

March 17, 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 constitutional initiative relating to the definition of taxes and the voting requirements for raising or imposing taxes (File No. SA2005RF0068).

BACKGROUND INFORMATION

State Taxes and Fees

Taxes. The State Constitution requires a two-thirds vote of each house of the Legislature for measures that result in net aggregate increases in revenues from imposing new taxes or changing existing taxes. Measures that do not result in a net increase in taxes may be adopted by majority vote. For example, a measure that results in higher taxes for some taxpayers but an equal (or larger) reduction in taxes levied on other taxpayers would not result in an aggregate increase in taxes, and thus can be passed by a majority vote.

Fees. In addition to taxes, the state may impose fees and other similar charges on individuals and businesses by majority vote. 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 ruled (in the *Sinclair Paint* decision) that such fees may include the costs for mitigating the societal impacts of the activity, such as remediation of past damages.

Local Taxes and Fees

At the local level, taxes imposed for general purposes must be approved by a majority vote of the electorate, and those imposed for special purposes generally must be approved by a two-thirds vote of the electorate. Most local fees may be imposed by a simple majority vote of the governing body.

PROVISIONS OF THE INITIATIVE

The measure amends the Constitution by broadening the definition of “increased” taxes and what are considered state and local taxes.

Definition of Increased State Taxes. The measure requires that any changes in statute that result in *any* taxpayer paying a higher tax would be considered a tax increase and require a two-thirds vote of the Legislature. Thus, a measure that resulted in offsetting tax increases and tax decreases—but no net increase in revenues—would require a two-thirds vote.

Definition of State and Local Taxes. The measure specifies that any charge imposed by state or local government represents a tax *except*: (1) charges for a specific service, unless the service is provided to people who are not charged or was previously financed by tax revenues (it is not clear how services that were partially financed through fees would be treated); (2) regulatory charges for licenses, permitting, inspection, audit, and administration; (3) charges for the use of state or local government property; (4) charges imposed as a condition of property development; (5) fines and penalties imposed as a result of the violation of a law or regulation; and (6) local government assessments and property-related fees.

These changes would have the effect of limiting what qualified as a fee and broadening what qualified as a tax. As a result, fees not directly linked to the provision of a specific service or benefit would be classified as taxes and be subject to (1) a two-thirds vote requirement of the Legislature in the case of a state levy, or (2) a vote of the governing body and local electorate in the case of a local levy. The measure would invalidate charges established after January 1, 2005 that do not meet the more stringent definitions imposed by the measure unless they are reenacted within one year of the effective date of the measure with a two-thirds vote.

FISCAL EFFECTS OF THE INITIATIVE

State and Local Impacts

Vote Requirements for Taxes. The measure would increase the vote requirement to two-thirds for some tax-related bills that may now be adopted by majority vote. For example, some tax bills that are adopted by majority vote currently are revenue neutral

in aggregate, but result in offsetting increases and decreases on different taxpayers. The measure would require that these bills be adopted by two-thirds votes. This change would likely affect the distribution of the tax burden, but not the overall level of revenues.

Definition of State and Local Taxes. By broadening the scope of what is considered a tax, the measure would make it more difficult for the state and local governments to impose certain charges. For example, fees imposed for certain remediation or mitigation purposes would now require higher voting thresholds. To the extent that the increased voting requirement resulted in a rejection of charges that would have been approved under a majority vote, the measure would result in lower revenues and spending than would have otherwise occurred. The revenue impact would depend on future actions of the Legislature, local governing boards, and local electorates—but it would likely be significant.

Summary

The measure would have the following impacts on state and local governments:

- Potentially significant decrease in state and local revenues from certain fees or charges, depending upon future actions of the Legislature, local governing bodies, and local electorates.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Tom Campbell
Director of Finance