January 30, 2012

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to elections Code Section 9005, we have reviewed a proposed statutory initiative related to the labeling of genetically engineered (GE) food products (A.G. File No. 11-0099).

Background

Genetic engineering is the technique of removing, modifying, or adding to the genetic material (especially DNA) of a living organism to produce some desired change in that organism's characteristics. Genetic engineering is used in the development of new plant and animal varieties that are used as sources of foods.

Federal Regulation. Several federal agencies currently have authority to regulate GE foods. Under the Federal Food, Drug, and Cosmetic Act, the federal Food and Drug Administration has authority to ensure the safety and proper labeling of most foods and food additives (except meat and poultry), including foods developed through biotechnology. In addition, the U.S. Department of Agriculture (USDA) regulates GE crops that may become pests by setting limits on their importation, interstate movement, and release into the environment. The USDA can also remove these restrictions for a crop that is shown to pose no additional risk of becoming a plant pest than a non-GE variety of that crop.

State Regulation. Under current state law, the Department of Public Health (DPH) regulates the safety and labeling of foods (except meats, dairy, and poultry). The California Department of Food and Agriculture (CDFA) also has authority over several aspects of food safety. Specifically, CDFA (1) ensures the safety of meat, poultry, and dairy products; (2) inspects fruits, vegetables, and nuts for accuracy in content and labeling; and (3) conducts scientific analyses in support of food and environmental safety.

Proposal

Disclosure of GE Foods. This measure requires that GE foods sold at retail in the state be labeled as such in a way that is clear and conspicuous. Specifically, the measure requires that raw agricultural commodities (crops) produced entirely or in part through genetic engineering be

labeled with the words "Genetically Engineered" on the front package or label. If the item is not separately packaged or does not have a label, these words shall appear on the shelf or bin where the item is displayed for sale. The measure also requires that processed foods—foods that are not raw agricultural commodities—produced entirely or in part through genetic engineering be labeled with the words "Partially Produced with Genetic Engineering" or "May be Partially Produced with Genetic Engineering."

The measure, however, exempts certain categories of food and food additives from the above labeling requirements. For example, alcoholic beverages, organic foods, and restaurant food and other prepared foods intended for immediate consumption would be exempted. In addition, producers and sellers of the products are exempt from labeling requirements if they (1) obtain a sworn statement indicating that the product does not intentionally or knowingly contain GE ingredients or (2) receive independent certification that their product does not contain GE ingredients. However, the measure prohibits the use of terms such as "natural," "naturally made," "naturally grown," and "all natural" in the labeling and advertising of any food that is genetically engineered.

State Regulation. The labeling requirements specified in this measure for GE foods would be regulated by DPH pursuant to its existing authority in statute to regulate the safety and labeling of certain foods. According to the measure, the department may adopt regulations that it determines are necessary to implement certain provisions in the measure. For example, DPH would need to develop regulations specifying sampling procedures to determine whether foods contain GE ingredients.

Litigation. According to the measure, violation of the measure's provisions could be prosecuted by state, local, or private parties. The measure states that the court could award these parties all reasonable costs incurred in investigating and prosecuting the action. In addition, the measure specifies that consumers could sue for violation of the measure's provisions under the state Consumer Legal Remedies Act. In order to bring such action forward, the consumer would not be required to demonstrate any specific damage from the alleged violation.

Fiscal Effects

Potential Increase in State Administrative Costs. This measure could result in additional state costs for DPH to regulate the labeling of GE foods. Depending on how, and to what extent, the department chose to implement such regulations, these costs could potentially reach one million dollars annually.

Potential Increase in Costs Associated With Litigation. As previously mentioned, this measure allows private individuals to sue for violations, which could increase the number of cases filed in the courts. Under these circumstances, the state would incur additional costs to process and hear the additional cases. The Attorney General and local district attorneys may also incur some costs as those offices review and respond to allegations of violations and notices of private action. The magnitude of these various costs is unknown but could be significant, depending on the number of cases filed, the number of cases prosecuted by state and local governments, and how they are adjudicated by the courts.

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

- Potential increase in state administrative costs of up to one million dollars annually to monitor compliance with the disclosure requirements specified in the measure.
- Unknown, but potentially significant, costs for the courts, the Attorney General, and district attorneys due to litigation resulting from possible violations to the provisions of this measure.

Sincerely,

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Mac Taylor
Legislative Analyst

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Ana J. Matosantos
Director of Finance