

California Legislature

Joint Informational Hearing of the Assembly Committees on Local Government and Revenue and Taxation

INITIATIVE TO EXPAND REQUIREMENT FOR SUPERMAJORITY APPROVAL TO ENACT NEW LOCAL GOVERNMENT REVENUE MEASURES (#1846)

Wednesday, June 13, 2018

Upon Adjournment of Regular Bill Hearing, Room 447

Agenda (Revised)

- 1) Welcome and Opening Remarks
 - a) **Assembly Member Cecilia Aguiar-Curry**, Chair, Assembly Local Government Committee
 - b) **Assemblywoman Autumn Burke**, Chair, Assembly Revenue and Taxation Committee
- 2) Initiative Overview
 - a) **Ryan Miller**, Principal Fiscal & Policy Analyst, Legislative Analyst's Office
- 3) Initiative Proponents
 - a) **John Valdivia**, City Councilmember, City of San Bernardino
 - b) **Robert Lapsley**, President, California Business Roundtable
 - c) **Kurt Oneto**, Partner, Nielsen Merksamer
- 4) Initiative Opponents
 - a) **Darrell Steinberg**, Mayor, City of Sacramento
 - b) **Terry Brennand**, Director of Pensions, Budget, and Revenue, Service Employees International Union
 - c) **Dan Carrigg**, Deputy Executive Director, Legislative Director, League of California Cities
- 5) Public Testimony (one minute per person)



December 22, 2017

VIA PERSONAL DELIVERY

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DEC 22 2017

Hon. Xavier Becerra
Attorney General of California
1300 I Street, 17th Floor, P.O. Box 944255
Sacramento, CA 95814

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ashley Johansson, Initiative Coordinator

Re: Request for Title and Summary for Initiative Constitutional
Amendment (A.G. No. 17-0051) - Amended Language

Dear Ms. Johansson:

Pursuant to Section 9002(b) of the California Elections Code, please find attached hereto amendments to the above-captioned initiative measure. I hereby request that a title and summary be prepared for the initiative measure using the amended language. My address as a registered voter, the required proponent affidavits pursuant to Sections 9001 and 9608 of the California Elections Code, and a check for \$2,000.00 were included with the original submission.

All inquires or correspondence relative to this initiative should be directed to Nielsen, Merksamer, Parrinello, Gross & Leoni, LLP, 1415 L Street, Suite 1200, Sacramento, CA 95814, (916) 446-6752, Attention: Kurt Oneto (telephone: 916/446-6752).

Thank you for your assistance.

Sincerely,



Robert Lapsley, Proponent

Enclosure: Proposed Initiative Constitutional Amendment

[Deleted codified text is denoted in ~~strikeout~~. Added codified text is denoted by *italics and underline*.]

Section 1. Title.

This Act shall be known, and may be cited as, the Tax Fairness, Transparency and Accountability Act of 2018.

Section 2. Findings & Declarations.

(a) Californians are already among the highest taxed people in the country and pay among the highest tax rates in the nation for the state personal income tax, sales taxes, and gasoline tax. From the most recent data from the US Census Bureau, California state and local government general revenues collected in 2015 from taxes, fees, charges, and other non-utility local sources were the highest in the nation at \$419 billion, making them the 9th highest on a per capita basis at \$8,385 per person. With 12 percent of the national population, US Census Bureau data shows that Californians in 2016 paid 17 percent of all taxes collected by the states including 13 percent of all general sales taxes, 15 percent of all vehicle license fees, 16 percent of all property taxes, 22 percent of all corporation taxes, 23 percent of all personal income taxes, and 29 percent of all occupation and business license fees.

(b) Local governments' appetite for new revenue adds to the rapidly rising costs of living that Californians face for housing, childcare, gasoline, food, energy, healthcare and education. This growing burden of taxes and charges is hurting hardworking Californians who find themselves living paycheck to paycheck, and being forced to make tough choices between paying for housing, food, or healthcare.

