

Date of Hearing: April 24, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 2813 (Aguiar-Curry) – As Introduced February 15, 2024

SUBJECT: Government Investment Act.

SUMMARY: Enacts provisions to implement Assembly Constitutional Amendment (ACA) 1 (Aguiar-Curry), Chapter 173, Statutes of 2023. Specifically, **this bill:**

- 1) Defines the following terms:
 - a) “ACA 1 bonded indebtedness” as bonded indebtedness incurred by a local government pursuant to the constitutional provisions added by ACA 1.
 - b) “ACA 1 special tax” as any tax imposed by a local government pursuant to the constitutional provisions added by ACA 1.
 - c) “Audits” as the annual independent performance audit and the annual independent financial audit conducted by a local government conducted pursuant to the provisions of ACA 1.
 - d) “Citizens’ oversight committee” as a citizens’ oversight committee appointed to oversee proceeds from ACA 1 bonded indebtedness or an ACA 1 special tax.
 - e) “Local Government” as any county, city, city and county, including a charter city or county, any special district, transit district, a regional transportation commission, and association of governments, or any other local or regional governmental entity.
- 2) Specifies that for the purposes of ACA 1, “affordable housing” includes rental and for-ownership housing units.
- 3) Provides that a local government may commit revenue from ACA 1 bonded indebtedness or an ACA 1 special tax to affordable housing programs, which include, but are not limited to, all of the following:
 - a) Downpayment assistance programs.
 - b) First-time home buyer programs.
 - c) Owner-occupied affordable housing rehabilitation programs.
- 4) Requires a local government to ensure that any project that is funded with ACA 1 bonded indebtedness or an ACA 1 special tax has an estimated useful life of at least 15 years, except for expenditures made in regards to public safety buildings or facilities, equipment related to fire suppression, emergency response equipment, or interoperable communications equipment for direct and exclusive use by fire, emergency response, police, or sheriff personnel, which shall have an estimated useful life of at least five years.

- 5) Authorizes a local government to commit revenues derived from ACA 1 bonded indebtedness or an ACA 1 special tax to projects or programs administered by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of Title 26 of the United States Code for the purpose of constructing, reconstructing, rehabilitating, or replacing affordable housing or permanent supportive housing for persons at risk of chronic homelessness.
- 6) Authorizes a parcel tax imposed pursuant to ACA 1's provisions to include an exemption for any of the following taxpayers:
 - a) Persons who are 65 years of age or older.
 - b) Persons receiving Supplemental Security Income for a Disability, regardless of age.
 - c) Persons receiving Social Security Disability Insurance benefits, regardless of age, whose yearly income does not exceed 250% of the 2012 federal poverty guidelines issued by the United States Department of Health and Human Services.
- 7) Requires the California State Auditor (Auditor) to review at least ____ percent of the audits it receives each year based on best practices.
- 8) Specifies that that the Auditor shall establish best practices for purposes of reviewing audits.
- 9) Requires a local government to appoint a citizens' oversight committee within 60 days of certifying an election that approves ACA 1 bonded indebtedness or an ACA 1 special tax.
- 10) Provides that the purpose of the citizen's oversight committee shall be to inform the public concerning the expenditure of revenues derived from ACA 1 bonded indebtedness and ACA 1 special taxes.
- 11) Specifies that the citizens' oversight committee shall actively review and report on the proper expenditure of taxpayers' money for the construction, reconstruction, rehabilitation, or replacement of public infrastructure, affordable housing, permanent supportive housing for persons at risk of chronic homelessness and the acquisition or lease of real property for public infrastructure, affordable housing, or permanent supportive housing for persons at risk of chronic homelessness.
- 12) Requires the citizens' oversight committee to advise the public as to whether a local government is in compliance with the requirements of ACA 1, as applicable.
- 13) Specifies that the citizens' oversight committee shall convene to provide oversight for, but not be limited to, all of the following:
 - a) Ensuring that revenues derived from ACA 1 bonded indebtedness and ACA 1 special taxes are expended only for the purposes described in ACA 1.
 - b) Ensuring that funds are not used for employee salaries or other operating expenses, as prohibited by ACA 1.

