
MEMORANDUM

From: Townsend Public Affairs, Inc.
Casey Elliott, Vice President

Date: March 23, 2023

Subject: Taxpayer Protection and Government Accountability Act

OVERVIEW

Under current law, local revenue authority is limited by both statute and a number of voter-approved constitutional provisions, including those added by Proposition 13 (1978), Proposition 218 (1996), and Proposition 26 (2010). Due to these restrictions, local governments have over time become more dependent on state and federal funding rather than general revenues, thus furthering the imbalance between economic/population growth and tax rates.

The Taxpayer Protection and Government Accountability Act would amend the California Constitution to restrict the ability of the state, local governments, and the electorate to approve or collect taxes, fees, and other revenues. It would require voter approval of all state taxes, would further restrict local fee authority by limiting it to the “minimum amount necessary” to provide government services, and would require voter approval for local measures such as franchise fees. Its provisions would make it easier to challenge local revenue measures by increasing the burden of proof on local agencies while disallowing an agency’s characterization of a measure from being considered in court.

The measure would prohibit city charter amendments that provide for any revenue whatsoever from being submitted to the electorate. It would also prohibit local agencies from placing advisory measures on the same ballot as any general revenue measure and would raise the threshold for voter approval of local revenue measures proposed by initiative to two-thirds.

STATUS

On February 2nd, the Secretary of State announced that the proponents of the measure submitted enough valid signatures to qualify to be placed on the November 2024 statewide ballot.

PROPOSED CHANGES TO LAW

The purpose of the ballot measure is to make it more difficult for local governments and other local agencies and the state to raise revenue by any means. It places new and increased restrictions on every manner of revenue measures and narrows exceptions to its requirements. If enacted, this measure would increase city costs while reducing tax revenues, subject specific charges such as franchise fees to voter approval requirements, and subject cities to increased legal challenges pertaining to existing and proposed tax increases. Further, any clarifying language related to its implementation would need to be passed via another constitutional amendment and would require voter approval.

1. Defines Taxes and “Exempt Charges”

The primary provision of the proposed initiative would be to designate every levy, charge, or exaction of any kind imposed by the state or a local agency as either a tax or an “exempt charge.” Every revenue measure not defined as an exempt charge would be subject to voter approval requirements, some of which the initiative newly imposes or increases.

The list of exempt charges is based on the provisions of Proposition 26 (2010), with some changes. The list includes charges for the actual cost of a government service (such as utilities), charges for the regulatory costs of issuing licenses and performing related inspections and audits, charges for the lease or sale of government property, fines and penalties to punish violations of law, charges for tourism promotion, health care charges to increase Medi-Cal reimbursement rates, and, for local agencies, charges imposed as a condition of property development.

As proposed, every state and local revenue measure not defined as an exempt charge would need to be submitted to the voters for approval.

2. Instates New Ballot Transparency Requirements

Tax measures placed before the voters would be required to include, in both the title and summary and the ballot label, the type and amount or rate of the tax, the duration of the tax, and the use of the revenue derived from the tax. In the case of local general taxes, the phrase “for general government use” would be required and it would be prohibited to include an advisory measure on the same ballot to determine how the electorate would like to see those revenues used. By specifying that a duration must be provided, the proposed ballot measure appears to require taxes to be time limited in duration.

3. Raises Vote Threshold For Local Voter Initiatives From a Simple Majority to Two- Thirds

Local voter initiatives that impose special taxes are currently subject to lower voting thresholds than those initiated by city governing boards. This measure would increase those thresholds from a majority vote to two-thirds. Ultimately, this measure is attempting to reassert the two-thirds voter threshold requirements for tax increases proposed via initiative special taxes. This special tax voter threshold was disputed by the California Supreme Court in cases like California Cannabis Coalition v. City of Upland and subsequent Court of Appeals decisions which have upheld that special taxes proposed by initiative require only simple majority voter approval.

4. Retroactively Cancels Recently Passed Revenue Measures

This initiative would retroactively cancel other revenue measures passed by voters any time after January 1, 2022, if they do not comply with this measure’s provisions, even if they complied with all laws in effect at the time they were approved. The proposed initiative would give those revenue measures approved after January 1, 2022 twelve months to be resubmitted to voters in accordance with the provisions of the Taxpayer Protection Initiative. Unless re-approved by voters, the previously approved measures would become void after twelve months and the local government would no longer be able to collect revenue under those provisions. Additionally, the measure specifically prohibits any tax or fee regulating or related to vehicle miles traveled imposed as a condition of property development or occupancy.

5. Prohibits Fees and Taxes From Exceeding “Actual Cost” – Increases Potential for Legal Challenges

For most local fees, the measure would prohibit them from exceeding the “actual cost” and defines actual cost to “the minimum amount necessary,” opening up cities to litigation and judicial second-guessing about whether the city could have chosen a lower level of service or whether it could have achieved the result at a lower cost by other means.

The proposed measure would increase the burden of proof on local agencies to prove that a revenue measure is not subject to voter approval requirements—and that the amount of the charge is reasonable and does not exceed the “actual cost,” or “minimum amount necessary”—from a preponderance of evidence to clear and convincing evidence. This means that the imposition of exempt charges like parking meter fees, regulatory fees, and judicial fines are likely to be fought by any member of the public that views them as “unreasonable.” Furthermore, the measure prohibits a court from considering how a local agency describes, or characterizes, a revenue measure in making its determination, whereas the use of the funds would be required to be a factor in that determination.

This could factor into city processes like the sale of a parcel of land, which is defined within the measure as an exempt charge. To impose an exempt charge under the terms of the initiative, the governing body must pass an ordinance specifying the amount of the exempt charge, in this case, the amount charged to purchase the property. If a city resident contested the sale of the land and argued it was a tax rather than an exempt charge, the language would preclude a judge from assessing the situation under the factoring in the city’s description of the charge as being paid in exchange for an asset. Instead, the court would be required to consider as a factor the use of revenue derived from the charge.

This would mean that the revenue generated from the sale of the property could not be used under the discretion of the governing body, and the governing body would need to demonstrate that the amount of the charge was both “reasonable” and “did not exceed the actual cost” of providing the product to the buyer. Thus, the selling, leasing, or renting of property would be restricted to the city’s cost for providing the parcel to the buyer, instead of selling at market rate or to the person offering the highest amount.

6. Increases State-Level Tax Increases to a Higher Vote Threshold

At the state level, the measure would require all state taxes to receive voter approval, in addition to the current requirement for two-thirds approval of both houses of the Legislature. Any increase or imposition of any non-tax charge, however minor, would require approval of the Legislature if it results in any taxpayer paying a higher amount. This requirement would apply to everything from bar exam fees to State Fair ticket prices to any charge for a map, shirt, or deck of cards for sale at a state park. And due to the restrictions on the use of revenue from exempt charges, revenue from map, shirt, and playing card sales at state parks could not be used to support the maintenance of the park, but only to reimburse the minimum amount necessary to provide that map, sticker, or deck of cards to the purchaser.

RECOMMENDED ACTION

Adopt a resolution in opposition to the proposed “Taxpayer Protection and Government Accountability Act” initiative (21-0042A1).