LEAGUE OF CALIFORNIA CITIES

The Taxpayer Protection and Government Accountability Act
Initiative No. 21-0042A1
January 21, 2022

Summary: The measure limits the voters' input, adopts new and stricter rules for raising taxes and fees, and makes it more difficult to hold state and local law violators accountable.

Limiting Voter Authority and Accountability

- Limits voter input. Prohibits local voters from providing direction on how local tax dollars should be spent by prohibiting local advisory measures.

- Invalidates Upland decision that allows majority of local voters to pass special taxes. Taxes proposed by the Initiative are subject to the same rules as taxes placed on the ballot by a city council. All measures passed between January 2022 and November 2022 would be invalidated unless reenacted within 12 months.

Restricting Local Fee Authority to Provide Local Services

- Franchise fees. Sets new standard for fees and charges paid for the use of local and state government property. The standard may significantly restrict the amount oil companies, utilities, gas companies, railroads, garbage companies, cable companies, and other corporations pay for the use of local public property. Rental and sale of local government property must be "reasonable" which must be proved by "clear and convincing evidence."

- Except for licensing and other regulatory fees, fees and charges may not exceed the "actual cost" of providing the product or service for which the fee is charged. "Actual cost" is the "minimum amount necessary." The burden to prove the fee or charge does not exceed "actual cost" is changed to "clear and convincing" evidence.

Restricting Authority of State and Local Governments to Issue Fines and Penalties for Violations of Law.

- Requires voter approval of fines, penalties, and levies for corporations and property owners that violate state and local laws unless a new, undefined adjudicatory process is used to impose the fines and penalties.

Restricting Local Tax Authority to Provide Local Services

- Expanding existing taxes (e.g., UUT, use tax, TOT) to new territory (e.g., annexation) or expanding the base (e.g., new utility service) requires voter approval.
- City charters may not be amended to include a tax or fee.
- New taxes can be imposed only for a specific time period.
- Taxes adopted after January 1, 2022, that do not comply with the new rules, are void unless reenacted.
- All state taxes require majority voter approval.
- Prohibits any surcharge on property tax rate and allocation of property tax to state.

Other Changes

- No fee or charge or exaction regulating vehicle miles traveled can be imposed as a condition of property development or occupancy.

Fiscal and Program Effects of Initiative 21-0042A1 on Local Governments

If Initiative 21-0042A1 is placed on the ballot and passed by voters, it will result in:

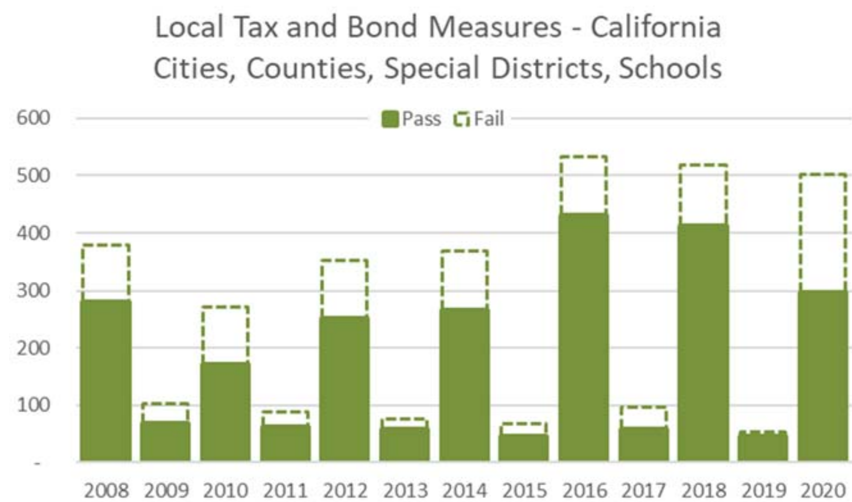
- Billions of local government fee and charge revenues placed at heightened legal peril. Related public service reductions across virtually every aspect of city, county, special district, and school services especially for transportation, and public facility use.
- Hundreds of millions of dollars of annual revenues from dozens of tax and bond measures approved by voters between January 1, 2022 and November 9, 2022 subject to additional voter approval if not in compliance with the initiative.
- Indeterminable legal and administrative burdens and costs on local government from new and more empowered legal challenges, and bureaucratic cost tracking requirements.
- The delay and deterrence of municipal annexations and associated impacts on housing and commercial development.
- Service and infrastructure impacts including in fire and emergency response, law enforcement, public health, drinking water, sewer sanitation, parks, libraries, public schools, affordable housing, homelessness prevention and mental health services.

1. Local Government Taxes and Services Threatened

With regard to taxes, Initiative 21-0042A1:

- Prohibits advisory, non-binding measures as to use of tax proceeds on the same ballot.
    - Voters may be less informed and more likely to vote against measures.
- Eliminates the ability of special tax measures proposed by citizen initiative to be enacted by majority voter approval (*Upland*).
    - Because the case law regarding citizen initiative special taxes approved by majority vote (Upland) is so recent, it is unknown how common these sorts of measures might be in the future. This initiative would prohibit such measures after the effective date of the initiative. Any such measures adopted after January 1, 2022 through November 8, 2022 would be void after November 9, 2023.
- Requires that tax measures include a specific duration of time that the tax will be imposed. This seems to require that all tax increases or extensions contain a sunset (end date).
    - This would require additional tax measures to extend previously approved taxes at additional cost to taxpayers.
- Requires that a tax or bond measure adopted after January 1, 2022 and before the effective date of the initiative (November 9, 2022) that was not adopted in accordance with the measure be readopted in compliance with the measure or will be void twelve months after the effective date of the initiative (November 9, 2023).
    - If past election patterns are an indication, dozens of tax and bond measures approving hundreds of millions of annual revenues may not be in compliance and would be subject to reenactment. Most will be taxes without a specific end date. Because there is no regularly scheduled election within the 12 months following the effective date of the initiative, measures not in compliance would need to be placed on a special election ballot for approval before November 9, 2023 or the tax will be void after that date. General tax measures would require declaration of emergency and unanimous vote of the governing board.

