

February 2, 2010

Hon. Edmund G. Brown Jr.  
Attorney General  
1300 I Street, 17<sup>th</sup> 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. 09-0100).

## **BACKGROUND**

### **Taxes**

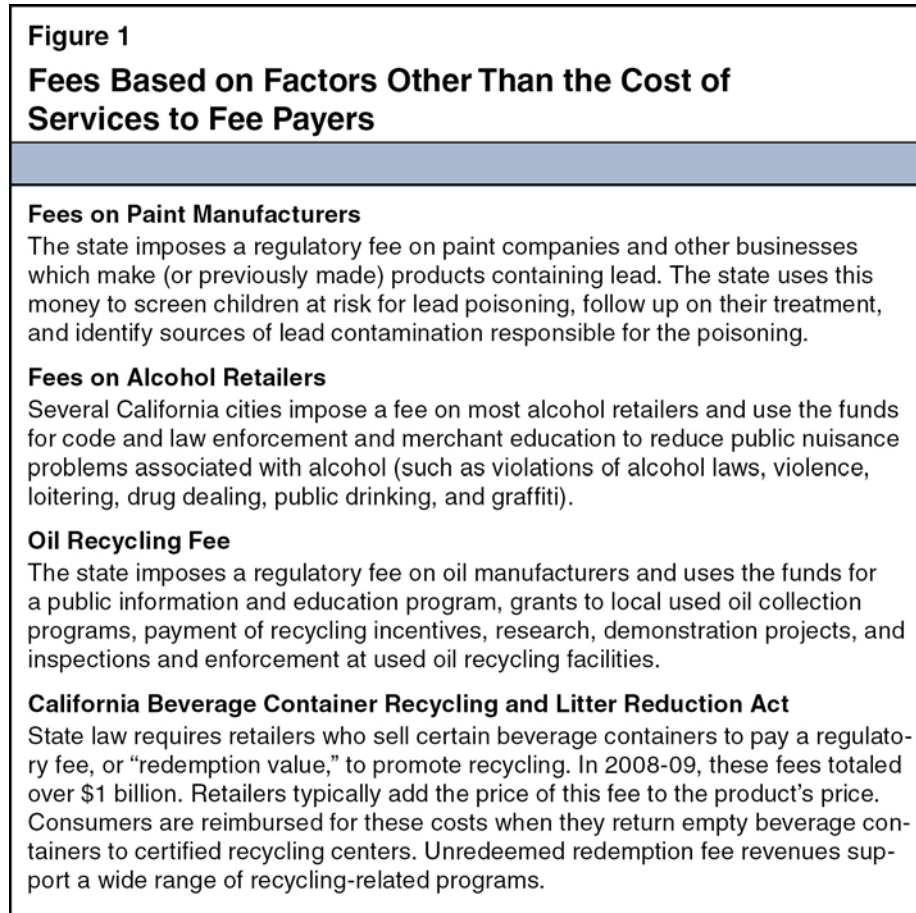
The State Constitution requires a two-thirds vote of each house of the Legislature for measures that result in increases in revenues from imposing new state taxes or changing existing state taxes. Local governments may impose or increase taxes (other than the base 1 percent ad valorem property tax) subject 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.

### **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 impose 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, the charge may be based on the costs of government over-

sight of a group or industry, the social costs associated with particular activities, or other factors. Figure 1 provides some examples of fees where the charge is based on factors *other* than government’s cost to provide a service to the fee payer.



**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, however, 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.

## PROPOSAL

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

*Definition of Taxes.* The measure broadens the definition of a state or local tax to include a wide range of charges that government currently may impose by a majority vote of its governing body. As a result, more state revenue measures would require approval by two-thirds of the Legislature and more local revenue measures would require approval by two-thirds of local voters. Specifically, the measure provides that all state and local charges are taxes, *except*:

- User charges, based on government's reasonable costs, for specific services or benefits that government provides directly and exclusively to the fee payer.
- Regulatory charges limited to a government's reasonable administrative costs for issuing licenses and permits and undertaking investigations, inspections, audits, enforcement, and adjudication.
- Charges for the use of or entrance to state or local government property.
- Fines and penalties imposed by government "as a result of a violation of a law."
- Local charges imposed as a condition of property development, property owner assessments, and property-related fees.

*Effective Date for State Provisions.* This measure specifies that any state tax enacted after January 1, 2010 that is inconsistent with this initiative's provisions would become inoperative 12 months after the effective date of this initiative unless the tax is reenacted into law in compliance with this initiative's requirements.

*Burden of Proof.* In any legal challenge, the measure specifies that government bears the burden of proving that the charge is not a tax and that the amount raised is consistent with the measure's provisions.

## FISCAL EFFECTS

By expanding the scope of what is considered a tax, the measure would make it more difficult for state and local governments to enact a broad range of measures that generate revenues. The extent of this change is not clear, but it would appear to include many state and local regulatory and other charges, such as the ones summarized in Fig-

ure 1. Future increases or changes to these charges would be subject to the approval requirements for taxes.

The overall revenue impact of these changes also would depend on future actions of the Legislature, local governing boards, and local voters. To the extent that these increased voting requirements resulted in a failure to pass charges that would have been approved under a majority vote, the measure would result in lower revenues and spending than would have occurred otherwise. Given the potential scope of levies that would be subject to the higher approval thresholds, the effect of the measure's provisions probably would be major.

### **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,

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Mac Taylor  
Legislative Analyst

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Ana J. Matosantos  
Director of Finance