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December 28, 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 the proposed constitutional initiative related to the approval of certain regulatory fees (A.G. File No. 11-0078).

Background

State and Local Fees, Taxes, and Charges. State and local governments impose a variety of taxes, fees, and charges on individuals and businesses. Taxes—such as income, sales, and property taxes—are typically used to pay for general public services such as education, prisons, health, and social services. Fees and charges, by comparison, typically pay for a particular service or program benefitting individuals or businesses. There are three broad categories of fees and charges:

- ***User fees***—such as state park entrance fees and garbage fees, where the user pays for the cost of a specific service or program.
- ***Regulatory fees***—such as fees on restaurants to pay for health inspections and fees on the purchase of beverage containers to support recycling programs. Regulatory fees pay for programs that place requirements on the activities of businesses or people to achieve particular public goals or help offset the public or environmental impact of certain activities.
- ***Property charges***—such as charges imposed on property developers to improve roads leading to new subdivisions and assessments that pay for improvements and services that benefit the property owner.

Approval Requirements for State Taxes and Fees. State law specifies different approval requirements regarding state taxes and fees. For example, increasing tax revenues requires approval by two-thirds of each house of the Legislature. In contrast, the Legislature can create or increase a fee or charge with a majority vote. In November 2010, California voters approved Proposition 26, which broadens the definition of a state or local tax to include many payments previously considered to be fees or charges. As a result, a two-thirds vote of each house of the Legislature is currently required to approve many fees, levies, and charges that previously could be enacted by a simple majority vote.

Generally, the types of fees and charges that are now considered taxes under Proposition 26 are ones that the government imposes to address health, environmental, or other societal or economic concerns. For example, a state regulatory fee on oil manufacturers to support public information and education programs, recycling incentives, and inspections and enforcement at used-oil recycling facilities is considered a tax. This is because this type of fee pays for many services that benefit the public broadly, rather than provide services directly to the fee payer.

Proposal

This measure amends the State Constitution to allow the Legislature to authorize by a majority vote fees, penalties, or charges on businesses whose activities (1) pollute the air or waters of the state, (2) damage other public natural resources, or (3) harm public health. Under the terms of the measure, the funds collected must be used to pay costs related to the mitigation of the actual or anticipated adverse impacts of the activity, including enforcement and prevention of future impacts from pollution.

Fiscal Effects

By reducing the voting requirement for some state regulatory fees, the measure would make it easier for the Legislature to approve such fees. The fiscal effect of this change would depend on future actions of the Legislature. If the reduced voting requirements resulted in a greater number of regulatory fees enacted into law, government revenues would be higher than otherwise would have occurred, likely ranging in the tens of millions of dollars to the low hundreds of millions of dollars annually. These revenues would result in a comparable increase in state spending for mitigation activities.

Summary of Fiscal Effects. We estimate that this measure would have the following major fiscal effect:

- Potential increase in state revenues, likely ranging in the tens of millions of dollars to the low hundreds of millions of dollars annually, depending on future actions of the Legislature. The revenues would be used to increase state spending on mitigation activities.

Sincerely,

Mac Taylor
Legislative Analyst

Ana J. Matosantos
Director of Finance