LOCAL BALLOT INITIATIVES

Please confirm specific requirements for local ballot measures with your respective agency attorney.

Proposed Tax Fairness, Transparency and Accountability Act (TFTAA) of 2018: The proposed TFTAA would change the voting requirement for general taxes - increasing it to 2/3 approval. Special taxes are already 2/3 approval. This would eliminate the general/special tax distinction and make all taxes subject to the 2/3 vote requirement. It also creates additional requirements for the ballot language when a tax measure is put to the voters. With regard to fees, it increases the vote requirement for the legislative body for "exempt charges" to 2/3 of the legislative body. But it does not change the rules for property-related fees or assessments. Local tax measures passed in 2018 would be void unless they complied with the ballot requirements of the measure and obtained a 2/3 vote.

Terms of the Proposed TFTAA: Attached.

Legal Requirements for Local Tax Measures: The attached was prepared by MuniServices/ Avenu’s Special Counsel Ben Fay on the legal requirements for municipal tax measures. This information was presented during the 2018 City Managers Conference. Ben presented on a panel with Fran Mancia (from MuniServices who moderated), Mike Madrid (from GrassRoots Lab who spoke on elections and strategy, and the proposed TFTAA ballot measure) and Fran David (former City of Hayward City Manager who spoke on community engagement, and strategy).

Considerations When Raising Revenue: The following link is to Fran David describing the changing nature of municipal finance and considerations public administrators need to consider before raising revenue with a tax measure. See: http://www.avenuinsights.com/2018/02/02/retired-city-manager-fran-david-on-the-new-normal-in-municipal-finance/

CDTFA Recommendation on Competing Ballot Measures: Some local agencies may be considering local ballot measures for 2018 and have raised questions regarding ‘competing measures.’ The attached CDTFA (BOE’s) August 2016 Special Notice which is currently policy, states that “The BOE cannot administer a district tax that causes the combined rate in any part of a jurisdiction to exceed 2.00% unless the state legislature has already passed legislation authorizing an exception. If both a city and countywide tax are proposed on the same ballot, which together will cause the combined tax rate in the city to exceed 2.00%, the BOE will be unable to administer the new taxes and would seek an opinion from the Office of the Attorney General to determine which tax to implement. The BOE therefore strongly encourages cities, counties, and special purpose entities not to propose new taxes that, in combination, would exceed the 2.00% cap or to work together to obtain statutory approval before such measures are placed on the ballot. In the event two jurisdictions do propose such competing taxes, the BOE also encourages the affected jurisdictions to request an opinion from the Office of the Attorney General prior to their approval to avoid unnecessary delay in implementation. The CDTFA (formerly BOE) in an email to MuniServices/ Avenu on March 14, 2018 confirmed that CDTFA’s “standard suggestion” to locals has been “is for the two jurisdictions to either reduce their proposed rates so they both comply (i.e. are within statutory limits). Or, seek legislative authority to exceed the statutory limit(s).”

Guidance for Prospective Special Taxing Jurisdictions See: https://www.cdtfa.ca.gov/taxes-and-fees/local-and-district-taxes.htm#new-district-tax

Status of Proposed TFTAA: Circulation Deadline: 07/25/18 | Signatures Required: 585,407 -25% of Signatures Reached 02/26/2018

League of Cities Summary/ LAO Analysis: Attached. Includes financial contributions made to the campaign as of February 12 ($50K from the proposal sponsor, the Business Roundtable, and $150K from the Wine Institute).

CONTACT

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Ben Fay, Special Counsel (ben@jarvisfay.com/ 510.238.1400)
MEMORANDUM

DATE: March 13, 2018

TO: Brenda Narayan, Director of Government Relations
    MuniServices, an Avenu company

FROM: Benjamin Fay
       Special Counsel

RE: Legal Requirements for Municipal Tax Measures

This memo is a summary of my presentation at the League of California Cities City Managers Department Conference on February 2, 2018 on the legal requirements for a city to place a tax measure on the ballot. Please note that if the Tax Fairness, Transparency and Accountability Act of 2018 proposition (“the TFTAA”) qualifies for the November 6, 2018 general election and passes, then any local tax enacted in 2018 would be void unless it was passed in compliance with the terms of the TFTAA, which are outlined in my memo of February 28, 2018.

