December 19, 2011

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Dawn McFarland
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed a proposed statutory initiative related to the labeling of genetically engineered (GE) food products (A.G. File No. 11-0071).

Background

Genetic engineering is the technique of removing, modifying, or adding to the genetic material (especially DNA) of a living organism to produce some desired change in that organism's characteristics. Genetic engineering is used in the development of new plant and animal varieties that are used as sources of foods.

Federal Regulation. Several federal agencies currently have authority to regulate GE foods. Under the Federal Food, Drug, and Cosmetic Act, the federal Food and Drug Administration has authority to ensure the safety and proper labeling of most foods and food additives (except meat and poultry), including foods developed through biotechnology. In addition, the U.S. Department of Agriculture regulates GE crops that may become pests by setting limits on their importation, interstate movement, and release into the environment. The USDA can also remove these restrictions for a crop that is shown to pose no additional risk of becoming a plant pest than a non-GE variety of that crop.

State Regulation. Under current state law, the Department of Public Health (DPH) regulates the safety and labeling of foods (except meats, dairy, and poultry). The California Department of Food and Agriculture (CDFA) also has authority over several aspects of food safety. Specifically, CDFA (1) ensures the safety of meat, poultry, and dairy products; (2) inspects fruits, vegetables, and nuts for accuracy in content and labeling; and (3) conducts scientific analyses in support of food and environmental safety.

Proposal

Labeling of GE Foods. This measure requires that GE foods sold for retail in the state be labeled as such in a way that is clear and conspicuous. Specifically, the measure requires that GE raw agricultural commodities (crops) be labeled with the words "GENETICALLY

ENGINEERED" on the front package or label. If the item is not separately packaged or does not have a label, these words shall appear on the shelf or bin where the item is displayed for sale. The measure also requires that processed foods—foods that are not raw agricultural commodities—made with or containing ingredients derived from GE crops be labeled with the words "CONTAINS GENETICALLY ENGINEERED INGREDIENT(S)" or "MAY CONTAIN GENETICALLY ENGINEERED INGREDIENT(S)." These words shall be followed by the name of such ingredients.

The measure, however, exempts certain categories of food and food additives from the above labeling requirements. For example, alcoholic beverages, organic foods, and restaurant food and other prepared foods intended for immediate consumption would be exempted. In addition, producers and sellers of the products are exempt from labeling requirements if they (1) obtain a sworn statement indicating that the product does not intentionally or knowingly contain GE ingredients or (2) receive independent certification that their product does not contain GE ingredients.

State Regulation. This measure identifies a list of GE crops known to be grown commercially in the United States (such as corn, cotton, and papaya). The measure requires DPH, in consultation with CDFA, to annually update this list. In addition, the measure states that CDFA shall develop regulations specifying sampling procedures to determine whether foods contain GE ingredients.

Litigation. According to the measure, violation of the measure's provisions could be prosecuted by the Attorney General, local district attorneys, or city prosecutors. This measure also allows private individuals to sue for violations if no government entity takes action.

Fiscal Effects

Increased State Administrative Costs. The DPH and CDFA currently inspect processing plants for various health and safety measures, including accuracy in labeling. This measure would expand the scope of these inspections and make it necessary for inspectors to review production records in order to ascertain whether or not a product contains any GE components. Additional workload would also result from the need to (1) analyze the genetic material of products selected for testing and (2) maintain a list of GE crops cultivated in the United States. We estimate that the above activities could increase state costs by several million dollars annually.

Potential State Capital Outlay Costs. The CDFA could also incur some capital outlay costs to build facilities capable of testing the genetic material of food ingredients to determine whether they are made of or contain GE crops. The specific magnitude of these costs would depend on the extent of the testing needed to successfully enforce the provisions of this measure, but could reach several million dollars on a one-time basis.

Potential Increased Costs Associated With Litigation. As previously mentioned, this measure allows private individuals to sue for violations of its provisions, which could increase the number of cases filed in the courts. Under these circumstances, the state would incur increased costs to process and hear the additional cases. The Attorney General and local district

attorneys may also incur some costs as those offices review and respond to allegations of violations and notices of private action. The magnitude of these various costs is unknown but could be significant, depending on the number of cases filed, the number of cases prosecuted by state and local governments, and how they are adjudicated by the courts.

Summary of Fiscal Effects

We estimate that this measure would have the following major fiscal effects:

- Increased state administrative costs, possibly in the several millions of dollars annually, to monitor and enforce the labeling requirements specified in the measure.
- Potential one-time state capital outlay costs, possibly in the several millions of dollars, for the construction of facilities to test the genetic material of certain food products.
- Unknown, but potentially significant, costs for the courts, the Attorney General, and district attorneys due to litigation resulting from possible violations to the provisions of this measure.

Sincerely,

_____

Mac Taylor
Legislative Analyst

_____

Ana J. Matosantos
Director of Finance