

June 2, 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, and to various budget-related matters (File No. SA2003RF0015).

Tax and Fee-Related Provisions

Background Information

The State Constitution requires a two-thirds vote of each house the Legislature for measures that result in increased revenues through the levying of new 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 the costs of not only 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 with respect to taxes and fees:

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.

Budget-Related Provisions

The initiative would make the following changes regarding the budget process and the adoption of the budget:

Reserve Requirement. The initiative directs that at least 25 percent of revenues collected in excess of current General Fund service levels be deposited into the Prudent State Reserve Fund. These deposits would be required to be made until total funds in the reserve reached 5 percent of prior-year expenditures (currently about \$4 billion). Money in the reserve fund could be appropriated during a state of emergency or in years in which current service levels exceeded revenues.

Salaries and Expenses for Governor and Legislature. The Constitution requires that a budget bill be passed by the Legislature by June 15th. The initiative prohibits the payment of salaries and expenses to the Governor and members of the Legislature for the period after June 15th until a budget bill has been signed into law. In addition, salaries and expenses could not be paid retroactively.

Budget Process. The measure specifies that members of the Legislature shall not be punished or threatened to be punished based on any vote on the budget bill, and may report any action in this regard to the Ethics Committee of the Senate or Assembly. In addition, the initiative directs the State Controller—with the assistance of the Legislative Analyst’s Office and the Department of Finance—to prepare a budget summary to be provided to the voters in the ballot pamphlet at each statewide election.

Fiscal Effects of the Initiative

The measure would have the following fiscal effects on state government:

State Revenues and Spending. 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 would depend on future actions of the Legislature.

Prudent General Fund Reserve. The impact of the reserve provision would depend on state revenue performance and interpretations regarding current service levels. It could have fiscal effects in years where revenues grow more rapidly than current service spending levels. In such cases, 25 percent of the excess revenue growth would go into the state's reserve. (These funds otherwise would have been available for additional spending or revenue reductions.) As a result, this provision could result in a higher state reserve level in some years than otherwise would have occurred. In addition, a higher reserve level could lead to less fluctuation in state spending. For example, in comparison to what otherwise would have occurred, a higher reserve could lower spending in high revenue growth years and supplement spending in low revenue years.

Salaries and Expenses. The salary and expenses forfeiture provision would reduce costs in any year in which the budget is late. In each year the Legislature and the Governor miss the deadline, the measure would save the state about \$50,000 per day until the passage of the budget.

Budget Summary. The preparation by the State Controller of a budget summary to be provided to registered voters would result in minor state costs.

SUMMARY

This measure would have the following major fiscal effects:

- Potentially significant decrease in state revenues from certain regulatory fees, depending upon future legislative actions.
- Potentially higher state budget reserve in some years than would otherwise have occurred.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Steve Peace
Director of Finance