A. General tax or special tax?

The first important question is whether the proposed tax will be a general tax or a special tax. The distinction depends on whether the revenues from the tax are legally restricted to particular uses, or whether they can be spent on any legitimate municipal purpose. If the revenues can be spent on any municipal purpose then the tax is a general tax. (Cal. Const. Art. XIII C, § 1(a).) On the other hand, if the revenues are legally limited to particular uses, then the tax is a special tax. (Cal. Const. Art. XIII C, § 1(d).) This limitation can be very narrow (for example, to purchase library books) or very broad (for example, to fund parks, police, fire, and libraries). (See, e.g., Howard Jarvis Taxpayers Ass’n v. City of Roseville (2003) 106 Cal.App.4th 1178, 1182-87 [tax limited to “police, fire, parks and recreation or library services” is a special tax].)

It must be a legal restriction. A general tax can have a non-binding companion measure that states the voters’ preference for the use of the tax proceeds, but if the companion measure is not binding, it does not turn the tax into a special tax. (Coleman v. County of Santa Clara (1998) 64 Cal.App.4th 662, 665-67, 670-71.)

The main consequence of whether a tax is general or special is the number of votes needed to adopt it. A general tax requires a simple majority vote to pass (Cal. Const. Art. XIII C, § 2(b)) while a special tax requires a two-thirds vote (Cal. Const. Art. XIII C, § 2(d)). But there are also other procedural differences: a city council needs a two-thirds vote to put a general tax on the
ballot (Gov. Code § 53724) and in most circumstances a general tax must be put on the ballot in a general election in which councilmembers are elected (Cal. Const. Art. XIII C, § 2(b)).

B. Getting the measure on the ballot

A city council can put a tax measure on the ballot by either resolution or ordinance. (Gov. Code § 53724(a).) As mentioned above, if it is a general tax, the resolution or ordinance must be approved by two-thirds of the city council. (Gov. Code § 53724(b).) This requirement, however, does not apply to charter cities. (Traders Sports, Inc. v. City of San Leandro (2001) 93 Cal.App.4th 37.)

A general tax can only be put on the ballot in a general election in which councilmembers are elected, unless the city council unanimously declares an emergency. (Cal. Const. Art. XIII C, § 2(c).) No reported cases have interpreted what qualifies as an emergency in this context; but in other situations, when a court has reviewed a city council’s declaration of an emergency, the court has only looked to whether facts constituting an emergency are recited in the ordinance or resolution, and if they are, then the declaration is upheld. (Northgate Partnership v. City of Sacramento (1984) 155 Cal.App.3d 65, 69.) Facts explaining the emergency should therefore be stated in the resolution declaring the emergency.

A proposed tax can also be put on the ballot by the voters by petition. The petition must be signed by 10% of the city’s voters if the tax is proposed as an ordinance (Elec. Code § 9215) and 15% of the voters if it is proposed as a charter provision (Elec. Code § 9255).

The 2017 decision of the California Supreme Court in California Cannabis Coalition v. City of Upland (2017) 3 Cal.5th 924 held that the procedural requirements of Proposition 218 do not apply to taxes put on a ballot by petition. The Court held that the requirement that a general tax be put on the ballot only in a general election in which councilmembers are elected did not apply to a tax proposed by voter petition. It is a matter of debate whether this applies to the two-thirds vote requirement in Proposition 218 for special taxes.

C. Election procedures

The election must be held at least 88 days after the city council calls the election. (Elec. Code § 9222.) If the election is consolidated with a statewide general election, the request to include the measure in the election must be filed with the county at least 88 days before the election. (Elec. Code § 10403.)

The ballot question, which is the question that is directly put to the voters on the actual ballot, must use the following specific language: “Shall the measure (stating the nature thereof) be adopted?” (Elec. Code § 13119(a).) It must also state the amount of revenue to be raised annually and the rate and duration of the tax. (Elec. Code § 13119(b).) It is limited to 75 words. (Elections Code §§ 9051, 13217). Proper names, even if multiple words, are generally considered single words.
Starting in 2018, the Elections Code provides that the ballot question “shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure.” (Elec. Code §13119(b).) It is not clear how much this provision will affect ballot questions.

The city attorney prepares the impartial analysis (unless the measure affects the organization or salaries of the city attorney’s office), which is published in the ballot pamphlet and is an important source of information for the voters. It must describe “the effect of the measure on the existing law and the operation of the measure.” (Elec. Code § 9280.) It is limited to 500 words. (Ibid.)

The city council may prepare a ballot argument for or against the measure, limited to 300 words. (Elec. Code § 9282.) The argument must be submitted within 14 days from the calling of the election. (Elec. Code § 9286.) If multiple arguments are submitted, priority is given to the city’s argument. (Elec. Code § 9287.) The city council can also submit a rebuttal argument, limited to 250 words. (Elec. Code § 9285.)

