, there would likely be relatively few projects large enough to come under the measure's requirement of voter approval. To the extent that voters did not approve these projects, there would be a reduction in the issuance of revenue bonds for large infrastructure projects. If these projects could no longer be completed, the state's infrastructure could be reduced. To the extent that voters do approve the projects, there could be some delay in the construction of projects affected by the measure.

Administrative Costs. State and local governments would also incur some administrative costs related to putting certain revenue bonds on the ballot and providing information on those projects approved by voters. These costs would be relatively minor.

Summary of Fiscal Effects. This measure would have the following major fiscal effect:

- Potential reduction in large-scale infrastructure projects funded by the issuance of revenue bonds.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance