



- **Board of Directors**
Legislation and Communications Committee

6/11/2024 Board Meeting

7-9

Subject

Express opposition to Initiative 1935: The Taxpayer Protection and Government Accountability Act and express support for ballot measure ACA 13: Voting thresholds; the General Manager has determined that the proposed actions are exempt or otherwise not subject to CEQA

Executive Summary

Two ballot measures relating to government revenues are presented for Board action and direction in this item: Initiative 1935: The Taxpayer Protection and Government Accountability Act (Initiative 1935) and Assembly Constitutional Amendment 13: Voting Thresholds (ACA 13).

Initiative 1935, entitled the “Taxpayer Protection and Government Accountability Act,” is a ballot measure that was introduced by the California Business Roundtable and is eligible for the November 2024 ballot. If successful, this measure would limit the State of California and local agency abilities to raise taxes, fees, assessments, and other charges for agency services, infrastructure improvements, and for any administrative actions by amending Articles XIII.A, C and D of the California Constitution. This measure would require a simple majority vote on the November 2024 ballot in order to amend the State Constitution. Initiative 1935 would prohibit an advisory measure - a non-binding measure often used by local governments to gauge voter preferences in how local funds may be used - from appearing on the same ballot as a general tax measure. The measure would apply retroactively to void all revenue measures adopted by the state or local agency after January 1, 2022. Initiative 1935 is currently being challenged before the California Supreme Court by the California Legislature as unconstitutional and as an improper change to the Constitution’s basic governmental structure. The Court heard the case on May 8, 2024, and may issue a decision at any time.

ACA 13 is a ballot measure introduced in the State Assembly to counter Initiative 1935. The measure would apply to any initiative that seeks to change a constitutional vote requirement to a supermajority (two-thirds), including Initiative 1935. ACA 13 would require that an initiative could only pass by the same vote requirement as proposed in the respective constitutional amendment. ACA 13 would also expressly allow advisory ballots to be placed on the same ballot as a companion tax measure. If Initiative 1935 is removed by the California Supreme Court’s decision, staff proposes to support ACA 13 independent of the status of Initiative 1935.

Proposed Action(s)/Recommendation(s) and Options

Staff Recommendation: Option #1

Option #1

Express opposition to Initiative 1935: The Taxpayer Protection and Government Accountability Act and express support for ballot measure ACA 13: Voting thresholds

Fiscal Impact: Unknown

Business Analysis: If passed, Initiative 1935 would impede fundamental local and state powers and functions, and create significant risk of costly litigation, potentially reduced quality of service to the public, and budgetary uncertainty and instability for public agencies.

Option #2

Take no action

Fiscal Impact: Unknown**Business Analysis:** Unknown**Alternatives Considered**

Not applicable

Applicable Policy

Metropolitan Water District Administrative Code Section 11104: Delegation of Responsibilities

Related Board Action(s)/Future Actions

Not applicable

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves proposals for legislation to be enacted by the State Legislature. (State CEQA Guidelines Section 15378(b)(1).)

CEQA determination for Option #2:

None required

Details and Background

Background on Initiative 1935

Initiative 1935, Two-Thirds Legislative Vote and Voter Approval for New or Increased Taxes Initiative, also known as the “Taxpayer Protection and Government Accountability Act” (**Attachment 1**), is sponsored by the California Business Roundtable and proposes to amend the California Constitution to change the rules for how the state and local governments impose taxes, fees, and other charges, including requiring local special taxes proposed through citizens’ initiative to be approved by a two-thirds vote as opposed to the current majority vote requirement.

This measure has raised significant concern for the state and local government agencies. The Governor and State Legislature filed a challenge to the constitutionality of the measure and believe it should not appear on the ballot since the initiative would amount to an unlawful revision of the California Constitution and an impermissible interference with essential government functions. The Governor and Legislature have requested a Court decision by June in anticipation of the November election. The Court heard the case on May 8, 2024, but it is unclear how or when the California Supreme Court will rule.

The stated intent of the initiative is to ensure direct voter control when determining taxes and improve government transparency by expanding the definition of taxes to include all other state and local revenue sources like fees and charges.

The ability of the state and local government to raise revenues is considered a fundamental function necessary to carry out their duty to the public. This initiative obstructs this essential government function by restricting state and local government abilities and changes the role of the state and local governing bodies. Additionally, this initiative creates significant risk of costly litigation, potentially reduced quality of service, and budgetary uncertainty and instability. It is critical that the state and local governments retain the ability to raise revenue based on clear standards.

Key Provisions of Initiative 1935

Broadens the Definition of a Tax

This initiative revises the definition of a tax to include any levy, charge, or exaction of any kind imposed under state law as a tax, unless it is considered an exempt charge through a new, vague, stricter standard than exists in current law. Exempt charges include:

- 1) a “reasonable charge,” which is a charge that reflects the actual cost of service to the customer. “Actual cost” is defined to mean “the minimum amount necessary to reimburse the government for providing the service;”
- 2) reasonable regulatory costs;
- 3) reasonable charges for entering or using government property;
- 4) imposition of fines or penalties related to violations of the law or adjudicatory due process;
- 5) charges imposed as a condition of property development;
- 6) assessments, fees, and charges imposed on a business by a tourism marketing district or business improvement district; and
- 7) charges for specified healthcare services.

The term “reasonable” is not defined in the text; the term “actual cost” is defined, but it does not take into account that local rate-setting is based on projections and not solely on past costs incurred. This creates undue risk for legal challenges due to the ambiguity in determining what is “reasonable” or an “actual cost” on the part of the state or the local agency. In order to claim an exemption, an agency must present “clear and convincing evidence” that such an exemption complies with the law. Further, if the state or local agency cannot prove that the charge is exempt with “clear and convincing evidence,” the charge may be invalidated and becomes subject to an election. In current law, the evidentiary standard is a “preponderance of the evidence;” this initiative both creates new restrictions on government’s ability to raise revenues and also raises the legal burden of proof.

Finally, an exempt charge at the state or local level must be imposed through the adoption, respectively, of legislation at the state level or an ordinance at the local level.

Retroactive to January 1, 2022

This initiative would be retroactive and would apply to all fees, charges and assessments adopted after January 1, 2022, and onwards. If any charge adopted since January 1, 2022, is determined to be in violation, then the agency will have 12 months to cease the charges, or reassess the charge consistent with the requirements of the new law. This provision could subject agencies to frivolous litigation as a result of the Initiative 1935’s lack of clarity, and could result in costly settlements for charges that have already been implemented, including fees linked to index or other fees that may increase over time.

Requirement for Ratification by Majority Vote Statewide for State Taxes

Initiative 1935 would require the state to ratify all “taxes” by a majority vote of the electorate statewide after it passes the Legislature’s 2/3 vote approval. The requirement for voter ratification of all taxes is prohibitive of the State Legislature enacting any tax without costly elections and would delay administration of many government activities and programs.

Legislative Action Required to Adopt Any State Revenue Measures, including Administrative Fees

Initiative 1935 prohibits the State Legislature from delegating the enactment of administrative fees (even though they are categorized as exempt charges) to administrative agencies. This means that even fees for the most minor government service, such as licensing fees, would have to be adopted by the Legislature. The new requirement could delay government functions, activities, and services to the public. It would also interfere with the current operational role of agencies, like the State Water Resources Control Board, and create undue delays for the licenses and other permits handled by state agencies.

Restricts Citizen Initiative Power

Taxes or other revenue measures proposed by the voters through initiatives are subject only to the majority vote requirement applicable to any initiative, as provided in the California Constitution, Article II, Section 9. Initiative 1935, would require taxes proposed through the voter initiative power be subject to a two-thirds vote. The measure would restrict local agencies and voters in funding services or other activities important to the public.

Additional Administrative Compliance

This initiative adds a requirement that an ordinance be passed for all local exempt charges and requires local agencies to comply with a specific format when placing taxes on the ballot, including identification of the duration of the tax. Requiring an “ordinance” be passed for any local agency charge is both unclear and could be administratively burdensome.

