

May 30, 2003

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Tricia Knight
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the constitutional initiative relating to voting requirements for increasing state revenues through taxes or fees (File No. SA2003RF0011).

Background Regarding the Initiative

The State Constitution requires a two-thirds vote of each house of the Legislature for measures that result in increased revenues through the levying of new *taxes* or changes to existing taxes. In contrast, approval of new or additional *fees* requires only a majority vote of the Legislature.

State fees are generally of two types—*user fees* and *regulatory fees*.

- User fees—such as state park entrance fees—are paid by the user for the cost of providing specific services or programs.
- Regulatory fees—such as waste discharge permit fees or smog check fees—pay for programs that establish rules regarding the activities of businesses or people in order to achieve particular policy goals.

In the case of regulatory fees, the State Supreme Court recently ruled (in the *Sinclair Paint* decision) that such fees may include not only the costs of specific regulatory and enforcement activities, but also more generalized impacts of particular activities.

Provisions of the Initiative

The measure amends the Constitution in the following manner:

Voting Requirements for Tax Increases. The measure affirms that any change in taxes enacted for the purpose of increasing revenues from an existing tax or a newly established tax requires a vote of two-thirds of the Legislature.

Voting Requirements for Certain Regulatory Fees. The measure establishes that beginning January 1, 2003, any changes to certain state regulatory fees for the purpose of increasing revenues would require a vote of two-thirds of the Legislature. This would apply to fees imposed for the primary purpose of addressing health, environmental, or other “societal or economic” concerns. Fees covered by the measure would be those fees that *do not* impose a significant regulatory obligation on the fee payer, and are only collected in order to monitor, study, or mitigate the general effects of an activity. There is some uncertainty as to what types of regulatory fees would be affected by this measure.

The measure exempts from the higher vote requirement: (1) fee increases related to inflation or workload; (2) fees that are set at levels that do not exceed the state’s cost of regulating or enforcing particular activities; (3) assessment, property, and development fees; and (4) fees or penalties related to damages or remedial expenses associated with specific events.

Any fees covered by the measure would be repealed five years after their enactment, and could be extended for successive periods of no more than five years.

Fiscal Effect of the Initiative

This measure, by increasing the voting requirement from a majority vote to two-thirds, would make it more difficult for the state to impose certain regulatory fees. To the extent that this increased voting requirement resulted in rejection of fee-related proposals which would have been approved under a majority vote, the measure would result in lower revenues (and thus spending) than would otherwise have occurred. The revenue impact could be significant, but it would depend on future actions of the Legislature.

Summary

This measure would have the following major fiscal effect:

- Potentially significant decrease in state revenues from certain regulatory fees, depending upon future legislative actions.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Steve Peace
Director of Finance