

\*UPDATES: UCLA Law [released a report](#) analyzing Proposition 26's impacts on the State's environmental protection laws. And co-blogger Rhead Enion has [responded point by point](#) to some of Maureen Gorsen's arguments criticizing our analysis of the initiative.\*

My co-bloggers have argued whether [Proposition 25](#) or [Proposition 23](#) is more important to California's environmental future. I believe a different initiative — [Proposition 26](#) — may deserve that honor. Proposition 26 would require a 2/3 vote of the legislature or a local government to approve the type of fees that fund most of our state's environmental protection work, and would deprive state and local governments of billions of dollars as a result. It also could interfere significantly with implementation of our greenhouse gas emissions control law AB 32.

Right now, "taxes" require a 2/3 vote (as does our state budget), but "fees" do not. According to the California Legislative Analyst:

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.

A 2/3 vote for any proposal is famously difficult in the California legislature; indeed, that requirement is what has held up our state budget each of the past several years, and what has made it virtually impossible to enact new taxes. Realistically, it's hard to imagine many fees being enacted in the future, if the legislature is subject to this new law. And this will have serious environmental and public health impacts.

State and local governments impose fees that broadly benefit the public in a wide variety of situations. Although there are some exemptions in the initiative, its provisions will be particularly hard on the state's environmental programs. The state Legislative Analyst's analysis [says](#):

This measure broadens the definition of a state or local tax to include many payments currently considered to be fees or charges. As a result, the measure would have the effect of increasing the number of revenue proposals subject to the [2/3 vote requirements]. Generally, the types of fees and charges that would become taxes under the measure are ones that government imposes to address health, environmental, or other societal or economic concerns. Figure 3 provides

examples of some regulatory fees that could be considered taxes, in part or in whole, under the measure. This is because these fees pay for many services that benefit the public broadly, rather than providing services directly to the fee payer. The state currently uses these types of regulatory fees to pay for most of its environmental programs.

Got that? "The state currently uses these types of regulatory fees to pay for most of its environmental programs." So is this initiative important for the environment? Just a teeny weeny bit, in the sense that it will make it impossible for the state to fund much of its environmental protection work. And beyond that, fees relating to environmental impacts, such as hazardous waste generation and disposal, provide critical market signals to discourage practices that harm the environment, by forcing polluters to bear environmental costs rather than externalizing them onto all of us.

It's even likely that Proposition 26 could interfere with AB 32's implementation. For example, any version of a greenhouse gas cap-and-trade program in which polluters have to pay for their allowances to emit greenhouse gases — for example, through an auction — could be considered a fee subject to this law's requirements. Since AB 32 was not approved by 2/3 of the legislature, such a program may be legally vulnerable if Proposition 26 passes.

Finally, the initiative would have a chilling effect on state and local governments' attempts to make industry bear the environmental costs of its actions in the future. It will be nearly impossible to pass laws to accomplish basic public-health goals through imposition of fees on activities that harm the environment.

Prop 26 has largely flown under the radar so far, but it may be a "sleeper" proposition that gains traction from spurious anti-tax rhetoric. Surely it's as important as the others that have been gaining more attention.

\*UPDATE: I've changed the title of this post because it seemed to confuse some people!\*