Prohibition on Advisory Measures

Initiative 1935 would prohibit an advisory measure from appearing on the same ballot as a general tax measure. Advisory measures are non-binding measures often used by local governments to gauge voter preferences in how local funds may be used. This prohibition would eliminate the use of an important tool for local community engagement.

Opponents

Opponents include, but are not limited to, the Association of California Water Agencies, AFSCME California, California Alliance for Jobs, California State Association of Counties, the League of California Cities, and the California Special District Association (CSDA).

Arguments in Opposition

Opponents of Initiative 1935 argue it is designed to cripple state and local government's ability to raise critically needed revenues at a time when local resources are already strained. This measure brings significant risk of resulting in costly litigation, reduced quality of service and unstable revenues for agencies providing essential services. As the water industry advances various strategies to respond to climate change, opponents believe it is critical that local government retains the ability to raise revenue based on clear standards that do not inhibit the needs of the public.

Supporters

Supporters include, but are not limited to, the California Business Roundtable (Sponsor), the California Chamber of Commerce and the Howard Jarvis Taxpayers Association.

Arguments in Support

Proponents of Initiative 1935 argue that California has some of the highest taxes in the nation, which has created significant challenges for affordability. This initiative seeks to give California voters the power to determine what they should pay for in taxes and improve transparency by ensuring government officials cannot hide taxes under the guise of fees and charges.

Background on ACA 13

ACA 13: Voting thresholds (**Attachment 2**) is a constitutional amendment passed by the Legislature and is sponsored by the California School Employees Association (CSEA), AFL-CIO and Service Employees International Union (SEIU) California. This measure was specifically introduced to address the adverse impacts of Initiative 1935.

ACA 13 would require that any constitutional ballot measure that proposes a specific vote requirement must also itself pass by that same vote requirement. In addition, this measure would expressly allow a local government agency to present an advisory measure on the same ballot as a general tax measure.

Staff recommends supporting ACA 13 independent of the status of Initiative 1935.

Supporters

Supporters include, but are not limited to, CSDA, CSEA, AFL-CIO, SEIU California, California State Association of Counties, and the League of California Cities.

Arguments in Support

Supporters note that under current law, a simple majority of voters can insert a three-fifths, two-thirds, four-fifths, or higher vote threshold into the California Constitution, even without the corresponding level of support in terms of votes cast in favor of the original amendment proposal.

The California Special Districts Association writes:

“ACA 13 would propose to California voters a solution to this quirk in the initiative process: if approved by two-thirds of the California Legislature, California voters would be asked to decide whether an initiative constitutional amendment containing provisions that increase vote thresholds should be required to attain the same proportion of votes in favor of the amendment that the proposed increased vote thresholds would demand. In this way, ACA 13 would ensure that a proposal cannot impose vote thresholds on our communities and our State that exceed the level of support for imposing such thresholds. ACA 13 protects the democratic process in local communities by ensuring that a simple majority of statewide voters cannot restrict the will of a supermajority of voters in a local community.”

Opponents

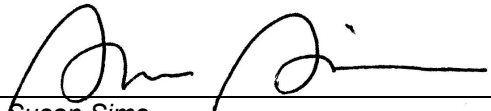
Opponents include, but are not limited to, the California Business Roundtable, the California Chamber of Commerce and the Howard Jarvis Taxpayers Association.

Argument in Opposition

Opponents argue:

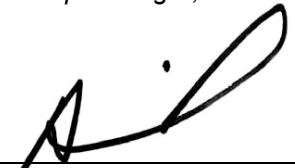
The initiative process is a vital tool for Californians to voice their concerns, propose changes, and stand up for their values. It allows citizens to bypass the usual legislative channels and bring about changes that matter deeply to them. However, ACA 13 risks diminishing these voices, shifting power away from the people and towards the Legislature in a drastic and unprecedented way. Under ACA 13, the power to increase voter thresholds for new and higher taxes would vest solely with the Legislature, taking away a fundamental and often-used tool for voters looking to better control their cost of living and higher taxes. However, the power to reduce voter thresholds would remain with both citizens and the Legislature, creating a significant power imbalance and an unlevel playing field.

