



CAPITOL WEEKLY

THE NEWSPAPER OF CALIFORNIA GOVERNMENT AND POLITICS

New legal opinion reignites speculation over budget vote

By **Anthony York** | 04/02/09 12:00 AM PST

As state budgeters look toward another multi-billion dollar budget deficit this summer, attorneys for the Legislature and Gov. Schwarzenegger have issued a new opinion reaffirming the legality of a plan passed by Democrats last December that raised revenues without requiring a two-thirds vote.

The March 9 opinion from Legislative Counsel Diane Boyer-Vine, addressed to Gov. Schwarzenegger, reaffirms a 2003 opinion by her office that finds a bill that raises one tax and lowers another by an equal or greater amount only needs simple majority votes in each legislative house.

"We think that a tax bill is not subject to the two-thirds vote requirement if the cumulative effect of the 'changes in state taxes' ... when considered in their entirety would be neutral or would produce a net decrease in state tax revenues," her March 9 opinion states.

The latest Legislative Counsel opinion is a reprise of a May 2003 decision, which Democrats used as the basis for their December budget proposal. Steinberg jokingly refers to that 2003 decision as "The Pelican Brief," a reference to a legal crime thriller written by John Grisham.

The governor refused to sign the December budget, although he did not cite the majority-vote issue as a reason.

In December, Speaker Karen Bass, D-Los Angeles, and Senate Leader Darrel Steinberg, D-Sacramento, guided a revenue increase package through their respective houses without any Republican votes. The plan would have eliminated an 18 cents-per-gallon excise tax and raised the state's sales and income taxes. A separate bill in the budget package instituted a 39 cents-per-gallon fee on gasoline.

The net effect of the December package was a 13 cents-per-gallon hike in gas levies, a 3/4-cent increase in the state sales tax, a 9.9 percent surcharge on oil pumped in California, and a 2.5 percent income tax surcharge for every California taxpayer.

But Democrats argued the plan did not require a two-thirds vote because the tax bill was "revenue neutral," and the new revenues came from fee increases. Fees, which are defined as revenues dedicated to a specific purpose or project, do not require a two-thirds vote.

The package was rejected by Gov. Schwarzenegger, who complained that the \$18 billion proposal was not large enough to solve the state's budget problem. Schwarzenegger called the plan a "terrible budget," and quickly promised a veto.

"This package that they are sending down does really only do one thing, and this is punish the people of California," he said shortly after the December vote.

Schwarzenegger said the Democrats' proposal did not go far enough to close what he identified as a \$41 billion budget hole. But the governor was notably silent about the structure of the plan, which legislative Republicans decried as unconstitutional.

And as the state faces a budget gap that could be anywhere from \$8 billion to \$15 billion, (depending on the outcome of the May 19 special election), state numbers crunchers are already looking for solutions.

Schwarzenegger spokesman Aaron McLearn said the request that prompted the March 9 Legislative Counsel opinion was not made to test any hypothetical budget plan or theory. It was made by the governor's Department of Finance on behalf of the members of a tax commission, consisting of legislative and gubernatorial appointees, charged with making recommendations about the state's tax structure and policy.

The commission, led by Gerald Parsky, is scheduled to make a series of tax recommendations to the Legislature and Gov. Schwarzenegger in June.

Former Assemblyman Fred Keeley, who was appointed by Steinberg to the tax commission, said the request was made by some members of the panel who do not have the legislative background that Keeley, former Speaker Curt Pringle, former Assemblywoman Becky Morgan and others on the commission have.

"Every time an issue comes up, we ask for some third-party to give us information so everybody has a complete understanding of the issues," Keeley said.

The Legislative Counsel's response was addressed to Gov. Schwarzenegger, however, because the governor is an official client of the counsel's office.

But Keeley added, "the issue of majority-vote budget based on the theory of revenue neutrality is very interesting to us. I think part of it came from a place where there were some observations that when the Legislature sent that budget to the governor, he didn't seem to pitch a hissy fit that it was done on a majority vote."

While the governor may not have pitched a hissy fit over the majority vote budget, the same cannot be said by Republican legislative leaders, who quickly filed a lawsuit as soon as the Democrats released their majority-vote proposal.

The lawsuit claimed the Democrats' budget plan violated Proposition 13, which state voters approved in 1978 and which limits increases in property taxes and set the two-thirds majority requirement for tax bills.

But the Legislative Counsel opinion points out there have been numerous efforts since Proposition 13's passage to address the revenue-neutrality issue. The opinion cites ACA 53, which died in the Legislature in 1984, and Proposition 36, which was rejected by voters on the 1984 ballot. "Each of those measures would have amended [Proposition 13]" to require a two-thirds vote for any tax increase, not just tax increases that are passed "for the purpose of increasing revenues."

In the lawsuit filed against the Democrats' plan, Howard Jarvis Taxpayers Association President Jon Coupal called that reasoning a "convoluted effort ... based on false theory."

That fight disappeared when the governor rejected the Democrats' plan. But the March 9 letter is a reminder that another major budget problem is in California's future, and that a future budget proposal may well wind up before a judge.

Copyright ©2009 :: [Contact Us](#)