(c) Californians have tried repeatedly to force a vote of the people before local government revenues can be increased. Voter-approved ballot measures such as Proposition 13 (1978), Proposition 62 (1986), Proposition 218 (1996), and Proposition 26 (2010) required state and local governments to make their case to the voters on the need for increased government revenues.

(d) Through these measures, voters also tried to keep government honest and transparent about why new revenues and charges are needed and how they will be used. For too long, politicians, local governments, and special interests have promised that revenues will be spent for a specific purpose, only to divert its use once the money starts coming in. Revenues that

were supposed to improve education instead have been diverted to general salary and benefit increases. Revenues that were promised to improve and expand government services were instead diverted to pay down debts created by past government decisions. Recent major transportation improvements have seen cost overruns more than double their original estimate.

(e) Contrary to the voters' intent, voter approval of local government revenue increases and spending accountability measures have been weakened by politicians, the courts, and special interests, making it easier to raise local revenues in a myriad of ways with little to no accountability to the public who is expected to pay the costs.

(f) Worse, court-created loopholes have enabled local governments and their surrogates to become less transparent about how the funds taken from taxpayers are raised and spent. Loopholes have been created which are used by local governments and even special interest groups to: (1) pass vaguely-worded measures allowing unelected bureaucrats to impose new fees and other charges on their own that increase the costs of goods and services; (2) impose new taxes and charges by hiding them and simply calling them by another name or even using the term "something else;" (3) shelter the revenue increases from voter approval by running the revenues through a nonprofit organization or another third party; and (4) encourage "divide and tax" by making it easier to raise taxes or fees on only a part of the population through simple majority votes in low turnout elections.

Section 3. Statement of Purpose.

(a) In enacting this measure, the voters reassert their right to vote on increases in local taxes, no matter how they are labeled nor how or by whom they are proposed. The voters also intend that local governments remain accountable to the voters for how the taxes, charges, and other revenues extracted from Californians are spent.

(b) Furthermore, the purpose and intent of the voters in enacting this measure is to clarify that any new or increased form of local tax, by any name or manner of extraction paid directly or indirectly by Californians, shall be authorized only by a two-thirds vote to ensure that the purposes for such tax is broadly supported and transparently debated.

(c) Furthermore, the purpose and intent of the voters in enacting this measure is also to ensure that taxpayers have the right and ability to effectively balance new or increased local taxes, charges, or other government revenues with the rapidly increasing costs Californians are

already paying for housing, food, gasoline, energy, healthcare, education, and other basic costs of living.

(d) Furthermore, the purpose and intent of the voters in enacting this measure is to force transparency and accountability on how local revenues are utilized, so that revenues are used for their promised purposes, and not diverted to other uses without the express approval of the voters.

(e) Furthermore, the purpose and intent of the voters in enacting this measure is to require that the public be allowed to vote on any and all local taxes that were created or increased by local regulation or other bureaucratic action.

(f) In enacting this measure, the voters also additionally intend to reverse loopholes in the people's right to vote on local government revenue increases created by the courts including, but not limited to, *Cannabis Coalition v. City of Upland*, *Chamber of Commerce v. Air Resources Board*, and *Schmeer v. Los Angeles County*.

Section 4. Section 1 of Article XIII C of the California Constitution is amended, to read:

SECTION 1.

Definitions. As used in this article:

(a) "Article XIII D assessment, fee, or charge" means an assessment, fee, or charge subject to Article XIII D. ~~"General tax" means any tax imposed for general governmental purposes.~~

(b) "Local government" means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity, or the electorate of any of the preceding entities when exercising the initiative power.

(c) "Special district" means 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 including, but not limited to, school districts and redevelopment agencies.