In order to protect the fundamental function of the state and local governments to raise revenues appropriately as necessary to carry out their duty to the public and provide equity and consistency in voting thresholds needed to amend the State Constitution, staff recommends that the Board express opposition to Initiative 1935 and express support for ACA 13.



Susan Sims
Group Manager, External Affairs

6/3/2024
Date



Adel Hagekhalil
General Manager

6/6/2024
Date

Attachment 1 – Initiative 1935: The Taxpayer Protection and Government Accountability Act

Attachment 2 – ACA 13: Voting thresholds

Ref# 12703716

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21-0042 Amdt. # 1

January 4, 2022

RECEIVED

JAN 04 2022

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Anabel Renteria
Initiative Coordinator
Office of the Attorney General
State of California
PO Box 994255
Sacramento, CA 94244-25550

Re: Initiative 21-0042 - Amendment Number One

Dear Initiative Coordinator:

Pursuant to subdivision (b) of Section 9002 of the Elections Code, enclosed please find Amendment #1 to Initiative No. 21-0042 "The Taxpayer Protection and Government Accountability Act." The amendments are reasonably germane to the theme, purpose or subject of the initiative measure as originally proposed.

I am the proponent of the measure and request that the Attorney General prepare a circulating title and summary of the measure as provided by law, using the amended language.

Thank you for your time and attention processing my request.

Sincerely,



Thomas W. Hiltachk

The Taxpayer Protection and Government Accountability Act

[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 Taxpayer Protection and Government Accountability Act.

Section 2. Findings and Declarations

(a) Californians are overtaxed. We pay the nation's highest state income tax, sales tax, and gasoline tax. According to the U.S. Census Bureau, California's combined state and local tax burden is the highest in the nation. Despite this, and despite two consecutive years of obscene revenue surpluses, state politicians in 2021 alone introduced legislation to raise more than \$234 *billion* in new and higher taxes and fees.

(b) Taxes are only part of the reason for California's rising cost-of-living crisis. Californians pay billions more in hidden "fees" passed through to consumers in the price they pay for products, services, food, fuel, utilities and housing. Since 2010, government revenue from state and local "fees" has more than doubled.

(c) California's high cost of living not only contributes to the state's skyrocketing rates of poverty and homelessness, they are the pushing working families and job-providing businesses out of the state. The most recent Census showed that California's population dropped for the first time in history, costing us a seat in Congress. In the past four years, nearly 300 major corporations relocated to other states, not counting thousands more small businesses that were forced to move, sell or close.

(d) California voters have tried repeatedly, at great expense, to assert control over whether and how taxes and fees are raised. We have enacted a series of measures to make taxes more predictable, to limit what passes as a "fee," to require voter approval, and to guarantee transparency and accountability. These measures include Proposition 13 (1978), Proposition 62 (1986), Proposition 218 (1996), and Proposition 26 (2010).

(e) Contrary to the voters' intent, these measures that were designed to control taxes, spending and accountability, have been weakened and hamstrung by the Legislature, government lawyers, and the courts, making it necessary to pass yet another initiative to close loopholes and reverse hostile court decisions.

Section 3. Statement of Purpose

(a) In enacting this measure, the voters reassert their right to a voice and a vote on new and higher taxes by requiring any new or higher tax to be put before voters for approval. Voters also intend that all fees and other charges are passed or rejected by the voters themselves or a governing body elected by voters and not unelected and unaccountable bureaucrats.

(b) Furthermore, the purpose and intent of the voters in enacting this measure is to increase transparency and accountability over higher taxes and charges by requiring any tax measure placed on the ballot—

either at the state or local level—to clearly state the type and rate of any tax, how long it will be in effect, and the use of the revenue generated by the tax.

(c) Furthermore, the purpose and intent of the voters in enacting this measure is to clarify that any new or increased form of state government revenue, by any name or manner of extraction paid directly or indirectly by Californians, shall be authorized only by a vote of the Legislature and signature of the Governor to ensure that the purposes for such charges are broadly supported and transparently debated.

