



1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327.7500
Facsimile
916.441.5507

Memo: Ballot Initiative #1935, “Taxpayer Protection and Government Accountability Act,” (TPA Initiative)

County Educational Toolkit

Background

The “Taxpayer Protection and Government Accountability Act,” referred to as “Initiative #1935,” or the “TPA,” would revise the California Constitution to restrict the ability of the state, counties, other local agencies, and the electorate to approve or collect taxes, fees, and other revenues. Collectively, the impacts of the measure would impair essential government functions.

The measure would require voter approval of all state taxes, redefining many existing administrative fees as taxes that require voter approval and requiring voters to approve any changes to state taxes imposed by the California Legislature. It would further restrict local fee authority by limiting fee amounts to the “minimum amount necessary” to provide government services, and would require voter approval for local measures such as franchise fees. Its provisions would make it easier to challenge local revenue measures by increasing the burden of proof on local agencies while disallowing an agency’s characterization of a measure from being considered in court.

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

The proposed constitutional initiative is sponsored by the California Business Roundtable, an association composed of executives for the largest corporations in California. However, the measure has been funded primarily by a small few of those member corporations and, in February 2024, several of the association’s members placed an advertisement requesting the sponsors to remove the measure from the ballot.

The California Attorney General has titled the measure: “LIMITS ABILITY OF VOTERS AND STATE AND LOCAL GOVERNMENTS TO RAISE REVENUES FOR GOVERNMENT SERVICES. INITIATIVE CONSTITUTIONAL AMENDMENT.”

The official summary is as follows:

“For new or increased state taxes currently enacted by two-thirds vote of Legislature, also requires statewide election and majority voter approval. Limits voters’ ability to

pass voter-proposed local special taxes by raising vote requirement to two-thirds. Eliminates voters' ability to advise how to spend revenues from proposed general tax on the same ballot as the proposed tax. Expands definition of "taxes" to include certain regulatory fees, broadening application of tax approval requirements. Requires Legislature or local governing body set certain other fees. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: **Lower annual state and local revenues, potentially substantially lower, depending on future actions of the Legislature, local governing bodies, voters, and the courts."**

The measure would apply retroactively to any local measure or state law passed since January 1, 2022, allowing only a twelve-month period for the state or local governments to re-ratify the measures.

CSAC Efforts Related to the Measure

The CSAC Board of Directors voted to oppose the measure in March 2022.

In September 2023, Governor Gavin Newsom petitioned the California Supreme Court to review the measure, asserting that it would be a revision of the California Constitution, rather than an amendment, and therefore would require a constitutional convention to make the changes sought by the measure's sponsors. The Governor also asserted the measure would impair essential government functions.

In January 2024, CSAC, as part of a coalition of local government entities and associations, filed an amicus brief in support of the Governor and Legislature in their petition to the California Supreme Court to deem the California Business Roundtable's ballot measure as a constitutional revision that would impair essential government functions, and therefore ineligible for the November 2024 ballot.

Analysis

Under current law, local revenue authority is limited by both statute and several voter-approved constitutional provisions, including those added by Proposition 13 (1978), Proposition 218 (1996), and Proposition 26 (2010). Due to these restrictions, counties have become more dependent on state and federal funding. These restrictions, combined with other factors, cause the taxes counties rely on for general revenues not to keep pace with population and economic growth.

Changes under Ballot Initiative

The purpose of the ballot measure is to make it more difficult for counties, cities, schools, special districts, and the state to raise revenue by any means. It places new and increased restrictions on every manner of revenue measure and narrows exceptions to its most onerous requirements. Its provisions are so broad that while the proponents cite specific examples they are targeting for change, the measure would no doubt have many unintended consequences.

The effect will be to increase county costs, reduce tax and fee revenue for counties, subject *de rigueur* charges such as franchise fees to voter approval requirements, and open more government actions to legal challenges while simultaneously making those challenges more difficult to defend against. Further, as is the case with many ballot measures, it would write into the California Constitution contradictory and confusing language that cannot be changed or clarified without another future ballot measure that receives voter approval.

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

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

As proposed, every state and local revenue measure not defined as an exempt charge would need to be submitted to the voters for approval. Those measures would be required to include in both the title and summary and the ballot label the type and amount or rate of the tax, the duration of the tax, and the use of the revenue derived from the tax. In the case of local general taxes, the phrase “for general government use” would be required and it would be prohibited to include an advisory measure on the same ballot to determine how the electorate would like to see those revenues used.

