

Date of Hearing: July 12, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

ACA 1 (Aguiar-Curry) – As Amended May 30, 2023

SUBJECT: Local government financing: affordable housing and public infrastructure: voter approval.

SUMMARY: Proposes amendments to the California Constitution to allow a city, county, or special district, with 55% voter approval, to incur bonded indebtedness or impose specified special taxes to fund projects for affordable housing, permanent supportive housing, or public infrastructure. Specifically, **this bill:**

- 1) Allows a city, county, city and county, or special district, to incur indebtedness in the form of general obligation (GO) bonds to fund the construction, reconstruction, rehabilitation, or replacement of public infrastructure, affordable housing, or permanent supportive housing for persons at risk of chronic homelessness, including persons with mental illness, or the acquisition or lease of real property for public infrastructure, affordable housing, or permanent supportive housing for persons at risk of chronic homelessness, including persons with mental illness, to be approved by 55% of the voters voting on the proposition on or after the effective date of the measure adding this provision. This provision shall apply only if the proposition approved by the voters and resulting in the bonded indebtedness includes all of the following accountability requirements:
 - a) A requirement that the proceeds from the sale of the bonds be used only for the purposes specified in 1) above, and not for any other purpose, including city, county, city and county, or special district employee salaries and other operating expenses.
 - b) The specific local program or ordinance through which projects will be funded and a certification that the city, county, city and county, or special district has evaluated alternative funding sources.
 - c) A requirement that the city, county, city and county, or special district conduct an annual, independent performance audit to ensure that the funds have been expended pursuant to the local program or ordinance specified in b) above.
 - d) A requirement that the city, county, city and county, or special district conduct an annual, independent financial audit of the proceeds from the sale of bonds until all of those proceeds have been expended for the public infrastructure or affordable housing projects, as applicable.
 - e) A requirement that the city, county, city and county, or special district post the audits in a manner that is easily accessible to the public.
 - f) A requirement that the city, county, city and county, or special district appoint a citizens' oversight committee to ensure that bond proceeds are expended only for the purposes described in the measure approved by the voters.

- 2) Specifies that a city, county, city and county, or special district may levy a 55% vote ad valorem tax pursuant to 1) above.
- 3) Specifies that the imposition, extension, or increase of a sales and use tax, a transactions and use tax, or a parcel tax imposed by a local government for the purposes of funding the construction, reconstruction, rehabilitation, or replacement of public infrastructure, affordable housing, or permanent supportive housing for persons at risk of chronic homelessness, including persons with mental illness, or the acquisition or lease of real property for infrastructure, affordable housing, or permanent supportive housing for persons at risk of chronic homelessness, including persons with mental illness, is subject to approval by 55% of the voters in the local government voting on the proposition, if both of the following conditions are met:
 - a) The proposition is approved by a majority of the membership of the governing board of the local government.
 - b) The proposition contains all of the following accountability requirements:
 - i) A requirement that proceeds of the tax only be used for the purposes specified in the proposition, and not for any other purpose, including general employee salaries and other operating expenses of the local government.
 - ii) The specific local program or ordinance through which projects will be funded and a certification that the city, county, city and county, or special district has evaluated alternative funding sources.
 - iii) A requirement that the local government conduct an annual, independent performance audit to ensure that the proceeds of the special tax have been expended pursuant to the local program or ordinance specified in ii) above.
 - iv) A requirement that the local government conduct an annual, independent financial audit of the proceeds from the tax during the lifetime of that tax.
 - v) A requirement that the local government post the audits in a manner that is easily accessible to the public.
 - vi) A requirement that the local government appoint a citizens' oversight committee to ensure the proceeds of the special tax are expended only for the purposes described in the measure approved by the voters.
- 4) Defines the following terms:
 - a) "Affordable housing" to include housing developments, or portions of housing developments, that provide workforce housing affordable to household earning up to 150% of countywide median income, and housing developments, or portions of housing developments, that provide housing to lower, low-, or very low income households, as those terms are defined by state law.
 - b) "At risk of chronic homelessness" to include, but is not limited to, persons who are at risk of long-term or intermittent homelessness, including persons with mental illness exiting

institutionalized settings, including, but not limited to, jail and mental health facilities, who were homeless prior to admission, transition age youth experiencing homelessness or with significant barriers to housing stability, and others, as defined in program guidelines.