(d) 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 and other charges with the rapidly increasing costs Californians are already paying for housing, food, childcare, gasoline, energy, healthcare, education, and other basic costs of living, and to further protect the existing constitutional limit on property taxes and ensure that the revenue from such taxes remains local, without changing or superseding existing constitutional provisions contained in Section 1(c) of Article XIII A.

(e) 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*, *Schmeer v. Los Angeles County*, *Johnson v. County of Mendocino*, *Citizens Assn. of Sunset Beach v. Orange County Local Agency Formation Commission*, and *Wilde v. City of Dunsmuir*.

Section 4. Section 3 of Article XIII A of the California Constitution is amended to read:

Sec. 3(a) Every levy, charge, or exaction of any kind imposed by state law is either a tax or an exempt charge.

(b)(1) (a) Any change in state statute law which results in any taxpayer paying a new or 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, and submitted to the electorate and approved by a majority vote, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property, may be imposed. Each Act shall include:

(A) A specific duration of time that the tax will be imposed and an estimate of the annual amount expected to be derived from the tax.

(B) 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 a separate, stand-alone section. Any proposed change to the use of the revenue from the tax shall be 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 and submitted to the electorate and approved by a majority vote.

(2) The title and summary and ballot label or question required for a measure pursuant to the Elections Code shall, for each measure providing for the imposition of a tax, including a measure proposed by an elector pursuant to Article II, include:

(A) The type and amount or rate of the tax;

(B) The duration of the tax; and

(C) The use of the revenue derived from the tax.

(c) Any change in state law which results in any taxpayer paying a new or higher exempt charge must be imposed by an act passed by each of the two houses of the Legislature. Each act shall specify the type of exempt charge as provided in subdivision (e), and the amount or rate of the exempt charge to be imposed.

(d) ~~(b)~~ As used in this section and in Section 9 of Article II, "tax" means every ~~any~~ levy, charge, or exaction of any kind imposed by the State state law that is not an exempt charge, except the following:

(e) 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 charge imposed for the reasonable regulatory costs to the State incident to issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(3) A levy, charge, or exaction collected from local units of government, health care providers or health care service plans that is primarily used by the State of California for the purposes of increasing reimbursement rates or payments under the Medi-Cal program, and the revenues of which are primarily used to finance the non-federal portion of Medi-Cal medical assistance expenditures.

(4) A reasonable 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.

(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.

(6) A levy, charge, assessment, or exaction collected for the promotion of California tourism pursuant to Chapter 1 (commencing with Section 13995) of Part 4.7 of Division 3 of Title 2 of the Government Code.

(f) ~~(e)~~ Any tax or exempt charge adopted after January 1, ~~2022~~ 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 or exempt charge is reenacted by the Legislature and signed into law by the Governor in compliance with the requirements of this section.

(g) ~~(1) (d)~~ The State bears the burden of proving by a preponderance of the clear and convincing evidence that a levy, charge, or other exaction is an exempt charge and not a tax. The State bears the burden of proving by clear and convincing evidence that the amount of the exempt charge is reasonable and that the amount charged does not exceed the actual cost of providing the service or product to the payor, ~~that the amount is no more than necessary to cover the reasonable costs of the governmental activity 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

(2) The retention of revenue by, or the payment to, a non-governmental entity of a levy, charge, or exaction of any kind imposed by state law, shall not be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

(3) The characterization of a levy, charge, or exaction of any kind 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.

(4) The use of revenue derived from the levy, charge or exaction shall be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

(h) As used in this section:

(1) "Actual cost" of providing a service or product means: (i) the minimum amount necessary to reimburse the government for the cost of providing the service or product to the payor, and (ii) where the amount charged is not used by the government for any purpose other than reimbursing that cost. In computing "actual cost" the maximum amount that may be imposed is the actual cost less all other sources of revenue including, but not limited to taxes, other exempt charges, grants, and state or federal funds received to provide such service or product.

(2) "Extend" includes, but is not limited to, doing any of the following with respect to a tax or exempt 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.

(3) "Impose" means adopt, enact, reenact, create, establish, collect, increase or extend.

(4) "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. "State law" does not include actions taken by the Regents of the University of California, Trustees of the California State University, or the Board of Governors of the California Community Colleges.

