

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Randy Breault, Director of Public Works/City Engineer via City Manager

SUBJECT: Oppose Pending Ballot Measure Sponsored by California Business Roundtable

DATE: May 17, 2018

City Council Goals:

To provide for effective and efficient delivery of City services. (#1)

To design infrastructure and public facilities to be efficient, cost effective and to contribute to the cohesion and character of the community. (#2)

Purpose:

To consider taking a formal position on a pending state ballot measure that would significantly reduce the city's ability to provide public services by expanding the definition of taxes, and by also significantly increasing the vote threshold for approval of local taxes.

Recommendation:

Approve Resolution No. 2018-37.

Background:

The most onerous features of the ballot measure are described in detail in the League of CA Cities "Action Alert" in the "Summary" section in two categories; "Restricting Local Tax Authority" and "Restricting Local Fee Authority".

The Attorney General's title & summary on the measure predicts, ". . . potentially substantial decrease in local revenues." In a similar vein, the Legislative Analyst's Office notes, "roughly half of recently enacted sales, business, hotel, and utility general tax measures would have failed if the measure's increased vote threshold requirements were in effect, suggesting that the reduction in local tax revenue could be substantial."

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Discussion:

The League of California Cities Board of Directors has taken a formal oppose position on this measure. The attached news article from the League describes the membership of the coalition formed to oppose this measure. Perhaps the most-telling line in this newsletter is this quote from the League’s Executive Director, “Interfering with our cities’ ability to raise revenues to pay for local services is a far overreach that will hurt California’s quality of life for generations to come.”

Fiscal Impact:

Potentially significant reduction in general fund revenues if this measure were to pass.

Measure of Success

A failure at the voting booths of the proposed measure.

Attachments:

- Resolution No. 2018-37
- League of California Cities “Action Alert”
- California Attorney General Title & Summary for Initiative 17-0050 (Amdt. #1)
- CA Legislative Analyst’s Office’s review of Attorney General File No. 17-0050 (Amdt. #1)
- League of California Cities 4/20/18 news article



Director of Public Works/City Engineer



City Manager

RESOLUTION NO. 2018-37

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BRISBANE OPPOSING THE TAX FAIRNESS,
TRANSPARENCY, AND ACCOUNTABILITY ACT OF 2018**

WHEREAS, California's cities, counties and special districts follow strict guidelines and existing state law regarding the establishment of reasonable fees and the required voter approval of all local taxes; and

WHEREAS, there is a signature-gathering campaign for a state ballot measure sponsored by the California Business Roundtable that would severely harm the ability of local governments to continue to provide quality services by imposing onerous roadblocks to raising local revenue to address community needs, services and infrastructure improvements; and

WHEREAS, it is important for local community members, in concert with their duly-elected officials - rather than a special interest group in Sacramento - to determine the services and funding levels appropriate for their own cities; and

WHEREAS, the proposed ballot measure would allow businesses to escape from their existing obligations to pay the full cost of services that they request and receive from local agencies and benefit from; and

WHEREAS, the proposed ballot measure would then shift the burden of these uncovered costs from business interests to local general funds supported by taxpayers, and thereby reduce general funds available to support police, fire, parks, planning, and other community services.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Brisbane as follows:

SECTION 1. The City of Brisbane hereby opposes the Tax Fairness, Transparency and Accountability Act of 2018 sponsored by the California Business Roundtable on the

grounds that this measure would harm the ability of local communities to adequately fund services; and

SECTION 2. The City Manager is hereby directed to email a copy of this adopted resolution to the League of California cities at cityletters@cacities.org.

W. Clarke Conway, Mayor

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Brisbane held on the ____ day of _____, 2018, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Ingrid Padilla, City Clerk

Action Alert

— League of CA Cities

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 under circulation for signatures and proposed 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 any local measure 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 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 and 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 Trade 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 any local measure 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.

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

EXPANDS REQUIREMENT FOR SUPERMAJORITY APPROVAL TO ENACT NEW

REVENUE MEASURES. INITIATIVE CONSTITUTIONAL AMENDMENT. For new

revenue measures, broadens definition of state taxes that would require approval by two-thirds

supermajority vote of Legislature. For local governments, requires two-thirds approval of

electorate to raise new taxes or governing body to raise new fees. Requires that state and local

laws enacting new taxes specify how revenues can be spent. Heightens legal threshold for state

and local governments to prove that fees passed without two-thirds approval are not taxes.

