

January 15, 2010

Hon. Edmund G. Brown Jr.
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Krystal Paris
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional initiative relating to state and local approval requirements for taxes, fees, and penalties (A.G. File No. 09-0096).

BACKGROUND

Taxes

State Taxes. The State Constitution requires a two-thirds vote of each house of the Legislature for measures that result in increases in revenues from imposing new state taxes or changing existing state taxes. This has been interpreted to allow measures that do not result in a net increase in state taxes to 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. Under current practice, this type of measure could be passed by a majority vote.

Local Taxes. Local governments may impose or increase taxes (other than the base 1 percent ad valorem property tax) subject to the approval of their local voters. If the local government proposes to use the tax proceeds for general purposes (a “general tax”), the tax requires approval by a majority of local voters. If the tax proceeds are earmarked for a specific purpose (a “special tax”), the voter approval threshold is two-thirds. In some cases, local governments place nonbinding “companion measures” on the same ballot with proposed general tax increases. These advisory measures express voter intent regarding the expenditure of funds raised by the general tax.

Fees, Assessments, Fines, and Other Charges

Current law generally gives state and local governments significant discretion in establishing fees, assessments, fines, penalties, and other charges. Governments may im-

pose these charges for many reasons, including to offset their costs to provide specific services and benefits (“user fees”), regulate a particular activity (“regulatory fees”), penalize certain behaviors (“fines” and “penalties”), and finance property or business improvements (“assessments”).

In some cases—such as many user fees, admission fees, and assessments—the charge is closely linked to the cost of providing a particular service to an individual beneficiary. In other cases—particularly regulatory fees (including environmental mitigation)—the charge may be based on the costs of government oversight of a group or industry, or on the social costs associated with particular activities. Figure 1 provides some examples of fees imposed for broad regulatory purposes.

| Figure 1 Examples of Regulatory Fees |
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| <p>Fees on Paint Manufacturers The state imposes a regulatory fee on paint companies and other businesses which make (or previously made) products containing lead. The state uses this money to screen children at risk for lead poisoning, follow up on their treatment, and identify sources of lead contamination responsible for the poisoning.</p> <p>Fees on Alcohol Retailers Several California cities impose a fee on most alcohol retailers and use the funds for code and law enforcement and merchant education to reduce public nuisance problems associated with alcohol (such as violations of alcohol laws, violence, loitering, drug dealing, public drinking, and graffiti).</p> <p>Oil Recycling Fee The state imposes a regulatory fee on oil manufacturers and uses the funds for a public information and education program, grants to local used oil collection programs, payment of recycling incentives, research, demonstration projects, and inspections and enforcement at used oil recycling facilities.</p> |

Imposing Fees, Assessments, and Charges. By a majority vote, the Legislature may impose fees, assessments, and charges—or delegate this responsibility to state administrative agencies. State charges may not exceed government’s related costs. (State charges in excess of costs are considered “taxes” and are subject to the Constitution’s approval requirements for taxes.) With three exceptions, local governments generally have similar authority to impose fees, assessments, and charges. Specifically, state law requires local governments to obtain the approval of business owners before imposing assessments to finance improvements in business districts. In addition, the Constitution requires local governments to receive approval from property owners or voters before imposing (1) property owner assessments or (2) fees as an incident of property ownership (“property-related fees”), other than fees for water, sewer, and refuse collection services.

State and Local Requirements Regarding Fines and Penalties. State and local governments have significant discretion to set fines and penalties for violations of state laws and local ordinances and to discourage certain behavior. The Constitution generally does not restrict how state and local governments spend the funds raised from fines and penalties. State and local governments may impose most fines and penalties with a majority vote of the governing body. The Constitution does not limit state or local governments' authority to impose fines administratively (that is, outside of an adjudicatory or quasi-adjudicatory proceeding).

PROPOSAL

This measure amends the Constitution to constrain state and local government authority to impose taxes and fees.

State Taxes and Fees

The measure constrains the Legislature's authority to impose certain taxes, fees, assessments, and charges. Specifically, the measure:

- Requires the Legislature to approve by a two-thirds vote any new or increased fee—except for user fees to reimburse the state for its costs in providing a product or service requested by the fee payer, which the fee payer reasonably could have declined.
- Prohibits the Legislature from imposing a tax, fee, or assessment on real property or the sale or transfer of real property. (Currently, the Legislature is prohibited from imposing ad valorem or sales taxes on real property.)
- Prohibits the Legislature from imposing a fine or penalty except those imposed “for a violation of a law in an adjudicatory or quasi-adjudicatory proceeding.”

The measure also specifies that any change in a state statute that results in *any* taxpayer paying a higher state tax requires a two-thirds vote of the Legislature. (This would include statutes that do not impose a net increase in revenues but only reallocate tax burdens.)

Local Taxes and Fees

The measure broadens the definition of a local special tax to include: (1) any tax that is the subject of a companion measure advising that its funds would be used for specific purposes, and (2) a wide range of charges that local governments currently may impose by a majority vote of their governing boards. Specifically, the measure defines as a special tax all local fees or charges *except*:

- User charges to reimburse a local government for its costs in providing a product or service requested by the fee payer, which the fee payer reasonably could have declined.
- Fines and penalties imposed “for a violation of a law in an adjudicatory or quasi-adjudicatory proceeding.”
- Charges imposed as a condition of property development.
- Property-related fees.

FISCAL EFFECTS

By expanding the scope of what is considered a local special tax and limiting state and local government authority to impose fees and other charges, the measure would make it more difficult for state and local governments to enact a wide range of measures that generate revenues.

State Government

The measure makes three significant changes to state finance. First, the measure requires state statutes that increase or impose many fees—other than narrowly defined user fees—to be approved by a two-thirds vote of the Legislature, rather than the current legislative majority. Second, the measure prohibits the Legislature from enacting certain revenue measures, such as assessments on real property and new fines levied outside of an adjudicatory or quasi-adjudicatory proceeding. Finally, the measure requires state statutes that reallocate state taxes to be approved by two-thirds of the Legislature, rather than the current legislative majority.

The overall revenue impact of these changes would depend on future actions of the Legislature. By making it more difficult to pass measures which increase revenues, it is likely that state revenues would be lower in the future than they would be otherwise. Given that state fee measures frequently total tens or hundreds of millions of dollars, the higher approval thresholds in the measure could result in major decreases in state revenues and spending.

Local Government

Under the measure, many local revenue measures—including local regulatory fees and general taxes that are accompanied by provisions specifying how its proceeds would be used—would be considered special taxes. As a result, instead of being approved by a majority of local governing boards, these charges also would require approval by two-thirds of local residents.

The overall revenue impact of this measure would depend on future actions of the local governing bodies and voters. By making it more difficult to pass these revenue increases, it is likely that some local governments would have less revenues in the future than they would otherwise. Given the amount of revenues derived from these local charges, the higher approval threshold in this measure could result in major decreases in local revenues and spending.

Summary

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

- Potentially major decrease in state and local revenues and spending in the future, depending upon actions of the Legislature, local governing bodies, and voters.

Sincerely,

Mac Taylor
Legislative Analyst

Ana J. Matosantos
Director of Finance