Section 5. Section 1 of Article XIII C of the California Constitution is amended, to read:

Sec. 1. Definitions. As used in this article:

(a) "Actual cost" of providing a service or product means: (i) the minimum amount necessary to reimburse the government for the cost of providing the service or product to the payor, and (ii) where the amount charged is not used by the government for any purpose other than reimbursing that cost. In computing "actual cost" the maximum amount that may be imposed is the actual cost less all other sources of revenue including, but not limited to taxes, other exempt charges, grants, and state or federal funds received to provide such service or product.

(b) "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.

~~(c) (a)~~ "General tax" means any tax imposed for general governmental purposes.

~~(d)~~ "Impose" means adopt, enact, reenact, create, establish, collect, increase, or extend.

~~(e) (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 an elector pursuant to Article II or the initiative power provided by a charter or statute.

~~(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) (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.

~~(h) (d)~~ "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

~~(i) (e)~~ As used in this article, and in Section 9 of Article II, "tax" means every ~~any~~ levy, charge, or exaction of any kind, imposed by a local government law that is not an exempt charge., ~~except the following:~~

~~(i)~~ 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 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 charge imposed for the reasonable regulatory costs to 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 reasonable 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. No levy, charge, or exaction regulating or related to vehicle miles traveled may be imposed as a condition of property development or occupancy.

~~(6) (7)~~ An Assessments and property related fees assessment, fee, or charge imposed in accordance with the provisions of subject to Article XIII D, or an assessment imposed upon a business in a tourism marketing district, a parking and business improvement area, or a property and business improvement district.

(7) A charge imposed for a specific health care service provided directly to the payor and that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the health care service. As used in this paragraph, a "health care service" means a service licensed or exempt from licensure by the state pursuant to Chapters 1, 1.3, or 2 of Division 2 of the Health and Safety Code.

The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity 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.

Section 6. Section 2 of Article XIII C of the California Constitution is amended to read:

Sec. 2. Local Government Tax Limitation. Notwithstanding any other provision of this Constitution:

(a) Every levy, charge, or exaction of any kind imposed by local law is either a tax or an exempt charge. 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 law government, whether proposed by the governing body or by an elector, 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). (d) No local law government, whether proposed by the governing body or by an elector, 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.

(d) The title and summary and ballot label or question required for a measure pursuant to the Elections Code shall, for each measure providing for the imposition of a tax, include:

(1) The type and amount or rate of the tax;

(2) the duration of the tax; and

(3) The use of the revenue derived from the tax. If the proposed tax is a general tax, the phrase "for general government use" shall be required, and no advisory measure may appear on the same ballot that would indicate that the revenue from the general tax will, could, or should be used for a specific purpose.

(e) Only the governing body of a local government, other than an elector pursuant to Article II or the initiative power provided by a charter or statute, shall have the authority to impose any exempt charge. The governing body shall impose an exempt charge by an ordinance specifying the type of exempt charge

as provided in Section 1(j) and the amount or rate of the exempt charge to be imposed, and passed by the governing body. This subdivision shall not apply to charges specified in paragraph (7) of subdivision (i) of Section 1.

(f) No amendment to a Charter which provides for the imposition, extension, or increase of a tax or exempt charge shall be submitted to or approved by the electors, nor shall any such amendment to a Charter hereafter submitted to or approved by the electors become effective for any purpose.

(g) Any tax or exempt charge adopted after January 1, 2022, 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 or exempt charge is reenacted in compliance with the requirements of this section.

(h)(1) The local government bears the burden of proving by clear and convincing evidence that a levy, charge or exaction is an exempt charge and not a tax. The local government bears the burden of proving by clear and convincing evidence that the amount of the exempt charge is reasonable and that the amount charged does not exceed the actual cost of providing the service or product to the payor.

(2) The retention of revenue by, or the payment to, a non-governmental entity of a levy, charge, or exaction of any kind imposed by a local law, shall not be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

(3) The characterization of a levy, charge, or exaction of any kind imposed by a local law as being 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.