- Requires voter approval to expand an existing tax to new territory (annexations). This would require additional tax measures and would deter annexations and land development in cities.
    - o If a tax is "extended" to an annexed area without a vote after January 1, 2022, it will be void 12 months later until brought into compliance. Because there is no regularly scheduled election within the 12 months following the effective date of the initiative, such extensions for general taxes would, under current law, each require unanimous vote of the agency board to be placed on a special election ballot or would be void after November 9, 2023.



1.a. Number of Measures and Value of Local Taxes at Risk[1]

In 2020, voters in California approved 293 local tax and bond measures for cities, counties, special districts and schools (95 in March and 198 in November). The approved measures enacted $3.85 billion in new annual taxes including $1.3 billion for cities, $302 million for counties, $208 million for special districts (fire, wastewater, open space and transit districts), and $2.037 billion for schools (including for school bonds).

Most tax measures go to the ballot during a presidential or gubernatorial primary or general election in an even year. However, some tax measures are decided at other times. During 2019, there were 45 approved tax and bond measures (24 city, 14 special district, 7 school) adopting $154.0 million in new annual taxes ($124.0 million city, $10.5 million special district and $19.2 million school).

Most tax and bond measures comply with the new rules in Initiative 21-0042Amdt#1 except:

- Dozens of taxes would require end dates. This would require additional measures in future years to extend the taxes further. Very few extensions of existing local taxes fail.
- Majority vote general tax measures could not be accompanied on the same ballot with an advisory, non-binding measure as to use of tax proceeds.
- Special taxes placed on the ballot via citizen initiative would require two-thirds voter approval.

Bond measures have fixed terms. Historically, about 20 percent of other tax measures have included specific durations (i.e. sunsets). Advisory measures as to use of revenues are uncommon. I do not expect the provisions of 21-0042A1 to have any substantial effect on passage rates. However, some 2022 approved measures would likely have to put back on the ballot.

Based on history, a reasonable estimate of the annualized tax revenues estimated to be approved by

[1] Source: Compilation and summary of data from County elections offices.

voters in 2022 and placed at risk by this initiative is at least **$1.5 billion, including $1.0 billion from cities and $500 million from counties and special districts**.[2]

1.b. Additional Costs and Public Service Effects of the Tax Provisions

In addition to service delays and disruption due to new tax revenues placed at greater legal risk, there will be substantial additional costs for legal defense. The deterrence of taxes for annexations will delay and deter municipal annexations.

2. "Exempt Charges" (fees and charges that are not taxes) and Services Threatened

With regard to fees and charges adopted after January 1, 2022, Initiative 21-0042A1:

- Subjects new fees and charges for a product or service to a new "actual cost" test defined as "(i) the minimum amount necessary to reimburse the government for the cost of providing the service to the payor, and (ii) where the amount charged is not used by the government for any purpose other than reimbursing that cost. In addition, subjects these same charges to a new, undefined, "reasonable" standard.
- Subjects fees and charges for entrance to local government property; and rental and sale of local government property to a new, undefined, "reasonable" test.
- Subjects a challenged fee or charge to new, higher burdens of proof if legally challenged.
- Prohibits a levy, charge or exaction regulating or related to vehicle miles traveled, imposed as a condition of property development or occupancy.

2.a. Value on New Local Government Fees and Charges at Risk[3]

Virtually every city, county, and special district must regularly (e.g., annually) adopt increases to fee rates and charges and revise rate schedules to accommodate new users and activities. Most of these would be subject to new standards and limitations under threat of legal challenge. Based on the current volume of fees and charges imposed by local agencies and increases in those fees simply to accommodate inflation, the amount of local government fee and charge revenue placed at risk is about **$1 billion per year including those adopted since January 1, 2022. Of this $1 billion, about $570 million is for special districts, $450 million is cities, and $260 million is counties.**[4]

Major examples of affected fees and charges are:

1. Nuisance abatement charges - such as for weed, rubbish and general nuisance abatement to fund community safety, code enforcement, and neighborhood cleanup programs.
2. Commercial franchise fees.
3. Emergency response fees - such as in connection with DUI.
4. Advanced Life Support (ALS) transport charges.
5. Document processing and duplication fees.
6. Transit fees, tolls, parking fees, public airport and harbor use fees.
7. Facility use charges, fees for parks and recreation services, garbage disposal tipping fees.

In addition to fees and charges, the measure puts fines and penalties assessed for the violation of state and

[2] This does not include citizen initiative special tax approved by majority but not two-thirds. Because this approach is new, the number of these measures and amount of revenue involved cannot be estimated.
[3] Source: California State Controller Annual Reports of Financial Transactions concerning cities, counties and special districts, summarized with an assumed growth due to fee rate increases (not population) of 2 percent annually.
[4] School fees are also affected but the amount is negligible by comparison.

local law at risk, making them taxes subject to voter approval under certain circumstances.

2.b. Additional Costs and Public Service Effects of the Fee/Charge Provisions

In addition to service delays and disruptions due to fee and charge revenues placed at greater legal risk, there would be substantial additional costs for legal defense. The risk to fees and charges will make infrastructure financing more difficult and will deter new residential and commercial development.

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