D. Advocacy

Public resources can be used to educate the public about a ballot measure, but they cannot be used to advocate for or against a ballot measure. (Gov. Code § 54964.) “Public resources” include funds, staff time, materials, equipment, facilities, and communication channels (e.g., website, email, newsletters). (Gov. Code § 8314(b)(3).)

The restrictions on expending public resources on a measure are looser before the measure qualifies for the ballot. For example, a city can propose a ballot measure and use city staff to draft it. A city can hire a communications consultant or pollster to survey voter support for a proposed measure. These actions are similar to drafting legislation.

Once a measure is on the ballot, a city can take a public position for or against it. (Vargas v. City of Salinas (2009) 46 Cal.4th 1, 36.) It can have an opinion about a measure, but it cannot mount a campaign for or against it. (Ibid.) It can issue a report on the probable effects of a measure, and it can state what the city would do if the measure passes or fails. (Id. at 37-38.)

A city cannot produce communications that advocate for or against a measure. (Id. at 29-30.) In deciding whether a communication is advocacy, a court will look at the “style, tenor, and timing” of the communication. (Id. at 27.) A city cannot disseminate literature prepared by proponents or opponents of a measure. (Id. at 24-25.)

A neutral fact-based statement on a city’s website is not advocacy, and a city does not have to give opponents space on the city’s website. (Id. at 37.) A neutral fact-based article in a city’s newsletter is also not advocacy, provided it is a regular newsletter, the article is similar to the usual content of the newsletter, and it is mailed to the usual mailing list. (Id. at 38-39.) A city cannot distribute bumper stickers or posters or use billboards or television or radio spots that state support or opposition to a ballot measure. (Id. at 32-33.)
MEMORANDUM

DATE: February 28, 2018

TO: Steve Quon, Manager, Utility Users Tax
    Fran Mancia, Vice President of Government Relations
    Brenda Narayan, Director of Government Relations
    MuniServices, an Avenu company

FROM: Benjamin Fay
       Special Counsel

RE: Proposed Initiative: Tax Fairness, Transparency and Accountability Act of 2018

Background

The California Business Roundtable is sponsoring a statewide ballot initiative that it calls the “Tax Fairness, Transparency and Accountability Act of 2018” (hereafter “the TFTAA”). It claims that it is needed to plug loopholes that the courts and governments have found in previous taxpayer initiatives, such as Proposition 13 (1978), Proposition 62 (1986), Proposition 218 (1996), and Proposition 26 (2010). It is expected to qualify for the ballot.

Question Presented

What effect would the TFTAA have on existing utility users taxes?

Short Answer

If it passes, the TFTAA will have very little effect, if any, on taxes that were already in place before 2018. Its main effect will be on any future taxes that a city might want to enact and any taxes enacted in 2018.

Discussion

The TFTAA will make it more difficult to enact taxes by doing the following:

- Broadening the definition of what is a tax. Every charge or fee would be a tax, unless it is:
  - A charge or fee for a product or service that does not exceed the actual cost of providing the product or service.
  - A regulatory charge or fee that does not exceed the actual regulatory cost to the government.
- A charge or fee for use of government property.
- A fine or penalty imposed following due process to punish a violation of the law.
- A fee imposed as a condition of property development.
- A property-related fee imposed under Article XIII D of the California Constitution (Proposition 218).
- An assessment imposed under Article XIII D of the California Constitution (Proposition 218).

- Eliminating the distinction between special and general taxes. All local taxes would have to be approved by a two-thirds vote of the electorate at a general election. A tax could no longer be submitted to the voters at a special election unless the city council unanimously declares an emergency.
- Requiring all fees to be approved by a two-thirds vote of the city council. Newly enacted fees would be subject to a referendum if a petition signed by 5% of the voters is filed.
- Requiring specific language in the ballot question of a proposed tax.

The TFTAA would also make it more difficult to defend against legal challenges to fees. A city defending a fee would have the burden of establishing by “clear and convincing” evidence that the fee is not a tax and that it was enacted in compliance with the requirements of the TFTAA.

Any local tax enacted in 2018 would be void unless it complied with the TFTAA.

The TFTAA applies to “[e]very levy, charge, or exaction of any kind imposed, adopted, created, or established by local law” and “local law” is defined broadly to include “any ordinance, resolution, ruling, opinion letter, or other legal authority or interpretation adopted, enacted, enforced, issued, or implemented by a local government.” This comprehensive definition does not appear to actually change the reach of Articles XIII C and XIII D of the Constitution, which have always been interpreted to apply to all local government actions that impose a tax, fee, or charge.

The TFTAA would amend Articles XIII A, XIII C, and XIII D of the California Constitution and therefore would apply to charter cities.