(4) The use of revenue derived from the levy, charge or exaction shall be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

Section 7. Section 3 of Article XIII D of the California Constitution is amended, to read:

Sec. 3. Property Taxes, Assessments, Fees and Charges Limited

(a) No tax, assessment, fee, ~~or~~ charge, or surcharge, including a surcharge based on the value of property, 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~~ described in Section 1(a) of Article XIII and Section 1(a) of Article XIII A, and described and enacted pursuant to the voter approval requirement in Section 1(b) of Article XIII A.

(2) Any special non-ad valorem tax receiving a two-thirds vote of qualified electors pursuant to Section 4 of Article XIII A, or after receiving a two-thirds vote of those authorized to vote in a community facilities district by the Legislature pursuant to statute as it existed on December 31, 2021.

(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. Sections 1 and 14 of Article XIII are amended to read:

Sec. 1 Unless otherwise provided by this Constitution or the laws of the United States:

(a) All property is taxable and shall be assessed at the same percentage of fair market value. When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed value. The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.

(b) All property so assessed shall be taxed in proportion to its full value.

(c) All proceeds from the taxation of property shall be apportioned according to law to the districts within the counties.

Sec. 14. All property taxed by state or local government shall be assessed in the county, city, and district in which it is situated. Notwithstanding any other provision of law, such state or local property taxes shall be apportioned according to law to the districts within the counties.

Section 9. General Provisions

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

B. (1) In the event that this initiative measure and another initiative measure or measures relating to state or local 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) In furtherance of this provision, the voters hereby declare that this measure conflicts with the provisions of the "Housing Affordability and Tax Cut Act of 2022" and "The Tax Cut and Housing Affordability Act," both of which would impose a new state property tax (called a "surcharge") on certain real property, and where the revenue derived from the tax is provided to the State, rather than retained in the county in which the property is situated and for the use of the county and cities and districts within the county, in direct violation of the provisions of this initiative.

(3) 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.

C. 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.

D. 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:

(1) 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.

(2) 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.

(3) 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.

(4) Nothing in this section shall prohibit the proponents of this Act, or a bona fide taxpayers association, from intervening to defend this Act.

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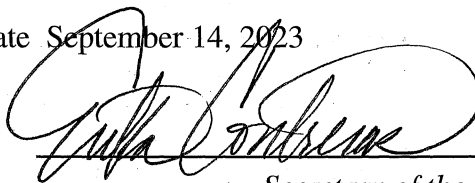
Assembly Constitutional Amendment No. 13

Adopted in Assembly September 14, 2023



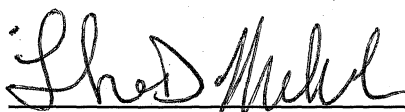
Chief Clerk of the Assembly

Adopted in Senate September 14, 2023



Secretary of the Senate

This resolution was received by the Secretary of State this
2nd day of November, 2023, at 10
o'clock a.M.



Deputy Secretary of State

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RESOLUTION CHAPTER _____

Assembly Constitutional Amendment No. 13—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 10 of, and adding Section 10.5 to, Article II thereof, and adding Section 7.8 to Article XI thereof, relating to voting.

LEGISLATIVE COUNSEL'S DIGEST

ACA 13, Ward. Voting thresholds.

The California Constitution provides that a proposed constitutional amendment and a statewide initiative measure each take effect only if approved by a majority of the votes cast on the amendment or measure.

This measure would further provide that an initiative measure that includes one or more provisions that would amend the Constitution to increase the voter approval requirement to adopt any state or local measure would be approved by the voters only if the proportion of votes cast in favor of the initiative measure is equal to or greater than the highest voter approval requirement that the initiative measure would impose. The measure would specify that this voter approval requirement would apply to statewide initiative measures that appear on the ballot on or after January 1, 2024.

The California Constitution also permits initiative and referendum powers to be exercised by the voters of each city or county under procedures provided by the Legislature.

This measure would expressly authorize a local governing body to hold an advisory vote concerning any issue of governance for the purpose of allowing voters within the jurisdiction to voice their opinions on the issue. The measure would specify that an advisory question is approved only if a majority of the votes cast on the question are in favor.

