

Date of Hearing: July 12, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 348 (Leyva) – As Amended March 20, 2017

SENATE VOTE: 34-3

SUBJECT: County voter information guide: taxpayer notice.

SUMMARY: Requires an elections official to include specified notice in the county voter information guide regarding the process for challenging the levy of a special tax. Specifically, **this bill:**

- 1) Requires an elections official, if a local special tax measure is presented to the voters for approval, to include in the county voter information guide for that election a notice regarding the process for initiating a validation action challenging the levy of a special tax.
- 2) Requires the notice to be no smaller than 12-point, in bold and all capital letters with a one-eighth inch border, and to immediately follow the analysis of the special tax measure. Requires under the heading "Important Notice for Taxpayers" the following to be printed: "State law generally requires that a legal challenge be filed within 60 days of voter-approval of a special tax. The validity of the special tax cannot be challenged after that time."
- 3) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to current law governing state mandated local costs.

EXISTING LAW:

- 1) Authorizes cities, counties, and special districts to impose a special tax for specified purposes with the approval of two-thirds of the voters.
- 2) Authorizes school districts to impose qualified special taxes, in accordance with specified procedures, including the approval of two-thirds of the voters in the district.
- 3) Requires an elections official to send to each voter a county voter information guide that contains, among other things, impartial analyses of local ballot measures, including measures to levy special taxes.
- 4) Requires county elections officials to mail a county voter information guide to each voter in the jurisdiction, as specified.
- 5) Requires the county voter information guide to contain, among other things, a copy of the official ballot (sample ballot), a complete copy of each local measure, and an analysis of each local ballot measure, including measures to levy special taxes.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

- 1) **Background.** Voters approved Proposition 13 (1978), Proposition 62 (1986), and Proposition 218 (1996), which established additional restrictions on a local government's ability to raise revenue, including taxes, assessments, and property-related fees. The California Constitution requires a majority vote to impose general taxes and a two-thirds vote to impose special taxes. To place a proposed tax measure on the ballot, a local agency must adopt a resolution, which includes the type of tax and rate to be levied, the method of collection, and the date of the election. To adopt an ordinance, local agencies must comply with the Ralph M. Brown Act, which includes public notification and hearing requirements. For example, a local agency must post an agenda at least 72 hours prior to its meeting. Additionally, current law requires publication of specific information 15 days after a local agency passes an ordinance. Special taxes, such as parcel taxes, are subject to additional accountability, pursuant to SB 165 (Alarcón), Chapter 535, Statutes of 2000. Current law requires local agencies to: a) issue a statement indicating the specific purpose of the tax and a requirement that the proceeds be used only for that purpose; b) create an account for the deposit of proceeds; and, c) issue an annual report that includes the amount of funds collected and expended, along with the status of any project required or authorized by the tax measure.

If voters approve a special tax, a private party may file a lawsuit in a superior court to determine the validity of certain actions of a local agency, including the levying of a special tax. The time period allowed for filing a validation lawsuit is 60 days. If no private party files a validation lawsuit, a municipal agency's actions are de facto validated once the statute of limitations runs out. The 60-day validation timeframe was upheld by *Golden Gate Hill Development Company v. County of Alameda* 242 Cal. App. 4th 760 (2015).

- 2) **Bill Summary.** This bill requires a local elections official to include notice in the voter information guide regarding the process for initiating a validation action challenging the levy of a special tax. This bill specifies the spacing, font, and placement for the notice and requires that under the heading "Important Notice for Taxpayers," the following statement must be printed: "State law generally requires that a legal challenge be filed within 60 days of voter approval of a special tax. The validity of the special tax cannot be challenged after that time." This bill is sponsored by the California Association of Realtors.
- 3) **Author's Statement.** According to the author, "The state's validation statutes allow 60 days for a governmental agency or private party to file a lawsuit to determine the validity of certain municipal agency actions or tax measures. Unfortunately, it is unlikely that many taxpayers are aware of this short time frame. It is the intent of SB 348 to ensure that voters are aware and well informed of this requirement. SB 348 will provide voter education, as well as hopefully minimize unnecessary litigation years after a tax has already been enacted."
- 4) **Related Legislation.** AB 2109 (Daly), Chapter 781, Statutes of 2014, required the State Controller to report annually on the imposition of each locally assessed parcel tax, and required each county, city, and special district to provide any information required by the Controller in order to complete the report. AB 2476 (Daly) requires a local agency, city, county, special district, or school district to provide specified notice of a new parcel tax to non-resident parcel owners. AB 237 (Daly) of 2015, which was held on suspense in the Assembly Appropriations Committee, was substantially similar to AB 2476. AB 448 (Daly), pending in this Committee, would require a local agency to provide notice of a new parcel