None of these restrictions would have any effect on a tax enacted before 2018, and therefore it does not appear that it would have any effect on existing utility users taxes (or any other taxes for that matter). However, it would make it more difficult to enact new utility users taxes (or any other taxes) and more difficult to amend existing ones.
Special Notice

Combined District Tax Rate Cap is Two Percent (2.00%)

Currently, California’s statewide sales and use tax rate is 7.50%. Additionally, cities, counties, and special purpose entities (like transportation authorities) may impose district taxes. The Board of Equalization (BOE) would like to remind all such jurisdictions that the combined rate of all district taxes imposed within any jurisdiction cannot exceed 2.00% unless specifically authorized by statute.

The BOE cannot administer a district tax that causes the combined rate in any part of a jurisdiction to exceed 2.00% unless the state legislature has already passed legislation authorizing an exception. For instance, if a county proposes a new tax that would cause the combined district tax rate in a single city within that county to exceed 2.00%, the BOE cannot administer the new county tax.

City And Countywide Tax Measures On The Same Ballot

If both a city and countywide tax are proposed on the same ballot, which together will cause the combined tax rate in the city to exceed 2.00%, the BOE will be unable to administer the new taxes and would seek an opinion from the Office of the Attorney General to determine which tax to implement.

The BOE therefore strongly encourages cities, counties, and special purpose entities not to propose new taxes that, in combination, would exceed the 2.00% cap or to work together to obtain statutory approval before such measures are placed on the ballot. In the event two jurisdictions do propose such competing taxes, the BOE also encourages the affected jurisdictions to request an opinion from the Office of the Attorney General prior to their approval to avoid unnecessary delay in implementation.

Statewide Rate Set To Decrease By 0.25%

The additional 0.25% statewide sales and use tax rate that was passed by voters in 2012 is set to expire on December 31, 2016, resulting in a decrease of the statewide sales and use tax rate from 7.50% to 7.25%. The decrease in the statewide sales and use tax rate will not affect the 2.00% cap for combined district taxes imposed in any jurisdiction.

Where Can I Obtain More Information?

For more information, see the BOE webpage Guidance for Prospective Special Taxing Jurisdictions at www.boe.ca.gov/sutax/newloctax.htm. You may also call the Local Revenue Branch at 1-916-324-3000 or email raadjuri@boe.ca.gov.
Tax Fairness, Transparency and Accountability Act of 2018

Summary:

This measure (AG 1700-50 Amd #1), currently under circulation for signatures and proposed for the November ballot, would drastically limit local revenue authority, while making comparatively minor modifications to state authority. For cities and other local agencies, it applies retroactively and voids any local measure approved by local voters on or after January 1, 2018, but prior to the effective date of this act, that does not comply with the provisions of the act, and:

Restricting Local Tax Authority:

a) Eliminates local authority to impose a tax for general purposes by majority vote and instead requires all local proposed tax increases subject to a two-thirds vote. This proposal also requires two-thirds approval of all members of the local legislative body before a tax can be placed on the ballot.

b) Requires a two-thirds vote to “extend” a tax to new territory, a new class of payor, or expanded base. For cities, this would limit all future annexations by requiring a separate two-thirds vote of the affected residents prior to applying any existing city tax. Other limitations may apply to a local interpretation that an existing local tax applies to a business or product.

c) Expands the definition of a tax to include payments voluntarily made in exchange for a benefit received, which may cover local franchise fees.

d) Prohibits any tax to be placed on the ballot unless it either specifically identifies by binding and enforceable limitation how it can be spent, with any change requiring reapproval by the electorate, or states in a separate stand-alone segment of the ballot that the tax revenue is intended for “unrestricted revenue purposes.”

e) Requires tax measures to be consolidated with the regularly scheduled general election for members of the governing body, unless an emergency is declared by a unanimous vote of the governing body.

f) Expands the application of this act to include actions and “legal authority” that may be “enforced” or “implemented” by a local government.

g) Requires a tax imposed by initiative to also be subject to a two-thirds vote, to address concerns over the Upland decision.

h) Clarifies a levy, charge, or exaction retained by and payable to a non-governmental entity is a tax, if the local agency limits in any way the use of the proceeds, to address concerns over the Schmeer decision.

i) Exempts existing school bond (55% vote) construction authority from the application of the bill.