- c) Ensuring that the administrative costs of the local government executing the projects and programs do not exceed 5% of the proceeds derived from the ACA 1 bonded indebtedness or ACA 1 special taxes, as prohibited by ACA 1.
- 14) Authorizes, in furtherance of its purpose, the citizens' oversight committee to engage in any of the following activities:
- a) Receiving and reviewing copies of the annual, independent performance audit required by ACA 1 as applicable.
 - b) Receiving and reviewing copies of the annual, independent financial audit required by ACA 1, as applicable.
 - c) Inspecting public infrastructure, affordable housing, or permanent supportive housing to ensure that revenues derived from ACA 1 bonded indebtedness or ACA 1 special taxes are expended in compliance with the requirements of ACA 1, as applicable.
 - d) Reviewing efforts by the local government to maximize revenues derived from ACA 1 bonded indebtedness or ACA 1 special taxes by implementing cost-saving measures, including, but not limited to, all of the following:
 - i) Mechanisms designed to reduce the costs of professional fees.
 - ii) Mechanisms designed to reduce the costs of site preparation.
 - iii) Mechanisms designed to reduce costs by incorporating efficiencies in public infrastructure, affordable housing, or permanent supportive housing design.
 - iv) Recommendations regarding the use of cost-effective and efficient reusable public infrastructure, affordable housing, or permanent supportive housing.
- 15) Provides that, for purposes of certain requirements in ACA 1, members of the legislative body of the local government and members of the citizens' oversight committee shall be subject to specified existing conflict of interest laws.
- 16) Provides that, for purposes of certain requirements in ACA 1, "committed" means all of the current and future annual tax revenue from the ACA 1 bonded indebtedness or the ACA 1 special tax is dedicated to specific projects or programs.
- 17) Specifies that the provisions of this bill are severable. If any provision of this article or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.
- 18) Provides that this bill shall become operative only if ACA 1 of the 2023-24 Regular Session is approved by the voters and, in that event, shall become operative on January 1, 2025.

EXISTING LAW:

- 1) Defines a "general tax" as any tax imposed for general governmental purposes. (Cal. Const., art. XIII C, § 1)

- 2) Defines a "special tax" as any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund. (Cal. Const., art. XIII C, § 1)
- 3) Specifies that all taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes. (Cal. Const., art. XIII C, § 2)
- 4) Prohibits a local government from imposing, extending, or increasing a general tax unless and until that tax is submitted to the electorate and approved by a majority vote. (Cal. Const., art. XIII C, § 2)
- 5) Prohibits a local government from imposing, extending, or increasing a special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. (Cal. Const., art. XIII C, § 2)
- 6) Authorizes a city, county, or special district, by a two-thirds vote of the qualified electors of such district, to impose special taxes on such district, except ad valorem taxes on real property or a transaction or sales tax on the sale of real property within such city, county, or special district. (Cal. Const., art. XIII A, § 4)
- 7) Caps the maximum amount of any ad valorem tax on real property at 1% of the property's full cash value. This limitation does not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition, or bonded indebtedness incurred by a school district, community college district, or county office of education for the construction, reconstruction, rehabilitation, or replacement of school facilities, approved by 55% of the voters of the district or county. Any such proposition must include specified accountability requirements, including an annual, independent performance audit. (Cal. Const., art. XIII A, § 1)

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Limitations on Special Taxes.** The California Constitution states that taxes local governments levy are either general taxes, subject to majority voter approval, or special taxes, subject to 2/3 vote (Article XIII C), which local agencies use for specified purposes. Proposition 13 (1978) required a 2/3 vote of each house of the Legislature for state tax increases, and 2/3 vote for local special taxes. Proposition 62 (1986) prohibited local agencies from imposing general taxes without majority approval of local voters. Proposition 218 (1996) extended those vote thresholds to charter cities and limited local agencies' powers to levy new assessments, fees, and taxes.
- 2) **Parcel Taxes.** One common form of local tax is the parcel tax, which can be imposed by cities, counties, or special districts, like school districts. Parcel taxes are not *ad valorem* or assessed based on the value of a property like property taxes; instead they are generally a flat rate assessed per parcel regardless of its size, or per square foot of a parcel or its improvements. Agencies can generally use revenues from a parcel tax in almost any way that serves local needs, such as ongoing expenses, programs, or buildings. Counties collect parcel

taxes with property taxes, and then remit funds to the agency imposing the parcel tax. Property tax law generally guides parcel tax collection.

The Legislature allowed school and community college districts to impose qualified special taxes that applied uniformly, to all taxpayers or real property within the district, but allowed districts to exempt persons over the age of 65 from the tax [AB 1440 (Hannigan), Chapter 100, Statutes of 1987]. In 2006, the Legislature allowed school districts to also exempt persons receiving Supplemental Security Income regardless of age [AB 385 (Lieber), Chapter 41, Statutes of 2006], and persons receiving Social Security Disability Insurance, whose yearly income was less than 250% of 2012 federal poverty guidelines [SB 874 (Hancock), Chapter 791, Statutes of 2012].