Local voter initiatives that impose special taxes are currently subject to lower voting thresholds than those initiated by county and city governing boards. This measure would increase those thresholds from a majority vote to two-thirds.

This initiative would retroactively cancel other revenue measures passed by voters or approved between January 1, 2022, and the time this initiative goes into effect, if they do not comply with this measure’s provisions, even if they complied with all laws in effect at the time they passed. The proposed initiative would give those cancelled revenue measures twelve months to re-comply. However, local tax measures can only be put to voters at regular elections where governing board members can also be elected, unless the governing board unanimously calls a special election, and no regular elections would take place in the twelve months after the initiative would take effect.

The initiative reduces counties’ home rule authority by prohibiting certain types of amendments to county charters from even appearing before the voters. Whether they are proposed by the Board of Supervisors or by voters themselves, any charter amendment that provides for the imposition, extension, or increase of a tax, fee, charge, or exaction of any kind whatsoever would be prohibited.

One provision of the measure allows fines and penalties to be imposed by the judicial branch of government or imposed by a local administrative enforcement agency to punish violations of law, without voter approval. However, another section of the measure says that, notwithstanding any other provision of the Constitution, only the governing body of a local government acting by ordinance, or an elector exercising the initiative power, can impose any kind of charge without voter approval. The measure specifically prohibits any tax or fee regulating or related to vehicle miles traveled imposed as a condition of property development or occupancy.

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

The proposed measure would increase the burden of proof on local agencies to prove that a revenue measure is not subject to voter approval requirements—and that the amount of the charge is reasonable and does not exceed the “actual cost,” or “minimum amount necessary”—from a preponderance of evidence to clear and convincing evidence. Furthermore, the measure prohibits a court from considering how a local agency describes, or characterizes, a revenue measure in making its determination, whereas the use of the funds would be required to be a factor in that determination.

To give an example of a normal county process that would be impacted by the proposed measure, consider a county’s sale of a parcel of land, which falls directly under one of the categories of exempt charge, the one defined in proposed subparagraph (3) of paragraph (j) of Article XIII C Section 1, “a reasonable charge for...the purchase...of local government property.” To impose an exempt charge under the terms of the initiative, the governing body may be required to pass an ordinance specifying the amount of the exempt charge, in this case, the amount charged to purchase the property.

If anyone sued the county contesting whether the sale was an exempt charge or should instead have been treated as a tax, under the terms of the proposed initiative the court would be explicitly disallowed from factoring in the county’s description of the charge “as being paid in exchange for a[n]...asset.”

Instead, the court would be required to consider as a factor “the use of revenue derived from the...charge.” So while board members might think the county could use the proceeds from the sale of property for general purposes, in order to show by clear and convincing evidence that the charge was not a tax, it would need to prove to the court both that the amount of the charge was reasonable and “that the amount charged does not exceed the actual cost of providing the...product to the payor,” with the “actual cost” defined as “the minimum amount necessary to reimburse the government for the cost of providing the...product to the payor...where the amount charged is not used by the government for any purpose other than reimbursing that cost.” So, in selling, renting, or

leasing property, a county would be limited to the county's cost of providing the parcel to the buyer, instead of selling at market rate or to the person offering the highest amount.

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

On the whole, the measure will limit local revenue, imperil existing revenue and laws, subject local governments to the risk of litigation, and limit the ability of governments to defend themselves in court.

What Can Counties Do?

CSAC encourages counties to consider taking an official position in opposition to Initiative #1935. While Boards of Supervisors can take official positions on ballot initiatives, county supervisors and county employees cannot use public resources to engage in advocacy related to ballot campaigns. Counties can, however, educate their constituents about the impacts propositions would have on the county and their community, despite whether they have taken a position on a ballot initiative. In fact, counties are well-positioned to provide information on the impacts of ballot measures in their local communities.

The line between education and advocacy can be difficult to differentiate at times, so CSAC staff encourages counties refer to helpful resources such as the [Institute for Local Government's papers and primers on ballot measure activities](#). Staff also highly recommends, especially when there is any doubt about a particular activity or communication, to consult with county counsel.

Attachments

- 1) [Full text of Ballot Initiative](#)
- 2) [Title and Summary](#)
- 3) [Fiscal Impact Estimate Report](#)

CSAC Staff Contact

For additional information, please contact Eric Lawyer, Legislative Advocate, California State Association of Counties (elawyer@counties.org or (916) 767-9403).