Restricting Local Fee Authority:

Restricts the ability of a local government to impose fees or charges, other than those subject to Prop. 218, by:

a) Prohibiting a fee or charge from being imposed, increased or extended unless approved by two-thirds vote of the legislative body.

b) Authorizing a referendum on decisions of a legislative body to impose, increase or extend a fee or charge triggered by petitions signed by 5% of affected voters.

c) Requiring a fee or charge proposed by initiative to be subject to a two-thirds vote of the electorate.

d) Narrows the legal threshold from “reasonable” to “actual” costs for fees applied to local services, permits, licenses, etc. Further, the measure authorizes new avenues to
challenge “actual” costs by enabling a payor to also second-guess in court whether they are “reasonable.” Opens up further litigation and debate by replacing the existing standard that fees and charges bear a “fair and reasonable relationship to the payor’s burdens and benefits” with a more rigorous “proportional to the costs created by the payor” standard.

e) Increases the legal burden of proof for local agencies from “preponderance of evidence” (more likely than not) to “clear and convincing evidence” (high probability) to establish that a levy, charge or other exaction is: (1) not a tax, (2) the amount is no more than necessary to cover the actual costs, and (3) the revenue is not being used for other than its stated purpose.

Provisions Applicable to State Actions:

a) Requires a tax contained in a regulation adopted by a state agency must be approved by two-thirds vote of the Legislature (unless the Legislature adopted a state tax that authorized the action of the state agency). This change is responsive to the recent Chamber of Commerce decision on cap and trade revenues.

b) Unlike the retroactive provisions that apply to local government, the application of this Act to the state is only prospective.

c) Requires a fee contained in a regulation adopted by a state agency to be approved by majority vote of the Legislature.

d) Imposes the same burden of proof changes applied to local governments.

Background: This initiative is sponsored by the California Business Roundtable, an organization that claims membership from some of the state’s largest companies including, Wells Fargo, Albertsons, KB Home, Blackstone Group, Chevron, Farmers Insurance, Granite Construction and others. [http://www.cbrt.org/members/](http://www.cbrt.org/members/).

The initiative contains over three pages of findings and statements maintaining that the state’s tax burden is high compared to other states, including state revenue growth of 68 percent since 2009. Concerns are also raised over employee pensions increasing costs and other issues affecting the economy and business climate.

One paragraph among the three pages declares one of the purposes of the measure is to overturn “loopholes” created by Cannabis Coalition v. City of Upland (concern that voters could enact special taxes via initiative by majority vote); Chamber of Commerce v. Air Resources Board (a recent case lost by the Chamber which alleged that the state Cap and Trade Program was an illegal tax) and Schmeer v. Los Angeles (which held that a locally imposed-grocer retained bag fee was not a tax). This measure, however, has much broader impacts than such fixes.
California Business Roundtable Membership List

1. Albertsons (Grocery)
2. Grimmway Farms (Agriculture)
3. Andeavor (Oil/Energy)
4. KB Home (Builders)
5. Anthem Blue Cross (Health)
6. Health Net, Inc. (Health)
7. Automobile Club of Southern California (Auto)
8. Kaiser Permanente (Health)
9. Bain and Company (Management Consulting Firms)
10. Majestic Realty Co. (Developer)
11. Blackstone Group (Investment Firm)
12. McKinsey & Company (Marketing Consultant)
13. Chevron (Oil/Energy)
14. Pepsico (Food and Beverage)
15. C.J. Segerstrom & Sons (Real Estate)
16. Sempra Energy (Energy)
17. Comcast (Telecoms)
18. Sidley Austin LLP (Law Firm)
19. California Resources Corporation (Oil/Energy)
20. State Farm (Insurance)
21. Dart Container Corporation (Foodservice Packaging Producer)
22. Sutter Health (Health)
23. DLA Piper (Law Firm)
24. Union Pacific (Rail)
25. Eli Lilly (Pharmaceutical)
26. Valero (Oil/Energy)
27. Enterprise Rent-a-car (Transportation)
28. Wells Fargo Bank & Company (Bank)
29. Farmers Group, Inc. (Insurance)
30. Western National Group (Apartment Property Management Company)
31. Granite Construction, Inc. (Construction)

Members of the Wine Institute can be found here.

Contributions to CALIFORNIANS FOR ACCOUNTABILITY AND TRANSPARENCY IN GOVERNMENT SPENDING as of February 12, 2018.

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The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

**EXPANDS REQUIREMENT FOR SUPERMAJORITY APPROVAL TO ENACT NEW REVENUE MEASURES. INITIATIVE CONSTITUTIONAL AMENDMENT.** For new revenue measures, broadens definition of state taxes that would require approval by two-thirds supermajority vote of Legislature. For local governments, requires two-thirds approval of electorate to raise new taxes or governing body to raise new fees. Requires that state and local laws enacting new taxes specify how revenues can be spent. Heightens legal threshold for state and local governments to prove that fees passed without two-thirds approval are not taxes.