- 3) **Bonds.** Article XVI, Section 18 of the California Constitution generally prohibits cities, counties, and school districts from incurring any debt or liabilities exceeding any year's revenues without 2/3 voter approval. One of the most common reasons local agencies incur debt is to raise sufficient capital for a project or cost that the local agency does not have sufficient cash on hand to immediately finance, such as a public infrastructure project, and promise to pay off the principal and interest on that debt over time. General obligation (GO) bonds, in the local government context, refer to bonds payable from ad valorem property tax revenue. These typically require 2/3 voter approval. However, Proposition 39 (2000) amended the Constitution to decrease the 2/3 approval requirement to 55% percent for school districts, community college districts, or county offices of education, to issue general obligation bonds for the construction or rehabilitation of school facilities.
- 4) **ACA 1.** If approved by the voters at the November 2024 election, ACA 1 would lower the vote threshold from a two-thirds supermajority to 55% majority to approve local (city, county, and special district) GO bonds and certain special taxes for affordable housing, public infrastructure, and permanent supportive housing projects, and defines those terms. ACA 1 also requires the proposition submitted to the voters to contain certain accountability provisions including a requirement that the proceeds from the bonds or taxes only be used for the purposes specified in the ACA, and not for employee salaries or other operating expenses.

The local ballot proposition must include the specific local program or ordinance through which projects will be funded and a certification that the city, county, or special district has evaluated alternative funding sources. It must also include a requirement that the city, county, or special district conduct both an annual performance audit and an independent financial audit. The local proposition must also include a requirement that a city, county, city and county, or special district post the audits in a manner that is easily accessible to the public. Lastly, a citizens' oversight committee must also be appointed to ensure that the proceeds of the bonds or special taxes are expended only for the purposes described in the measure approved by the voters, among other requirements.

- 5) **Citizens' Oversight Committees.** In 2000, Proposition 39 amended the Constitution to reduce the supermajority requirement from 60% to 55% for voters to pass local school bond measures. Legislation approved in June 2000 [AB 1908 (Lempert), Chapter 44, Statutes of 2000] placed certain limitations on local school bonds to be approved by 55% of the voters and included a requirement that the governing board of a school district or community college district appoint a citizens' oversight committee to inform the public concerning the

spending of the bond revenues. The duties of the citizens' oversight committee as detailed in this bill are very similar to those that were implemented by AB 1908.

- 6) **Bill Summary.** This bill would enact a number of provisions to implement portions of ACA 1 if ACA is approved by the voters at the November 2024 election. This bill authorizes a local government that issues a bond or imposes a tax under ACA 1 to commit revenue to affordable housing programs such as downpayment assistance programs, first-time home buyer programs, and owner-occupied affordable housing rehabilitation programs. This bill also provides that any project funded under ACA 1 must have a useful life of at least 15 years unless otherwise specified, and that a local government may commit revenues derived under ACA 1 to projects and programs administered by a nonprofit organization, as specified. Additionally, this bill allows a parcel tax imposed under ACA 1 to include exemptions for certain taxpayers and requires the Auditor to review an unspecified percent of audits. Lastly, this bill requires a local government to appoint a citizens' oversight committee within 60 days to inform the public concerning the expenditure of revenues derived under ACA 1, as specified. This bill is sponsored by the author.
- 7) **Author's Statement.** According to the author, "AB 2813 is a companion measure to ACA 1, which will only take effect if ACA 1 is passed and approved by the voters. This bill includes tax exemptions to vulnerable groups, like seniors and persons with disabilities. AB 2813 also clarifies the definition of the term 'affordable housing.' Many implementation issues do not need to be addressed in provision of the California Constitution, and instead can be done via statute. This bill is the vehicle for those provisions."
- 8) **Policy Consideration.** Existing law details school bond oversight committees, including the requirements they must follow, the number of committee members, who can be a committee member, and more. However, this bill does not include all of the same provisions regarding oversight committees as existing law does for school bonds. The Committee may wish to consider if this bill should more closely mirror the oversight committees for schools.
- 9) **Committee Amendments.** In order to address the above policy consideration, the Committee may wish to amend this bill as follows:

53738.6. (d) All citizens' oversight committee proceedings shall be open to the public and notice to the public shall be provided in the same manner as the proceedings of the governing board of the local government. The citizens' oversight committee shall issue regular reports on the results of its activities. A report shall be issued at least once a year. Minutes of the proceedings of the citizens' oversight committee and all documents received and reports issued shall be a matter of public record and be made available on an Internet Web site maintained by the governing board of the local government.

(e) (1) The governing board of the local government shall, without expending proceeds derived from the ACA 1 bonded indebtedness or ACA 1 special taxes, provide the citizens' oversight committee with any necessary technical assistance and shall provide administrative assistance in furtherance of its purpose and sufficient resources to publicize the conclusions of the citizens' oversight committee. Nothing in this section shall be construed to require the local government to pay for outside consultants for the committee.

