

Proposition 26

SUMMARY OF THE ISSUE: Proposition 26 would re-categorize as taxes many regulatory fees that benefit the public broadly rather than providing a direct and distinct benefit to the business owner or other fee payor. Among these are regulatory fees and assessments to address the health, environmental and other social effects of business activities.

Comparison of Approval Requirements: State & Local Fees & Taxes		
	Fee	Tax
State	Majority of each house of the Legislature and Governor's approval	For measures increasing state revenues, *2/3 of each house of the Legislature and Governor's approval or initiative constitutional amendment approved by simple majority of voters.
City or County	Majority of the city council or board of supervisors	2/3 voter approval for a special tax, majority voter approval for a general tax
*Proposition 26 would require a 2/3 vote for any law that increases the taxes of any taxpayer, regardless of its overall effect on state revenues.		

Proposition 26 would require any state fee approved in 2010 that violates its terms to expire by late 2011 unless re-enacted in compliance with the new 2/3-vote requirement. No similar "window period" is established for local governments fees and, if approved by California's voters, the measure will be effective as to local governments only from November 3, 2010.

Fees Affected

The fees that would be affected would include:

- Health inspection / monitoring fees
- Public safety cost mitigation fees
- Traffic, parking, noise abatement, and air quality impact fees for education, cleanup, health or other programs of general benefit
- Water quality impact fees for education, cleanup, health or other programs of general benefit
- Solid waste, tires, canned beverages, food packaging, computer hardware and toxic waste disposal fees used for education, cleanup, recycling / reuse, health or other programs of general benefit
- Alternative energy fees and energy use surcharges
- Fees on alcohol to litigate public nuisances associated with sale or consumption
- Fees on soda, unhealthy foods, fats, or sugar to mitigate obesity and other negative health effects
- Trenching fees for diminution in durability or longevity of roads, traffic congestion mitigation, mitigate potential damage to existing infrastructure
- Environmental mitigation and eco-impairment fees including carbon consumption fees, oil severance fees, and hazardous waste fees to support programs of general public benefit
- Vehicle registration or gasoline fees for transportation programs or environmental cleanup of general benefit Fees on tobacco for mitigating the adverse health effects of tobacco products (including evaluation, screening, and necessary follow-up services to those deemed potential victims of tobacco-related injuries) or to

discourage consumption (by increasing cost of product) and/or to educate the general public on the consequences of tobacco consumption.

- Fees to prevent illegal consumption by minors
- Fees on wireless telecommunications to reduce the impacts of DWTs (Driving While Talking), burdens on the 911 system, potential future effects of close proximity radio frequency exposure
- Fees on “altered food” products

Exceptions to the Definition of “Tax”

Proposition 26 excludes from its new definition of “tax” the following kinds of fees:

- for a benefit of privilege conveyed (like a professional license or a land use approval)
- for a service or product (like a park and recreation fee)
- to cover certain costs of regulation
- entrance fees for state or local property (but not vehicle license fee surcharges like that proposed by Proposition 21 on the November 2, 2010 ballot) and such entrance fees are not limited to cost
- fines imposed by a court or a local government
- development impact fees imposed by a local government
- assessments and property related fees governed by Proposition 218

Burden of Proof

Proposition 26 states that governments must bear the burden to prove by a preponderance of evidence that challenged revenue measures are not taxes; that the amount of a fee reflects the reasonable cost of providing the permit, privilege, or regulatory program for which it is imposed; and that it is allocated among fee payors so as to “bear a fair or reasonable relation to the payor’s burdens on, or benefits received from, the governmental activity.” Much of this reflects the requirements of existing law and this language might actually be helpful in giving meaning to the burden of proof rule of Proposition 218, which also makes government bear the burden to defend fees and assessments, but does not specify that the preponderance of evidence standard – the lowest of the standards applied by our courts – controls.

Recommendation

Oppose.