Invalidates local taxes imposed in 2018, unless taxes meet criteria adopted by this measure.

Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state

and local government: **Likely minor decrease in annual state revenues and potentially**

substantial decrease in annual local revenues, depending upon future actions of the

Legislature, local governing bodies, voters, and the courts. (17-0050.)



January 11, 2018

RECEIVED

JAN 11 2018

Hon. Xavier Becerra
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional initiative concerning state and local government taxes and fees (A.G. File No. 17-0050, Amendment No. 1).

BACKGROUND

State Government

Taxes and Fees. The state levies various taxes to fund over 80 percent of the state budget. The remainder of the budget is funded through various fees and other charges. Examples include: (1) charges for a specific government service or product, such as a driver's license; (2) charges relating to regulatory activities; (3) charges for entering state property, such as a state park; and (4) judicial fines, penalties, and other charges.

Vote Thresholds for Changing State Taxes and Fees. Under the State Constitution, state tax increases require approval by two-thirds of each house of the Legislature. The Legislature needs approval by only a majority of each house in order to levy fees and other charges. Voters, on the other hand, can levy state taxes or fees via initiative by a majority vote of the statewide electorate. The Legislature can reduce or change taxes with a majority vote of each house, provided the change does not increase taxes on any taxpayer. If a bill increases a tax on any taxpayer, the bill requires a two-thirds vote of both houses of the Legislature—even if the bill results in an overall state revenue loss.

Local Governments

Taxes and Fees. The largest local government tax is the property tax, followed by local sales taxes, utility taxes, hotel taxes, and other taxes. In addition to these taxes, local governments levy a variety of fees and other charges. Examples include parking meter fees, building permit fees, regulatory fees, and judicial fines and penalties.

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Vote Threshold for Changing Local Taxes and Fees. In order to increase taxes, the State Constitution generally requires that local governments secure a two-thirds vote of their governing body—for example, a city council or county board of supervisors—as well as approval of the electorate in that local jurisdiction. “General taxes”—that is, taxes levied by cities and counties for any purpose—may be approved by a majority vote of the electorate. On the other hand, “special taxes”—that is, any taxes levied by schools or special districts or taxes levied by cities and counties for specified purposes—require a two-thirds vote of the electorate. Citizen initiatives that increase taxes must secure the same vote of the electorate—majority vote for general taxes and two-thirds vote for special taxes—as those placed on the ballot by local governing bodies.

Fee increases, on the other hand, generally may be approved by a majority vote of the local governing body and do not require voter approval. (Exceptions include certain property-related fees which require voter approval.) Citizen initiatives changing fees must be approved by a majority vote of the electorate.

PROPOSAL

This measure amends the State Constitution to change the rules for how the state and local governments can impose taxes, fees, and other charges.

Taxes

Expands Definition of Tax. The measure amends the State Constitution to expand the definition of taxes to include some charges that state and local governments currently treat as nontax levies. As a result, the measure would increase the number of revenue proposals subject to the higher state and local vote requirements for taxes. Specifically, regulatory fees and fees charged for a government service or product would have to more closely approximate the payer’s actual costs in order to remain fees. Certain charges retained by or payable to nongovernmental entities would also be considered taxes under the measure. In addition, certain charges imposed for a benefit or privilege granted the payer but not granted to those not charged would no longer be considered fees.

Increases Vote Thresholds for Some Local Taxes. The measure increases the vote thresholds for increasing some local taxes. Specifically, the measure requires that increases in local general taxes be approved by a two-thirds vote of the electorate whether sought by local governments or by citizen initiative. Any local government tax approved between January 1, 2018 and the effective date of this measure would be nullified unless it complies with the measure’s new vote threshold and other rules described below.

Allowable Uses of Revenues Must Be Specified in Certain Cases. The measure requires tax measures to include a statement of how the revenues can be spent. If the revenue is to be used for general purposes, the law must state that the revenue can be used for “unrestricted general revenue purposes.” These requirements would apply to increases in state and local taxes. In the case of local government taxes, the measure requires that a statement of allowable uses be included in the ballot question presented to voters. Any change to the statement of allowable uses of revenue would have to be passed by (1) a two-thirds majority of both houses of the

Legislature in the case of state taxes, (2) a two-thirds vote of the local governing body and two-thirds vote of the electorate in the case of local government taxes, or (3) a two-thirds vote of the electorate in the case of local citizen initiative taxes.