- c) “Permanent supportive housing” to mean housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite or offsite services that assist residents in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community. “Permanent supportive housing” includes associated facilities, if those facilities are used to provide services to housing residents.
- d) “Special district” to mean, for the purposes of 1) above, an agency of the State, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries and specifically includes a transit district, a regional transportation commission, and an association of governments, except that “special district” does not include a school district, redevelopment agency, or successor agency to a dissolved redevelopment agency.
- e) “Local government” to mean, for the purposes of 3) above, any county, city, city and county, including a charter city or county, any special district, as defined in Article XIIC of the California Constitution, or any other local or regional governmental entity, including a transit district, a regional transportation commission, and an association of governments.
- f) “Public infrastructure” to include, but is not limited to, projects that provide any of the following:
 - i) Water or protect water quality.
 - ii) Sanitary sewer.
 - iii) Treatment of wastewater or reduction of pollution from stormwater runoff.
 - iv) Protection of property from impacts of sea level rise.
 - v) Parks and recreation facilities.
 - vi) Open space.
 - vii) Improvements to transit and streets and highways.
 - viii) Flood control.
 - ix) Broadband internet access service expansion in underserved areas.
 - x) Local hospital construction.
 - xi) 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, policy, or sheriff personnel.

xii) Public library facilities.

- 5) Specifies that a special district, other than a board of education or school district, shall not incur any indebtedness or liability exceeding any applicable statutory limit, as prescribed by the statutes governing the special district as they currently read or may thereafter be amended by the Legislature.
- 6) Allows the voter approval thresholds specified above in 1) and 3), above, to apply to a local measure imposing, extending, or increasing a sales and use tax, a transactions and use tax, or a parcel tax, or GO bonded indebtedness for the purposes specified above, submitted to voters at the same election as ACA 1.
- 7) Makes numerous other technical, clarifying, and conforming changes.

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 has been keyed non-fiscal. However, it was referred to both the Local Government and Appropriations Committees on May 26, 2023.

COMMENTS:

- 1) **Bill Summary.** ACA 1 lowers the voter 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 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, and a requirement that the city, county, or special district conduct both an annual performance audit and an independent financial audit. The 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. 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. This measure is sponsored by the California Professional Firefighters.

- 2) **Author's Statement.** According to the author, "Under current law, local officials propose a local bond or special tax, and then it is up to the voters in that community to decide whether they support the idea or not. Local governments and local voters know best what their communities need. In some neighborhoods this means a new library or fire station; in others this means an increase in the affordable housing stock, or connecting their constituents to broadband service. These investment initiatives often fail to reach the legal requirement of a 2/3 vote, a threshold under which opponents' votes count twice as much as those community members who support infrastructure investments.

"ACA 1 will empower local governments to address local priorities without needing to wait for state and federal funding initiatives. A majority vote tax measure is much more likely to pass, while voters would still need to overwhelmingly support a bond or special tax in order for it to be approved with 55 percent of the vote.

"ACA 1 will level the playing field and create parity between school districts and cities, counties, and special districts, so that all local governments have a viable financing tool to address community needs. It also contains various transparency and accountability measures, including an expenditure plan of projects and programs proposed, audits, and monitoring by a citizens' commission to assure resources are being spent as proposed."

- 3) **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.

- 4) **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 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.
- 5) **Affordable Housing and Other Infrastructure Needs.** Funding for the development of local infrastructure comes from many sources, including federal, state and local. However, California's infrastructure development needs are vast. For example, according to the 2022 Statewide Housing Plan, to meet California's unmet housing needs, the state needs an additional 2.5 million housing units, including 1.2 million for lower-income households. The state needs an additional 180,000 new units of housing a year to keep up with demand, including about 80,000 units of housing affordable to lower-income households. Furthermore, the state's homelessness crisis is driven, in part, by the lack of affordable rental housing for lower income people. According to the most recent point in time count, 171,521 people were experiencing homelessness in California, representing 30% of the nation's homeless population.