~~(d) "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.~~

~~(d)~~ (e) As used in this article, "tax" means every any levy, charge, or exaction of any kind imposed, adopted, created, or established by a local government law that is not an exempt charge or Article XIII D assessment, fee, or charge. ~~except the following:~~

(e) "Exempt charge" means only the following:

~~(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.~~

~~(1) (2) A reasonable charge imposed for a specific local government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable actual costs to the local government of providing the service or product.~~

~~(2) (3) A reasonable charge imposed for the reasonable not to exceed the actual regulatory costs to the a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.~~

~~(3) (4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.~~

~~(4) (5) A fine, or penalty, or other monetary charge including any applicable interest for nonpayment thereof, imposed by the judicial branch of government or a local government administrative enforcement agency pursuant to adjudicatory due process, as a result of to punish a violation of law.~~

~~(5) (6) A charge imposed as a condition of property development, or an assessment imposed upon a business by a tourism marketing district.~~

~~(6) (7) An Article XIII D assessment, fee, or charge Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.~~

~~(f) "Local law" includes, but is not limited to, any ordinance, resolution, regulation, ruling, opinion letter, or other legal authority or interpretation adopted, enacted, enforced, issued, or implemented by a local government.~~

~~(g) "Extend" includes, but is not limited to, doing any of the following with respect to a tax, exempt charge, or Article XIII D assessment, fee, or charge: lengthening its duration, delaying or eliminating its expiration, expanding its application to a new territory or class of payor, or expanding the base to which its rate is applied.~~

~~(h)(1) A levy, charge, or exaction of any kind imposed, adopted, created, or established by a local law and which is retained by or payable to a non-government entity remains subject to~~

this section and Section 2 if a local law also limits in any way how the non-government entity can use the levy, charge, or exaction.

(2) The characterization of a levy, charge, or exaction of any kind imposed, adopted, created, or established by a local law as being voluntary, or paid in exchange for a benefit, privilege, allowance, authorization, or asset, shall not be factors in determining whether the levy, charge, or exaction is a tax or an exempt charge.

(i) The local government bears the burden of proving by a preponderance of the clear and convincing evidence that a levy, charge, or other exaction of any kind is an exempt charge and not a tax, that the amount is reasonable and no more than necessary to cover the reasonable actual costs of the governmental activity service or product or regulatory task, that an exempt charge is not used for any purpose other than its stated purpose, and that the manner in which those costs are allocated to a payor is proportional based on the service or product provided to the payor as described in paragraph (1) of subdivision (e), or is proportional to the costs to the local government created by the payor for performing the regulatory tasks described in paragraph (2) of subdivision (e) bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.

Section 5. Section 2 of Article XIII C of the California Constitution is amended, to read:

SECTION 2.

Local Government Tax Limitation. Notwithstanding any other provision of this Constitution:

~~(a) 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.~~

~~(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.~~

~~(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).~~

(a) Every levy, charge, or exaction of any kind imposed, adopted, created, or established by local law is either a tax, an exempt charge, or an Article XIII D assessment, fee, or charge.

(b) (d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

(c) The governing body of a local government shall only submit a tax to the electorate of the local government by an act passed by not less than two-thirds of all members elected to the governing body. Any tax so submitted shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(d) The governing body of a local government shall not impose, extend, or increase any exempt charge unless and until the act containing the exempt charge is passed by not less than two-thirds of all members elected to the governing body. An exempt charge imposed, extended, or increased by a governing body shall be subject to referendum pursuant to the same signature requirement applicable to statewide referendum measures.

(e) No initiative in any local government may impose, extend, or increase any exempt charge unless and until the exempt charge is submitted to the electorate and approved by a two-thirds vote.

(f) No new, increased, or extended tax shall be valid or given any effect unless:

(1) The act creating, increasing, or extending the tax contains a specific and legally binding and enforceable limitation on how the revenue from the tax can be spent. If the revenue from a tax can be spent for unrestricted general revenue purposes, then a statement that the tax revenue can be spent for "unrestricted general revenue purposes" shall be included in the separate, stand-alone section required by paragraph (2), and included in the ballot question presented to voters.

(2) A true and impartial statement of facts explicitly and affirmatively identifying each tax and the specific limitation on how the revenue therefrom can be spent is set forth in the act as a separate, stand-alone section containing no other information.

