February 16, 2005

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 proposed initiative entitled "The Education Funding Protection Act" (File No. SA20054RF0021), which deals with spending limits and regulatory fees.

Spending Limits

Background

Article XIIIB of the State Constitution places annual limits on the appropriations of tax proceeds that can be made by the state, school districts, and local governments in California. The annual spending limit for each jurisdiction is based on the amount of appropriations in 1978-79 (the base year), as adjusted each year for population growth and cost-of-living factors.

The Constitution also limits annual growth in the Legislature's budget to the change in the state's appropriations limit.

Proposal

This measure states that no state or local government limit on appropriations or spending—other than the Article XIIIB appropriations limit and the limit on legislative appropriations discussed above—shall apply until certain educational benchmarks are reached. Specifically, limits would not apply until both the following occurred:

- Current annual expenditures per pupil for California K-12 schools was equal to or greater than the average per pupil spending in the ten highest spending states.

- Average class size was equal to or lower than the average class size of the ten states with the lowest class sizes.

We estimate that California currently spends about $3,700 per pupil (or one-third) less than the average of the ten highest spending states. To reach the average of the ten highest spending states, California would have to spend around an additional $22 billion on K-12 education.

Fiscal Effect

The measure's reference to limits on appropriations or spending would appear to refer to restrictions on a public entity's overall expenditures (similar to the current Article XIIIB provisions). If so, there are currently no other such spending restrictions of which we are aware. As such, the measure would have no fiscal impact. If, however, some future measure imposed a spending limit, this initiative would prevent that limit's provisions from going into effect until such time that the educational targets were met.

Regulatory Fees

Current Law

In addition to taxes, the state and local governments impose various regulatory fees on individuals and businesses. These fees can be imposed to cover the costs for remediation or mitigation of actual or anticipated damages from the fee payers' operations or products. The constitutional requirements regarding imposition of these levies involve lower approval thresholds by the governing body and/or voters than is the case for taxes. For example, regulatory fees are subject to approval by (1) a majority vote of the Legislature (instead of a two-thirds vote that would be required for a state tax) or (2) the local governing board (instead of approval by the local governing board *and* local voters that would be required for a local tax).

Proposal

This measure basically incorporates current law and legal interpretation regarding the definition of regulatory fees into the State Constitution.

Fiscal Effect

These provisions would have no current fiscal impact on state or local governments.

Summary of Fiscal Effect

The measure would have the following major fiscal impacts:

- No current fiscal impact on the state or local governments.

- Restricts any future appropriation or spending limit from taking effect until spending on K-12 education was increased dramatically.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Tom Campbell
Director of Finance