Moreover, according to the Assembly Water, Parks, and Wildlife Committee analysis for SB 867 (Allen), "Led by state agencies and completed in 2018, [California's Fourth Climate Change] Assessment includes over 44 peer-reviewed technical reports that examine specific aspects of climate change in California. Among the Assessment's findings is that California is one of the most 'climate-challenged' regions of North America and must actively plan and implement strategies to prepare for and adapt to extreme events and shifts from previously 'normal' averages. The report stated that climate change impacts are here, including the following impacts: 1) temperatures are warming, heat waves are more frequent, and precipitation has become increasingly variable; 2) glaciers in the Sierra Nevada have lost an average of 70% of their area since the start of the 20th century; and 3) the sea level along the central and southern California coast has risen more than 5.9 inches over the 20th century. The Assessment projects that climate change impacts could result in direct economic costs exceeding \$100 billion annually by 2050. Human mortality due to high temperatures is the single largest projected cost at approximately \$50 billion annually. A 'megaflood' in the Central Valley would not be an annual cost, but climate change will increase the likelihood of such an event and it could cost up to \$750 billion in damages. Similarly, sea level rise could lead to as much as \$18 billion in damages. The increased likelihood and severity of a 100-year storm hitting the coast combined with sea level rise could result in costs of \$30 billion."

In addition to affordable housing, homelessness, and climate change resilience, supporters have identified the need for funding for a number of other types of infrastructure projects, including transportation, broadband, public safety, and parks, among others.

- 6) **Two-Thirds Legislative Approval and Statewide Ballot Approval Requirements.** This measure requires the approval of two-thirds of the membership of each house in the Legislature and approval by a majority of voters at a statewide ballot election to ratify the changes to the constitution.
- 7) **Technical Amendments.** The author has agreed to the following technical amendments:
- a) On Page 6, Line 11, replace “protect” with “protection of.”
 - b) On Page 6, Line 26, replace “policy” with “police.”
 - c) On Page 10, Line 6, replace “protect” with “protection of.”
 - d) On Page 10, Line 21, replace “policy” with “police.”
 - e) On Page 11, Line 25, replace “forty” with “40.”
- 8) **Arguments in Support.** According to the California Professional Firefighters, “ACA 1 gives voters the opportunity to decide whether a 55% threshold for approving local public safety expenditures is an appropriate standard. This measure does not raise or approve a single tax; rather it puts to the voters the question as to whether a 55% majority is a suitable threshold for approving special taxes or incurring bonded indebtedness to fund the construction, reconstruction, rehabilitation, or replacement of public infrastructure or affordable housing projects.

“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. For example, a parcel tax to fund fire and EMS services for Higgins Fire District in Nevada County a few years ago received 61.2% of the vote and failed. The failure of this measure forced the district to lay off six full-time positions, keep only two of the three fire stations open at a time and, as a result, response times doubled to over 12 minutes.

“ACA 1, if approved by the Legislature, would put this question before the voters to decide whether 55% is a proper voter approval threshold for generating additional dedicated revenue or incurring bonded indebtedness at the local level for critical public services and equipment.”

- 9) **Arguments in Opposition.** According to the California Taxpayers Association, and a coalition of organizations in opposition, “This measure proposes to make it easier for local governments to increase various taxes, including sales taxes and property taxes. Higher sales taxes increase the cost of home construction and everyday necessities used by homeowners and renters, while property taxes increase the burden of homeownership – all of which make housing less affordable for working families, including renters. A March 2022 Public Policy Institute of California poll found that 62 percent of Californians believe state and local taxes are too high. By paving the way for higher housing costs and consumer costs, this measure would harm those it seeks to help.

