



CITY OF GLENDALE, CALIFORNIA  
REPORT TO THE:

Joint  City Council  Housing Authority  Successor Agency  Oversight Board

May 8, 2018

**AGENDA ITEM**

Report: The Tax Fairness, Transparency, and Accountability Act of 2018

- 1) Resolution to List the City of Glendale as a Public Supporter of the Coalition to Oppose the Tax Fairness, Transparency, and Accountability Act of 2018

**COUNCIL ACTION**

Public Hearing  Ordinance  Consent Calendar  Action Item  Report Only   
Approved for 05/08/18 calendar

**ADMINISTRATIVE ACTION**

Signature

Prepared & Submitted by:  
Christine B. Powers, Senior Administrative Analyst

Approved by:  
Yasmin K. Beers, City Manager

Reviewed by:  
Michael J. Garcia, City Attorney

by

## **RECOMMENDATION**

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Staff respectfully recommends that Council consider opposing the Tax Fairness, Transparency, and Accountability Act of 2018, and in doing so, list the City of Glendale as a public supporter of the coalition to oppose this initiative, as requested by the League of California Cities.

## **BACKGROUND/ANALYSIS**

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The League of California Cities has asked local government organizations to consider opposing to the Tax Fairness, Transparency, and Accountability Act of 2018.

The Tax Fairness, Transparency, and Accountability Act of 2018 is an initiative sponsored by the American Beverage Association, the trade association of soda companies, and the California Business Roundtable, an organization that represents some of the largest interest groups in California, including oil companies, insurance companies, banks, and pharmaceutical companies.

This initiative, which applies retroactively, would drastically limit local revenue authority and may void local measures approved by local voters on or after January 1, 2018. It is currently under circulation for signatures, and is expected to qualify for the November 2018 ballot. 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).

This Act will make it more difficult for cities to enact taxes by 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)

Additionally, this Act eliminates 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. Currently, a simple majority approval is required for general taxes, and only special taxes (i.e. special-purpose district taxes, taxes dedicated to a specific purpose, taxes levied on a property) require a two-thirds vote.

It also requires 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, and specific language would be required in the ballot question of a proposed tax.

It would also make it more difficult to defend against legal challenges to fees. A city defending a fee would have the burden of establishing "clear and convincing" evidence that the fee is not a

tax and that it was enacted in compliance with the requirements of the Act. Any local tax enacted in 2018 would be void unless it complied with the Act.

The Act 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 Act 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. If passed, this Act would drastically limit local revenue authority, while making comparatively minor modifications to state authority.

The full text of the Tax Fairness, Transparency, and Accountability Act of 2018, as well as the State Legislative Analyst’s Office’s summary of the are included as Exhibits 1 and 2 of this report.

### **FISCAL IMPACT**

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The Tax Fairness, Transparency, and Accountability Act of 2018 would have very little effect, if any, on taxes already in place before 2018. The initiative’s main effect will be on any future taxes a city may want to enact, as well as any taxes enacted in 2018.

### **ALTERNATIVES**

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Alternative 1: The City Council may choose to oppose the Tax Fairness, Transparency, and Accountability Act of 2018, and authorize the City Manager to list the City of Glendale as a public supporter of the coalition to oppose this initiative.

Alternative 2: The City Council may choose to not oppose the Tax Fairness, Transparency, and Accountability Act of 2018, and thus, no action is needed.

Alternative 3: The City Council may consider any other alternative not proposed by staff.

### **CAMPAIGN DISCLOSURE**

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Not applicable for this report.

### **EXHIBITS**

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Exhibit 1: The Tax Fairness, Transparency, and Accountability Act of 2018 (Full Text)

Exhibit 2: Legislative Analyst’s Office Summary

**RESOLUTION NO.**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GLENDALE,  
STATE OF CALIFORNIA, OPPOSING THE TAX FAIRNESS, TRANSPARENCY AND  
ACCOUNTABILITY ACT OF 2018**

**WHEREAS**, California's cities, counties and special districts follow strict guidelines and existing state law regarding the establishment of reasonable fees and the required voter approval of all local taxes; and

**WHEREAS**, there is a signature-gathering campaign for a state ballot measure currently sponsored by the California Business Roundtable that would severely harm the ability of local governments to continue to provide quality services by imposing onerous roadblocks to raising local revenue to address community needs, services and infrastructure improvements; and

**WHEREAS**, it is important for local community members, in concert with their duly-elected officials--rather than a special interest group in Sacramento--to determine the services and funding levels appropriate for their own cities; and

**WHEREAS**, the proposed ballot measure would allow businesses to escape from their existing obligations to pay the full cost of services that they request and receive from local agencies and benefit from; and

**WHEREAS**, the proposed ballot measure would then shift the burden of these uncovered costs from business interests to local general funds supported by taxpayers, and thereby reduce general funds available to support police, fire, park, planning, and other community services.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE, CALIFORNIA:**

**SECTION 1.** The City of Glendale hereby opposes the Tax Fairness, Transparency and Accountability Act of 2018 sponsored by the California Business Roundtable on the grounds that this measure would harm the ability of local communities to adequately fund services.

**SECTION 2.** The City Manager is hereby directed to email a copy of this adopted resolution to the League of California Cities at [cityletters@cacities.org](mailto:cityletters@cacities.org).

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Mayor, City of Glendale

ATTEST:

\_\_\_\_\_  
City Clerk

STATE OF CALIFORNIA )

COUNTY OF LOS ANGELES )

CITY OF GLENDALE )

I, Ardashes Kassakhian, City Clerk of the City of Glendale, certify that the foregoing Resolution No. \_\_\_\_\_ was adopted by the Council of the City of Glendale, California, at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2018, the same was adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM

  
CHIEF ASSISTANT CITY ATTORNEY

DATED 5/3/18

17-0051 Amdt. # 1

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

**RECEIVED****DEC 22 2017****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 9<sup>th</sup> 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.





January 11, 2018

Hon. Xavier Becerra  
Attorney General  
1300 I Street, 17<sup>th</sup> 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 local government taxes and fees (A.G. File No. 17-0051, Amendment No. 1).

## **BACKGROUND**

**Local 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 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 local governments currently treat as nontax levies. As a result, the measure would increase the number of revenue proposals subject to the higher 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 local 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." The measure also 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 vote of the local governing body and two-thirds vote of the electorate in the case of local government taxes or (2) 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.)

## FISCAL EFFECTS

***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 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**

- Potentially substantial decrease in annual local revenues, depending upon future actions of local governing bodies, voters, and the courts.

Sincerely,

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Mac Taylor  
Legislative Analyst

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Michael Cohen  
Director of Finance