(2) The local government shall provide the citizens' oversight committee with responses to any and all findings, recommendations, and concerns addressed in the annual,

independent financial and performance audits required by clauses (iv) and (v) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subparagraphs (D) and (E) of paragraph (2) of subdivision (a) of Section 2.5 of Article XIII C of the California Constitution California Constitution within three months of receiving the audits.

(f) The citizens' oversight committee shall consist of at least seven members who shall serve for a minimum term of two years without compensation and for no more than three consecutive terms.

(g) (1) An employee or official of the local government shall not be appointed to the citizens' oversight committee.

(2) A vendor, contractor, or consultant of the local government shall not be appointed to the citizens' oversight committee.

(3) Members of the citizens' oversight committee shall abide by the prohibitions contained in Article 4 (commencing with Section 1090) and Article 4.7 (commencing with Section 1125) of Chapter 1 of Division 4 of Title 1.

- 10) **Author Amendments.** Due to time constraints, the Author has requested that the Committee adopt the following amendments:

53738.1. (a) For purposes of paragraph (4) of subdivision (b) of Section 1 of Article XIII A, Section 2.5 of Article XIII C, and subdivision (b) of Section 18 of Article XVI of the California Constitution, "affordable housing" ~~includes rental and for-ownership housing units.~~ **includes, but is not limited to, rental housing, ownership housing, interim housing, and affordable housing programs such as downpayment assistance, first-time homebuyer programs, and owner-occupied affordable housing rehabilitation programs.**

~~(b) A local government may commit revenue from ACA 1 bonded indebtedness or an ACA 1 special tax to affordable housing programs, which include, but are not limited to, all of the following:~~

~~(1) Downpayment assistance programs.~~

~~(2) First-time home buyer programs.~~

~~(3) Owner-occupied affordable housing rehabilitation programs.~~

~~53738.3. A local government may commit revenues derived from ACA 1 bonded indebtedness or an ACA 1 special tax to projects or programs administered by a nonprofit organization that is exempt from taxation under Section 501(e)(3) of Title 26 of the United States Code for the purpose of constructing, reconstructing, rehabilitating, or replacing affordable housing or permanent supportive housing for persons at risk of chronic homelessness.~~

53738.4 (a) Persons who are 65 years of age or ~~older.~~ **older whose annual income does not exceed 250 percent of the 2012 federal poverty guidelines issued by the United States Department of Health and Human Services.**

- 11) **Arguments in Support.** According to the California Professional Firefighters, "ACA 1 will put to the voters of California the question as to whether it is appropriate to reduce the voter threshold for local infrastructure, housing, and public safety expenditures to 55% from the current threshold of 66%. Over the last several years, various public safety-specific tax and bond measures have appeared on local ballots up and down our state and received more than 55% majority vote in support but failed to attain the existing two-thirds voter approval. If

passed by the voters, ACA 1 has the potential to radically improve the funding for critical projects throughout the state, and improve the lives, health, and safety of all Californians.

“AB 2813 is a targeted piece of clean-up legislation to clarify questions that were raised at the end of the legislative process in 2023 to ensure total clarity and accountability for this important measure. Included among these accountability measures are reviews of independent audits by the California State Auditor, requirements for the citizens’ oversight committee, and defining the useful life of projects both for general infrastructure and for specific public safety items. These clarifications will ensure that the funding raised via ACA 1 is dedicated only to the purposes intended by the voters, and that it will provide the maximum benefit to the communities.”

12) **Arguments in Opposition.** According to the Howard Jarvis Taxpayers Association, “The intent of AB 2813 is to further the purposes of ACA 1 which repeals one of the most important protections in Proposition 13 by lowering the existing two-thirds vote threshold for both local bonds and special taxes to 55 percent for a myriad of purposes.

“The special tax threshold, which includes sales and parcel taxes, has been in place since 1978 while the two-thirds requirement for bonds has existed since the late 1800’s. The intent of the two-thirds vote is to ensure a broad community consensus before the government exercises the power to tax. While everybody pays sales taxes, only property owners pay local bonds and parcel taxes. The latter of these is very regressive in that a property owner pays the same amount regardless of the size of their home or business. In addition, it is not impossible to meet the two-thirds threshold to approve special taxes if appropriate justification is made to voters. Dozens of such measures have been approved over the last decade.

“Making it easier to approve millions of dollars a year in new annual bonds and parcel taxes won’t make it easier to afford a home, and it won’t make it easier for renters, many of whom spend half their take home pay on rent, to be able to save.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Professional Firefighters
California State Association of Counties
Habitat for Humanity California
PowerCA Action

Opposition

Howard Jarvis Taxpayers Association

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