

From: Warner Paul D
Sent: Friday, February 22, 2013 5:45 PM
To: Sen Boquist
Cc: Ross Cheyenne; Richardson Dana; Rocco Ken G; Sen MonnesAnderson; Reutlinger Ted
Subject: RE: SB 97 Review

Senator

I responded to an e-mail from Art Ayre regarding SB 97 several weeks ago and after the hearing yesterday I followed up with Ted Reutlinger in Legislative Counsel.

The issue of what constitutes revenue for purposes of the 2% surplus kicker calculation has come up a number of times in the past. The most thorough discussion I recall was during the Revenue Restructuring Task Force meetings in 2008. The task force discussed what constituted the "General Fund forecast" for purposes of calculating the kicker and the answer from both Legislative Counsel and the AG was that it generally consisted of the elements and methods of the forecast that were in place in 2000 when voters put the kicker in the constitution. The "General Fund" that the kicker has been based on since its inception is the General Fund used for general budgetary purposes. Revenue sources for separate accounts that are not part of the budgeted General Fund have not been incorporated into the revenue forecast used for kicker calculations. My assumption is that the separate accounts within the General Fund set up under SB 97 would fall into this category and not be part of any future kicker calculation.

My discussions with Ted Reutlinger today and with Legislative Counsel attorneys in the past have confirmed this general view. However Counsel has made it clear that there is no consistent definition of "general fund" in the statutes or in the constitution. This means there is an element of legal risk as to how the courts would interpret "general fund" at some future point. This raises a much broader issue regarding the Legislature's budgeting practices and definitions used in that process.

Based on General Fund revenue and budgeting practices since kicker calculations began in 1979 I would say that SB 97 would have no impact on kicker calculations in the future.

Paul