

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. 17-0050) - 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) State and 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. Compared to 2009, state revenues from taxes and other sources are set to grow by 68 percent— \$72 billion, or the equivalent of more than an additional \$7,200 annually for a family of four. Comparable growth in local government charges such as employee pensions adds considerably more to this total. This growing burden of taxes and other 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.

(b) Californians are already among the highest taxed people in the country and already 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 9th 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.

(c) Californians have tried repeatedly to force greater accountability upon government before 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, state and local governments, and special interests have promised that taxpayer money 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. Polling by the nonpartisan Public Policy Institute of California showed 88 percent of Californians believe state government wastes a lot or some of the money we pay in taxes and charges.

(e) Contrary to the voters' intent, voter approval of government revenue increases and spending accountability measures have been weakened by the Legislature, the courts, and special interests, making it easier to raise government revenues in a myriad of ways by only a simple majority of the Legislature or with no vote by the public who is expected to pay the costs.

(f) Worse, court-created loopholes have enabled 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 the Legislature, local governments and even special interest groups to: (1) pass vaguely-worded statutes allowing unelected bureaucrats to impose new fees and other charges on their own that increase the costs of goods and services in the state; (2) impose new taxes and other charges by hiding them and simply calling them by another name or even using the term "something else;" (3) shelter the revenues 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 charges 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 require a two-thirds vote of the Legislature at the state level, and two-thirds of voters at the local level, for increases in state and local taxes, no matter how they are labeled nor how or by whom they are proposed. The

voters also intend that government remain accountable to the voters for how the taxes, fees, charges, and other government 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 state revenue, by any name or manner of extraction paid directly or indirectly by Californians, shall be authorized only by a two-thirds vote of the Legislature to ensure that the purposes for such tax, fee, or other charge are 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 taxes, fees, 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 state and local revenues are utilized, so that revenues are used for their promised purposes, and not diverted to other uses.

(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 regulation or other bureaucratic action.

(f) 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*, and *Schmeer v. Los Angeles County*.

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

SECTION 3.

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

(b) ~~(a)~~ Any change in state statute law which results in any taxpayer paying a 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, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property, may be imposed.

~~(c) (b)~~ As used in this section, "tax" means every ~~any~~ levy, charge, or exaction of any kind imposed, adopted, created, or established by the State ~~state law that is not an exempt charge.~~ except the following:

(d) 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 reasonable charge imposed for the reasonable not to exceed the actual regulatory costs to the State incident to for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, imposing assessments on a business by a tourism marketing district, and the administrative enforcement and adjudication thereof.

~~(3)~~ ~~(4)~~ A 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.

~~(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 the State, as a result of a state administrative enforcement agency pursuant to adjudicatory due process, to punish a violation of law.

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

(e) As used in this section, "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. Because subdivision (f) of Section 9 of Article IX of this Constitution requires that the University of California shall be entirely

independent of all political or sectarian influence, "state law" does not include acts of the Regents of the University of California.

(f)(1) A levy, charge, or exaction of any kind imposed, adopted, created, or established by state law and which is retained by or payable to a non-government entity remains subject to this section if a state 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 state law 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.

(g) No new, increased, or extended tax shall be valid or given any effect unless:

(1) The state law 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 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 the separate, stand-alone section required by paragraph (2).

(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 state law 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 identified pursuant to this subdivision.

(h) The specific and legally binding and enforceable limitation on how the revenue from a tax can be spent shall only be changed by a state law which is 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.

(i) ~~(d)~~ The State 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 is 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 bear a fair or reasonable relationship to the payor's burdens

on, or benefits received from, the governmental activity is proportional based on the service or product provided to the payor as described in paragraph (1) of subdivision (d), or is proportional to the costs to the State created by the payor for performing the regulatory tasks described in paragraph (2) of subdivision (d).

Section 5. Section 3.1 is added to Article XIII A of the California Constitution, to read:

SECTION 3.1.

(a) No new, increased, or extended levy, charge, or exaction of any kind that is contained in, or authorized by, a new or amended regulation shall be given any force or effect unless and until the Legislature by statute approves the levy, charge, or exaction as provided in this section.

(b) If the levy, charge, or exaction is a tax as defined in Section 3 of this article, then it must be approved by not less than two-thirds of all members elected to each of the two houses of the Legislature. If the levy, charge, or exaction is an exempt charge as defined in Section 3 of this article, then it must be approved by not less than a majority of all members elected to each of the two houses of the Legislature.

(c) The Legislature shall not vote to approve any levy, charge, or exaction of any kind subject to this section until after the regulation containing the levy, charge, or exaction is approved in its final form by the Office of Administrative Law or any alternative or successor agency. No regulation containing or authorizing a levy, charge, or exaction subject to this section shall be filed with the Secretary of State or published in the California Code of Regulations, or any alternative or successor publication, until the levy, charge, or exaction is approved by the Legislature in compliance with this section.

(d) An emergency regulation, including any readoption thereof, that contains or authorizes any new, increased, or extended levy, charge, or exaction of any kind shall not remain in effect longer than 120 days without approval of the levy, charge, or exaction by the Legislature pursuant to this section.

(e) This section shall not apply to any new, increased, or extended levy, charge, or exaction of any kind that is contained in, or authorized by, a new or amended regulation promulgated pursuant to a state tax that was adopted in compliance with Section 3.

(f) For purposes of this section, "regulation" has the same meaning as found in Section 11342.600 of the Government Code, and "emergency" has the same meaning as found in Section 11342.545 of the Government Code, as those sections read on January 1, 2017.

(g) Nothing in this section shall be interpreted as a grant of authority to tax to any executive branch agency or department.

Section 6. 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 7. 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 8. 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 9. 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 10. Liberal Construction.

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

Section 11. Conflicting Measures.

(a)(1) In the event that this initiative measure and another initiative measure or measures relating to state or 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 12. 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 13. 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 14. Effective Date.

Notwithstanding any other provision of the California Constitution, this act shall take effect the day after its approval by the voters.