Invalidates local taxes imposed in 2018, unless taxes meet criteria adopted by this measure.

Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Likely minor decrease in annual state revenues and potentially substantial decrease in annual local revenues, depending upon future actions of the Legislature, local governing bodies, voters, and the courts.** (17-0050.)
January 11, 2018

Hon. Xavier Becerra
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional initiative concerning state and local government taxes and fees (A.G. File No. 17-0050, Amendment No. 1).

BACKGROUND

State Government

Taxes and Fees. The state levies various taxes to fund over 80 percent of the state budget. The remainder of the budget is funded through various fees and other charges. Examples include: (1) charges for a specific government service or product, such as a driver’s license; (2) charges relating to regulatory activities; (3) charges for entering state property, such as a state park; and (4) judicial fines, penalties, and other charges.

Vote Thresholds for Changing State Taxes and Fees. Under the State Constitution, state tax increases require approval by two-thirds of each house of the Legislature. The Legislature needs approval by only a majority of each house in order to levy fees and other charges. Voters, on the other hand, can levy state taxes or fees via initiative by a majority vote of the statewide electorate. The Legislature can reduce or change taxes with a majority vote of each house, provided the change does not increase taxes on any taxpayer. If a bill increases a tax on any taxpayer, the bill requires a two-thirds vote of both houses of the Legislature—even if the bill results in an overall state revenue loss.

Local Governments

Taxes and Fees. The largest local government tax is the property tax, followed by local sales taxes, utility taxes, hotel taxes, and other taxes. In addition to these taxes, local governments levy a variety of fees and other charges. Examples include parking meter fees, building permit fees, regulatory fees, and judicial fines and penalties.
Vote Threshold for Changing Local Taxes and Fees. In order to increase taxes, the State Constitution generally requires that local governments secure a two-thirds vote of their governing body—for example, a city council or county board of supervisors—as well as approval of the electorate in that local jurisdiction. “General taxes”—that is, taxes levied by cities and counties for any purpose—may be approved by a majority vote of the electorate. On the other hand, “special taxes”—that is, any taxes levied by schools or special districts or taxes levied by cities and counties for specified purposes—require a two-thirds vote of the electorate. Citizen initiatives that increase taxes must secure the same vote of the electorate—majority vote for general taxes and two-thirds vote for special taxes—as those placed on the ballot by local governing bodies.

Fee increases, on the other hand, generally may be approved by a majority vote of the local governing body and do not require voter approval. (Exceptions include certain property-related fees which require voter approval.) Citizen initiatives changing fees must be approved by a majority vote of the electorate.

PROPOSAL

This measure amends the State Constitution to change the rules for how the state and local governments can impose taxes, fees, and other charges.

Taxes

Expands Definition of Tax. The measure amends the State Constitution to expand the definition of taxes to include some charges that state and local governments currently treat as nontax levies. As a result, the measure would increase the number of revenue proposals subject to the higher state and local vote requirements for taxes. Specifically, regulatory fees and fees charged for a government service or product would have to more closely approximate the payer’s actual costs in order to remain fees. Certain charges retained by or payable to nongovernmental entities would also be considered taxes under the measure. In addition, certain charges imposed for a benefit or privilege granted the payer but not granted to those not charged would no longer be considered fees.

Increases Vote Thresholds for Some Local Taxes. The measure increases the vote thresholds for increasing some local taxes. Specifically, the measure requires that increases in local general taxes be approved by a two-thirds vote of the electorate whether sought by local governments or by citizen initiative. Any local government tax approved between January 1, 2018 and the effective date of this measure would be nullified unless it complies with the measure’s new vote threshold and other rules described below.

Allowable Uses of Revenues Must Be Specified in Certain Cases. The measure requires tax measures to include a statement of how the revenues can be spent. If the revenue is to be used for general purposes, the law must state that the revenue can be used for “unrestricted general revenue purposes.” These requirements would apply to increases in state and local taxes. In the case of local government taxes, the measure requires that a statement of allowable uses be included in the ballot question presented to voters. Any change to the statement of allowable uses of revenue would have to be passed by (1) a two-thirds majority of both houses of the
Legislature in the case of state taxes, (2) a two-thirds vote of the local governing body and two-thirds vote of the electorate in the case of local government taxes, or (3) a two-thirds vote of the electorate in the case of local citizen initiative taxes.

**Local Government Fees**

*Increases Vote Thresholds for Certain Local Government Fees.* The measure requires that increased fees and other charges be approved by either a two-thirds vote of a local governing body in the case of local government fees or a two-thirds vote of the electorate in the case of local citizen initiative fees. The measure also provides that fees and other charges levied by a local governing body may be overturned via referenda. (The measure would not change vote thresholds and rules for developer fees and property assessments imposed on parcels.)