“...Public opinion polling has consistently shown that voters support a two-thirds vote

requirement for local taxes. A March 2018 survey by the Public Policy Institute of California showed that across all demographics, voters support a two-thirds vote – and few voters believe the supermajority vote requirement has had a negative impact on government. When asked if they ‘favor or oppose allowing local special taxes to pass with a 55 percent majority vote instead of a two-thirds vote,’ not a single demographic was in favor of changing the vote threshold. According to the survey, adults in the Central Valley, Inland Empire, Los Angeles, Orange County, San Diego, and San Francisco Bay Area regions oppose changing the vote threshold. The idea of changing the vote threshold was found to be widely unpopular among Democrats, Republicans and decline-to-state voters alike.

“...More than four decades ago, prompted by years of rising taxes, Californians resoundingly approved Proposition 13 to provide a check on local governments’ taxing authority, and to ensure a greater representative voice for those who would be taxed. Proposition 13 also limits taxes on property to 1 percent of the property’s assessed value. Reducing the vote threshold would diminish the people’s voice on tax increases and would erode property tax safeguards. A May 2022 Public Policy Institute of California poll found that 64 percent of registered voters believe Proposition 13 has benefitted taxpayers, and this support reaches across nearly every major demographic.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Professional Firefighters [SPONSOR]
AARP
Abode Communities
Abundant Housing LA
Affirmed Housing
Alta Housing
American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO
American Planning Association, California Chapter
Association of Bay Area Governments
California Association of Local Housing Finance Agencies
California Fire Chiefs Association
California Housing Consortium
California Housing Partnership Corporation
California Library Association
California School Employees Association
California Special Districts Association
California YIMBY
City and County of San Francisco
City of Alameda
City of Emeryville
City of Half Moon Bay
City of Long Beach
City of Palo Alto
County of Marin
County of Santa Clara
Devine & Gong, Inc.

EAH Housing
East Bay for Everyone
East Bay Municipal Utility District
East Bay YIMBY
Eden Housing
Enterprise Community Partners
Fire Districts Association of California
Generation Housing
Grow The Richmond
Habitat for Humanity California
How to ADU
International Union of Operating Engineers, Cal-Nevada Conference
Local Initiatives Support Corporation (LISC) Bay Area
Mercy Housing California
Metropolitan Transportation Commission
Midpen Housing Corporation
Midpeninsula Regional Open Space District
Mountain View YIMBY
Napa-Solano for Everyone
Non-Profit Housing Association of Northern California
Northern Neighbors
Peninsula Corridor Joint Powers Board
Peninsula for Everyone
People for Housing - Orange County
Professional Engineers in California Government
Progress Noe Valley
Regional Asthma Management and Prevention
Resources for Community Development
Rural County Representatives of California
San Francisco YIMBY
San Luis Obispo YIMBY
San Mateo County Transit District
Santa Clara Valley Water District
Santa Cruz YIMBY
Santa Rosa YIMBY
Seifel Consulting, Inc.
Solano Transportation Authority
South Bay YIMBY
South Side Forward
Streets for People
SV@Home Action Fund
Tenderloin Neighborhood Development Corporation
Tri-Valley Cities of Dublin, Livermore, Pleasanton, San Ramon, and the Town of Danville
Urban Environmentalists
Ventura County YIMBY
YIMBY Action

Opposition

Affordable Housing Management Association – Pacific Southwest
Alameda County Taxpayers’ Association
Apartment Association of Orange County
Building Owners and Managers Association
California Association of Realtors (unless amended)
California Attractions and Parks Association
California Business Properties Association
California Cattlemen’s Association
California Independent Petroleum Association
California Manufacturers and Technology Association
California Railroads
California Rental Housing Association
California Retailers Association
California Self Storage Association
California Taxpayers Association
Coalition of Sensible Taxpayers
Contra Costa Taxpayers Association
East Bay Rental Housing Association
Family Business Association of California
Greater San Fernando Valley Chamber of Commerce
Howard Jarvis Taxpayers Association
Kern County Taxpayers Association
NAIOP, the Commercial Real Estate Development Association
National Federation of Independent Business
Orange County Business Council
Orange County Taxpayers Association
San Diego County Taxpayers Association
San Gabriel Valley Economic Partnership
Silicon Valley Leadership Group
Small Property Owners of San Francisco
Solano County Taxpayers Association
Ventura County Taxpayers Association
40 Individuals

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