This measure would further declare that its provisions are severable and that if any provision is held invalid, the other provisions of the act remain valid, as specified.

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WHEREAS, In an era of special interests and others attempting to manipulate the electoral process, it is important to preserve the fundamental right of California citizens to approve statewide initiative statutes and referenda by a majority vote; and

WHEREAS, Initiative measures proposing to amend the Constitution to increase the vote requirement above a majority vote to pass other state and local measures violate the principle of majority rule; and

WHEREAS, Citizens have a substantial interest in voicing their opinions on issues of local governance and must be allowed to approve local advisory measures by majority vote; and

WHEREAS, The provisions of this measure are not intended to reverse or invalidate provisions of the Constitution in effect before January 1, 2024, including the provisions of Proposition 13 of 1978; and

WHEREAS, The purpose of this measure is to do all of the following:

(a) Retain the majority vote requirement to pass statewide initiative statutes and referenda;

(b) Provide that any proposed initiative measure that would amend the Constitution to increase the voter approval requirement to pass other state or local measures is effective only if the initiative is approved by the highest vote requirement it imposes on other measures;

(c) Constitutionally authorize local governments to submit questions to voters asking for their opinion on issues of governance; now, therefore, be it

Resolved, That this measure shall be known, and may be cited, as the Protect and Retain the Majority Vote Act; and be it further

Resolved by the Assembly, the Senate concurring, That the Legislature of the State of California at its 2023–24 Regular Session, commencing on the fifth day of December 2022, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First—That Section 10 of Article II thereof is amended to read:

Sec. 10. (a) An initiative statute or referendum approved by the electors pursuant to Section 10.5 takes effect on the fifth day after the Secretary¹ of State files the statement of the vote for the election at which the measure is voted on, but the measure may

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provide that it becomes operative after its effective date. If a referendum petition is filed against a part of a statute, the remainder of the statute shall not be delayed from going into effect.

(b) If provisions of two or more measures approved at the same election conflict, the provisions of the measure receiving the highest number of affirmative votes shall prevail.

(c) The Legislature may amend or repeal a referendum statute. The Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without the electors' approval.

(d) Before circulation of an initiative or referendum petition for signatures, a copy shall be submitted to the Attorney General who shall prepare a title and summary of the measure as provided by law.

(e) The Legislature shall provide for the manner in which a petition shall be circulated, presented, and certified, and the manner in which a measure shall be submitted to the electors.

Second—That Section 10.5 is added to Article II thereof, to read:

Sec. 10.5. (a) Except as provided in subdivision (b), a statewide initiative statute or referendum is approved if a majority of the votes cast on the measure are in favor.

(b) Notwithstanding Section 4 of Article XVIII or any other provision of the Constitution, an initiative measure that includes one or more provisions that amend the Constitution to increase the voter approval requirement to adopt any state or local measure is approved by the voters only if the proportion of votes cast in favor of the initiative measure is equal to or greater than the highest voter approval requirement that the initiative measure would impose for the adoption of any state or local measure.

(c) This section applies to all statewide initiative measures submitted to the electors on or after January 1, 2024, including measures that appear on the ballot at the same election at which the measure adding this section is approved by the electors.

Third—That Section 7.8 is added to Article XI thereof, to read:

Sec. 7.8. At any election, pursuant to procedures that the Legislature shall provide, a local governing body may hold an advisory vote concerning any issue of governance for the purpose of allowing voters within the jurisdiction to voice their opinions

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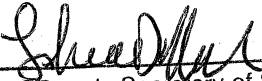
on the issue. An advisory question is approved only if a majority of the votes cast on the question are in favor. The results of the advisory vote shall in no manner be controlling on the sponsoring local governing body.

Fourth—The provisions of this measure are severable. If any portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application of this measure 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 measure. The people of the State of California hereby declare that they would have adopted this measure 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 measure or application thereof would be subsequently declared invalid.

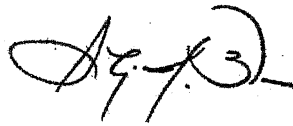
FILED

in the office of the Secretary of State
of the State of California

NOV 02 2023

By 
Deputy Secretary of State

Attest:



Secretary of State