**Other Provisions**

*State Regulations Containing Tax or Charge Must Be Approved by Legislature.* Under the measure, state regulations containing increased taxes or fees would not take effect unless the Legislature passes a law approving the regulation. (This requirement would not apply to regulations implementing laws that were already approved by the Legislature.) If the regulation contains a tax, the bill allowing the regulation to remain in place must be passed by a two-thirds majority of both houses of the Legislature. The measure allows emergency regulations to take effect for up to 120 days without approval of the Legislature.

**FISCAL EFFECTS**

*Reduced State Tax Revenue.* By increasing the number of revenue measures subject to a two-thirds vote of both houses of the Legislature, the measure makes it harder for the Legislature to increase certain state revenues. The amount of reduced state revenue under the measure would depend on various factors, including future court decisions that could change the number of revenue measures subject to the higher vote requirements. The fiscal effects also would depend on future decisions made by the Legislature. For example, requirements for legislative approval of regulations that increase taxes or fees could result in reduced revenue depending upon future votes of the Legislature. That reduced revenue could be particularly notable for some state programs largely funded by fees. Due to the uncertainty of these factors, we cannot estimate the amount of reduced state revenue but the fiscal effects on state government likely would be minor relative to the size of the state budget.

*Reduced Local Government Tax and Fee Revenue.* By expanding the definition of taxes and increasing vote thresholds for certain taxes and fees, the measure makes it harder for local governments and initiative proponents to increase local revenues. The amount of reduced local government revenues would also depend on various factors, including the extent to which local governments would substitute developer fees and other majority-vote revenue sources for the revenue sources subject to a higher vote threshold under the measure. Roughly half of recently enacted sales, business, hotel, and utility general tax measures would have failed if the measure’s increased vote threshold requirements were in effect, suggesting that the reduction in local tax revenue could be substantial.
Summary of Fiscal Effects

- Likely minor decrease in annual state revenues and potentially substantial decrease in annual local revenues, depending upon future actions of the Legislature, local governing bodies, voters, and the courts.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance
December 22, 2017

VIA PERSONAL DELIVERY

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

Attention: Ashley Johansson, Initiative Coordinator

Re: Request for Title and Summary for Initiative Constitutional Amendment (A.G. No. 17-0050) – 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

Robert Lapsley, Proponent

Enclosure: Proposed Initiative Constitutional Amendment
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) State and 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. Compared to 2009, state revenues from taxes and other sources are set to grow by 68 percent—$72 billion, or the equivalent of more than an additional $7,200 annually for a family of four. Comparable growth in local government charges such as employee pensions adds considerably more to this total. This growing burden of taxes and other 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.

(b) Californians are already among the highest taxed people in the country and already 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.

(c) Californians have tried repeatedly to force greater accountability upon government before 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, state and local governments, and special interests have promised that taxpayer money 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. Polling by the nonpartisan Public Policy Institute of California showed 88 percent of Californians believe state government wastes a lot or some of the money we pay in taxes and charges.

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

(f) Worse, court-created loopholes have enabled 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 the Legislature, local governments and even special interest groups to: (1) pass vaguely-worded statutes allowing unelected bureaucrats to impose new fees and other charges on their own that increase the costs of goods and services in the state; (2) impose new taxes and other charges by hiding them and simply calling them by another name or even using the term “something else;” (3) shelter the revenues 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 charges 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 require a two-thirds vote of the Legislature at the state level, and two-thirds of voters at the local level, for increases in state and local taxes, no matter how they are labeled nor how or by whom they are proposed. The
voters also intend that government remain accountable to the voters for how the taxes, fees, charges, and other government 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 state revenue, by any name or manner of extraction paid directly or indirectly by Californians, shall be authorized only by a two-thirds vote of the Legislature to ensure that the purposes for such tax, fee, or other charge are 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 taxes, fees, 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 state and local revenues are utilized, so that revenues are used for their promised purposes, and not diverted to other uses.

(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 regulation or other bureaucratic action.

(f) In enacting this measure, the voters also additionally intend to reverse loopholes in the legislative two-thirds vote and voter approval requirements for 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 3 of Article XIII A of the California Constitution is amended, to read:

SECTION 3.

(a) Every levy, charge, or exaction of any kind imposed, adopted, created, or established by state law is either a tax or an exempt charge.