(3) The revenue from the tax is not used for any purpose other than those specifically identified pursuant this subdivision.

(g) A change in how the revenue from a tax can be spent shall be treated as a new tax and shall be approved in accordance with the requirements of this section.

(h) An Article XIII D assessment, fee, or charge can be extended, imposed, or created pursuant to Article XIII D.

(i) In order to preserve the right of voters to vote on all local taxes as provided for in this section, all of the following shall apply:

(1) Any imposition, increase, or extension of a local government tax that was voted on by the electorate of the local government after January 1, 2018, but prior to the effective date of this subdivision, and which does not satisfy all of the requirements of paragraph (2), shall cease to be imposed, extended, increased, or collected unless and until the tax is approved in strict compliance with all the requirements of paragraph (2).

(2)(A) The tax imposition, increase, or extension was approved by two-thirds of the local government's electorate.

(B) The act imposing, increasing, or extending the tax strictly complies with subdivision (f).

(C) The ballot question presented to voters for the tax imposition, increase, or extension strictly complies with subdivision (f).

Section 6. Section 5 is added to Article XIII C of the California Constitution, to read:

SECTION 5.

(a) This article and Section 4 of Article XIII A shall apply to all local lawmaking power, whether exercised by a governing body or by the electorate acting through the initiative power.

(b) Nothing in this article or Section 3 of Article XIII A shall be interpreted as altering the voter approval requirements for bonded indebtedness described in paragraph (3) of subdivision (b) of Section 1 of Article XIII A.

Section 7. Section 3 of Article XIII D of the California Constitution is amended, to read:

SECTION 3.

Property Taxes, Assessments, Fees and Charges Limited.

(a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

(1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.

(2) Any special non-ad valorem tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.

(3) Assessments as provided by this article.

(4) Fees or charges for property related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.

Section 8. Liberal Construction.

This Act shall be liberally construed in order to effectuate its purposes.

Section 9. Conflicting Measures.

(a)(1) In the event that this initiative measure and another initiative measure or measures relating to local vote requirements for the imposition, adoption, creation, or establishment of taxes, charges, and other revenue measures shall appear on the same statewide election ballot, the other initiative measure or measures shall be deemed to be in conflict with this measure. In the event that this initiative measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other initiative measure or measures shall be null and void.

(2) Notwithstanding paragraph (1), this initiative measure shall not be deemed to be in conflict with any other initiative measure that requires statewide voter approval of the creation, increase, extension, or continued imposition of any tax.

(b) If this initiative measure is approved by the voters but superseded in whole or in part by any other conflicting initiative measure approved by the voters at the same election, and such

conflicting initiative is later held invalid, this measure shall be self-executing and given full force and effect.

Section 10. Severability.

The provisions of this Act are severable. If any portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application of this Act is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this Act. The People of the State of California hereby declare that they would have adopted this Act and each and every portion, section, subdivision, paragraph, clause, sentence, phrase, word, and application not declared invalid or unconstitutional without regard to whether any portion of this Act or application thereof would be subsequently declared invalid.

Section 11. Legal Defense.

If this Act is approved by the voters of the State of California and thereafter subjected to a legal challenge alleging a violation of state or federal law, and both the Governor and Attorney General refuse to defend this Act, then the following actions shall be taken:

(a) Notwithstanding anything to the contrary contained in Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code or any other law, the Attorney General shall appoint independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.

(b) Before appointing or thereafter substituting independent counsel, the Attorney General shall exercise due diligence in determining the qualifications of independent counsel and shall obtain written affirmation from independent counsel that independent counsel will faithfully and vigorously defend this Act. The written affirmation shall be made publicly available upon request.

(c) A continuous appropriation is hereby made from the General Fund to the Controller, without regard to fiscal years, in an amount necessary to cover the costs of retaining independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.

Section 12. Effective Date.

Notwithstanding any other provision of the California Constitution, this act shall take effect the day after its approval by the voters.