tax to non-resident property owners pursuant to existing law, within thirty days of the certification of the election approving the new parcel tax.

AB 1333 (Dababneh), pending in the Assembly Appropriations Committee, would require local government agencies that have an Internet website to prominently post on that site a notice of any upcoming election in which the voters will vote on a tax measure or proposed bond issuance. AB 1194 (Dababneh), pending in the Senate Elections and Constitutional Amendments Committee, would require an estimate of the average annual tax rate required to repay bonds to be included in the fiscal statement that must be inside the sample ballot for local bond measures.

- 5) **Policy Consideration.** A local agency must first hold a public meeting to adopt a resolution or ordinance regarding placing a special tax measure on the ballot. Once the resolution or ordinance is adopted, there is an extended period of time where the tax measure can be evaluated before it is voted on. Opposition argues if a legal flaw in a special tax proposal does exist, there is time to question its validity before the measure is voted on. The Committee may wish to consider if this statement in the voter pamphlet provides more than just voter education, but will encourage voters to vote against a tax measure.

This Committee has seen a number of bills seeking transparency for special taxes and parcel taxes in particular. The Committee may wish to consider the cumulative effect of these measures and whether they strike the appropriate balance of ensuring transparency without creating additional barriers for cash strapped local governments faced with a high threshold of obtaining supermajority voter approval.

- 6) **Arguments in Support.** The California Association of Realtors argues that this bill "will require county election voter information guides to include a notice informing taxpayers that special taxes – such as parcel taxes – must be challenged within 60 days of voter approval. The state's validation statutes provide that a governmental agency or a private party may file a lawsuit in Superior Court to determine the validity of certain actions of an agency. Generally, the period allowed for filing a validation lawsuit is 60 days. If no private party files a "reverse validation" lawsuit, an agency's actions are deemed validated once the statute of limitations runs out. However, it's likely very few taxpayers are aware they must challenge the legality of a new tax within such a short period after voter approval of the tax."

Howard Jarvis Taxpayers Association states, "As one of California's foremost taxpayer groups, we are aware of countless situations that either our organization or other impacted interests would have been able to bring a successful validation action against an illegal tax had it been within the 60 day timeframe. While we still believe the current 60 day limit is too short (government typically gives itself three years to pursue legal actions against taxpayers) SB 348 is a welcome step in the right direction."

- 7) **Arguments in Opposition.** The California School Boards Association states, "Ostensibly a transparency measure, the outcome of this bill can only be to serve as a suggestion to challenge badly-needed school funding measures that have been approved by the voters. SB 348 will result in an increase in frivolous lawsuits which will in turn delay the implementation of education programs, and the building and modernization of school facilities."

The Coalition of Adequate School Housing (CASH) argues, "CASH believes including this notice in the voter pamphlet as an official statement will encourage voters to vote no on the measure in the belief that the only reason they are being told of the ability to challenge the outcome is because the measure should not be approved. If there is a legal flaw in the special tax proposal, that flaw should be presented at the time of the local agency decision to place the proposal on the local ballot. If not then, the flaw should be identified in the opposition argument to the special tax proposition. If opposition parties are unwilling to do either, we question the need for this requirement to be printed in the voter pamphlet.

- 8) **Double Referral.** This bill was heard in the Elections and Redistricting Committee on June 14, 2017, where it passed with a 6-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of REALTORS [SPONSOR]
California Apartment Association
California Chamber of Commerce
California Taxpayers Association
Howard Jarvis Taxpayers Association

Opposition

Association of California School Administrators
California School Boards Association
Coalition for Adequate School Housing

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