

South Bay Cities Council of Governments

May 24, 2018

TO: SBCCOG Board of Directors
FROM: SBCCOG Steering Committee
RE: November 2018 Statewide Ballot Proposition

Adherence to the Strategic Plan

GOAL B: Regional Advocacy. Advocate for the interests of the South Bay.

There is a potential ballot measure that is in the signature gathering stage for the November 2018 ballot. It is titled, “The Tax Fairness, Transparency, and Accountability Act of 2018.”

This measure would require a 2/3 vote of the public before a local government could raise taxes.

While this is early in the process, the League of California Cities is requesting opposition now.

RECOMMENDATION

The Steering Committee recommends that the Board of Directors oppose the proposition that will potentially qualify for the November ballot that would restrict local taxing authority.

Action Alert

OPPOSE

State Ballot Measure Restricting Local Taxing Authority

Background:

The “Tax Fairness, Transparency and Accountability Act of 2018” or ([AG# 17-0050 Amdt. #1](#)), is currently circulating petitions to qualify for the November ballot. This initiative would drastically limit local revenue authority, while making comparatively minor modifications to state authority. For cities and other local agencies, it applies retroactively and may void some local measures approved by local voters on or after January 1, 2018, but prior to the effective date of this act, that does not comply with the provisions of the act.

This initiative is sponsored by the American Beverage Association the trade association of soda companies and the California Business Roundtable, an organization that claims [membership](#) from some of the state’s largest companies including, Wells Fargo, Albertsons, KB Home, Blackstone Group, Chevron, Farmers Insurance, Granite Construction, among others

One paragraph among the three pages declares one of the purposes of the measure is to overturn “loopholes” created by *Cannabis Coalition v. City of Upland* (concern that voters could enact special taxes via initiative by majority vote); *Chamber of Commerce v. Air Resources Board* (a recent case lost by the Chamber which alleged that the state cap and atrade program was an illegal tax) and *Schmeer v. Los Angeles* (which held that a locally imposed-grocer retained bag fee was not a tax).

This measure, however, has much broader impacts than such fixes.

For more background on the Tax Fairness, Transparency and Accountability Act of 2018 you may view the [title and summary](#) and the [LAO fiscal impact estimate](#).

Summary:

This initiative would drastically limit local revenue authority and for cities and other local agencies, it applies retroactively and may void some local measures approved by local voters on or after January 1, 2018, but prior to the effective date of this act, that does not comply with the provisions of the act, and:

Restricting Local Tax Authority:

- a) Eliminates local authority to impose a tax for general purposes by majority vote and instead requires all local proposed tax increases subject to a two-thirds vote. This proposal also requires two-thirds approval of all members of the local legislative body before a tax can be placed on the ballot.
- b) Requires a two-thirds vote to “extend” a tax to new territory, a new class of payor, or expanded base. For cities, this would limit all future annexations by requiring a separate two-thirds vote of the affected residents prior to applying any existing city tax. Other limitations may apply to a local interpretation that an existing local tax applies to a business or product.
- c) Expands the definition of a tax to include payments voluntarily made in exchange for a benefit received, which may cover local franchise fees.
- d) Prohibits any tax to be placed on the ballot unless it either specifically identifies by binding and enforceable limitation how it can be spent, with any change requiring reapproval by the

- electorate, or states in a separate stand-alone segment of the ballot that the tax revenue is intended for “unrestricted revenue purposes.”
- e) Requires tax measures to be consolidated with the regularly scheduled general election for members of the governing body, unless an emergency is declared by a unanimous vote of the governing body.
 - f) Expands the application of this act to include actions and “legal authority” that may be “enforced” or “implemented” by a local government.
 - g) Requires a tax imposed by initiative to also be subject to a two-thirds vote, to address concerns over the *Upland* decision.
 - h) Clarifies a levy, charge, or exaction retained by and payable to a non-governmental entity is a tax, if the local agency limits in any way the use of the proceeds, to address concerns over the *Schmeer* decision.
 - i) Exempts existing school bond (55% vote) construction authority from the application of the bill.

Restricting Local Fee Authority:

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

- a) Prohibiting a fee or charge from being imposed, increased or extended unless approved by two-thirds vote of the legislative body.
- b) Authorizing a referendum on decisions of a legislative body to impose, increase or extend a fee or charge triggered by petitions signed by 5% of affected voters.
- c) Requiring a fee or charge proposed by initiative to be subject to a two-thirds vote of the electorate.
- d) Narrows the legal threshold from “reasonable” to “actual” costs for fees applied to local services, permits, licenses, etc. Further, the measure authorizes new avenues to challenge “actual” costs by enabling a payor to also second-guess in court whether they are “reasonable.” Opens up further litigation and debate by replacing the existing standard that fees and charges bear a “fair and reasonable relationship to the payors burdens and benefits” with a more rigorous “proportional to the costs created by the payor” standard.
- e) Increases the legal burden of proof for local agencies from “preponderance of evidence” (more likely than not) to “clear and convincing evidence” (high probability) to establish that a levy, charge or other exaction is: (1) not a tax, (2) the amount is no more than necessary to cover the actual costs, and (3) the revenue is not being used for other than its stated purpose.

Provisions Applicable to State Actions:

- a) Requires a tax contained in a regulation adopted by a state agency must be approved by two-third vote of the Legislature (unless the Legislature adopted a state tax that authorized the action of the state agency). This change is responsive to the recent *Chamber of Commerce* decision on cap and trade revenues.
- b) Unlike the retroactive provisions that apply to local government, the application of this Act to the state is only prospective.
- c) Requires a fee contained in a regulation adopted by a state agency to be approved by majority vote of the Legislature.
- d) Imposes the same burden of proof changes applied to local governments.

ACTION:

This initiative is currently circulating petitions for signatures and has surpassed 25% of the required signatures to qualify for the November ballot. The League of California Cities is asking cities to do the following:

- 1) Adopt a city resolution (attached) to demonstrate how harmful this measure would be for our communities and the people of California.

- 2) Send city letters to the California Business Roundtable members expressing your city's concern over this proposed ballot measure. See company and contact information below and sample letter attached.

Company Name	First Name	Last Name	Contact Title	Billing Address	City	State	Postal Code
Albertsons	Rachel	Zenner	Director State & Local Gov't Affairs	11555 Dublin Canyon Road	Pleasanton	CA	94588
American Beverage Association	Fredericka	McGee	Vice President, Government Affairs	1275 Pennsylvania Ave., NW, Suite 1100	Washington	DC	20004
Comcast	Regina	Evans	Senior Director Government Affairs	3055 Comcast Circle	Livermore	CA	94551
Dart Container Corp.	Jonathan	Choi	Regional Manager, Western Region	4000 Barranca Parkway, Suite 250	Irvine	CA	92604
Kaiser Permanente	Kirk	Kleinschmidt	Director, Gov't Relations	353-A Vintage Park Drive	Foster City	CA	94404
State Farm Insurance	Vince	Wetzel	Gov't Affairs	1201 K Street Suite 920	Sacramento	CA	95814
Union Pacific Railroad	Wesley	Lujan	Vice President	915 L Street, Ste 1180	Sacramento	CA	95814
Wells Fargo	Alfredo	Pedroza	CA Local Gov't Relations	45 Fremont St. 26th Floor	San Francisco	CA	94105