(b) (a) Any change in state statute [law] which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property, may be imposed.
(c) (b) As used in this section, “tax” means every any levy, charge, or exaction of any kind imposed, adopted, created, or established by the State state law that is not an exempt charge, except the following:

(d) As used in this section, “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 State of conferring the benefit or granting the privilege to the payor.

(1) (2) A reasonable charge imposed for a specific 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 State of providing the service or product to the payor.

(2) (3) A reasonable charge imposed for the reasonable not to exceed the actual regulatory costs to the State incident to for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, imposing assessments on a business by a tourism marketing district, and the administrative enforcement and adjudication thereof.

(3) (4) A charge imposed for entrance to or use of state property, or the purchase, rental, or lease of state property, except charges governed by Section 15 of Article XI.

(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 the State, as a result of a state administrative enforcement agency pursuant to adjudicatory due process, to punish a violation of law.

(e) Any tax adopted after January 1, 2010, but prior to the effective date of this act, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of this act unless the tax is reenacted by the Legislature and signed into law by the Governor in compliance with the requirements of this section.

(e) As used in this section, “state law” includes, but is not limited to, any state statute, state regulation, state executive order, state resolution, state ruling, state opinion letter, or other legal authority or interpretation adopted, enacted, enforced, issued, or implemented by the legislative or executive branches of state government. Because subdivision (f) of Section 9 of Article IX of this Constitution requires that the University of California shall be entirely
independent of all political or sectarian influence, "state law" does not include acts of the Regents of the University of California.

(f) (1) A levy, charge, or exaction of any kind imposed, adopted, created, or established by state law and which is retained by or payable to a non-government entity remains subject to this section if a state 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 state law as being voluntary, or paid in exchange for a benefit, privilege, allowance, authorization, or asset, shall not be a factor in determining whether the levy, charge, or exaction is a tax or an exempt charge.

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

(1) The state law 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 the 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).

(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 state law 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 identified pursuant to this subdivision.

(h) The specific and legally binding and enforceable limitation on how the revenue from a tax can be spent shall only be changed by a state law which is adopted by a separate act that is passed by not less than two-thirds of all members elected to each of the two houses of the Legislature.

(i) (d) The State 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 is 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 bear a fair or reasonable relationship to the payor's burdens
on, or benefits received from, the governmental activity is proportional based on the service or product provided to the payor as described in paragraph (1) of subdivision (d), or is proportional to the costs to the State created by the payor for performing the regulatory tasks described in paragraph (2) of subdivision (d).

Section 5. Section 3.1 is added to Article XIII A of the California Constitution, to read:

SECTION 3.1.

(a) No new, increased, or extended levy, charge, or exaction of any kind that is contained in, or authorized by, a new or amended regulation shall be given any force or effect unless and until the Legislature by statute approves the levy, charge, or exaction as provided in this section.

(b) If the levy, charge, or exaction is a tax as defined in Section 3 of this article, then it must be approved by not less than two-thirds of all members elected to each of the two houses of the Legislature. If the levy, charge, or exaction is an exempt charge as defined in Section 3 of this article, then it must be approved by not less than a majority of all members elected to each of the two houses of the Legislature.

(c) The Legislature shall not vote to approve any levy, charge, or exaction of any kind subject to this section until after the regulation containing the levy, charge, or exaction is approved in its final form by the Office of Administrative Law or any alternative or successor agency. No regulation containing or authorizing a levy, charge, or exaction subject to this section shall be filed with the Secretary of State or published in the California Code of Regulations, or any alternative or successor publication, until the levy, charge, or exaction is approved by the Legislature in compliance with this section.

(d) An emergency regulation, including any readoption thereof, that contains or authorizes any new, increased, or extended levy, charge, or exaction of any kind shall not remain in effect longer than 120 days without approval of the levy, charge, or exaction by the Legislature pursuant to this section.

(e) This section shall not apply to any new, increased, or extended levy, charge, or exaction of any kind that is contained in, or authorized by, a new or amended regulation promulgated pursuant to a state tax that was adopted in compliance with Section 3.
(f) For purposes of this section, "regulation" has the same meaning as found in Section 11342.600 of the Government Code, and "emergency" has the same meaning as found in Section 11342.545 of the Government Code, as those sections read on January 1, 2017.

(g) Nothing in this section shall be interpreted as a grant of authority to tax to any executive branch agency or department.

Section 6. 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 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) 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 7. *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
eases of emergency declared by a unanimous vote of the governing body.

(e) 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 8. 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 9. 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 10. Liberal Construction.

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

Section 11. Conflicting Measures.

(a)(1) In the event that this initiative measure and another initiative measure or measures relating to state or 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 12. 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 13. 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 14. Effective Date.

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