Local Government Fees

Increases Vote Thresholds for Certain Local Government Fees. The measure requires that increased fees and other charges be approved by either a two-thirds vote of a local governing body in the case of local government fees or a two-thirds vote of the electorate in the case of local citizen initiative fees. The measure also provides that fees and other charges levied by a local governing body may be overturned via referenda. (The measure would not change vote thresholds and rules for developer fees and property assessments imposed on parcels.)

Other Provisions

State Regulations Containing Tax or Charge Must Be Approved by Legislature. Under the measure, state regulations containing increased taxes or fees would not take effect unless the Legislature passes a law approving the regulation. (This requirement would not apply to regulations implementing laws that were already approved by the Legislature.) If the regulation contains a tax, the bill allowing the regulation to remain in place must be passed by a two-thirds majority of both houses of the Legislature. The measure allows emergency regulations to take effect for up to 120 days without approval of the Legislature.

FISCAL EFFECTS

Reduced State Tax Revenue. By increasing the number of revenue measures subject to a two-thirds vote of both houses of the Legislature, the measure makes it harder for the Legislature to increase certain state revenues. The amount of reduced state revenue under the measure would depend on various factors, including future court decisions that could change the number of revenue measures subject to the higher vote requirements. The fiscal effects also would depend on future decisions made by the Legislature. For example, requirements for legislative approval of regulations that increase taxes or fees could result in reduced revenue depending upon future votes of the Legislature. That reduced revenue could be particularly notable for some state programs largely funded by fees. Due to the uncertainty of these factors, we cannot estimate the amount of reduced state revenue but the fiscal effects on state government likely would be minor relative to the size of the state budget.

Reduced Local Government Tax and Fee Revenue. By expanding the definition of taxes and increasing vote thresholds for certain taxes and fees, the measure makes it harder for local governments and initiative proponents to increase local revenues. The amount of reduced local government revenues would also depend on various factors, including the extent to which local governments would substitute developer fees and other majority-vote revenue sources for the revenue sources subject to a higher vote threshold under the measure. Roughly half of recently enacted sales, business, hotel, and utility general tax measures would have failed if the measure's increased vote threshold requirements were in effect, suggesting that the reduction in local tax revenue could be substantial.

Summary of Fiscal Effects

- Likely minor decrease in annual state revenues and potentially substantial decrease in annual local revenues, depending upon future actions of the Legislature, local governing bodies, voters, and the courts.

Sincerely,



Mac Taylor
Legislative Analyst

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Michael Cohen
Director of Finance

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Coalition Forms to Oppose Big Soda and Corporate Special Interest-Backed Initiative to Decimate Local Services

League Joins with SEIU California, AFSCME CA, California Professional Firefighters and PORAC to Lead Charge to Defeat Measure

April 20, 2018

League of CA Cities News Article

The Committee to Protect Our Communities formed on April 18 to oppose the “Tax Fairness, Transparency and Accountability Act,” a misleading named and dangerous initiative sponsored by the American Beverage Association (ABA) and the California Business Roundtable.

Proponents are currently gathering signatures to qualify the measure for the November 2018 ballot. The coalition opposing this measure comprises local governments, working families, labor groups, concerned individuals and business groups.

“Libraries, parks, medical emergency response, garbage and sewer, police, fire, streets and roads. These are the essential services that would be devastated by this proposed measure that puts corporate interests over the needs of local communities and our residents. Interfering with our cities’ ability to raise revenues to pay for local services is a far overreach that will hurt California’s quality of life for generations to come,” said Carolyn Coleman, chair of the Committee to Protect our Communities and League executive director.

To date, ABA has put \$4.1 million dollars into the committee in support of the initiative — well over 80 percent of the money raised so far by the proponents.

Joining the opposition coalition are a number of widely respected organizations, including the American Federation of State, County and Municipal Employees, California (AFSCME), the California Professional Firefighters (CPF), and the Peace Officers Research Association of California (PORAC).

The “Tax Fairness, Transparency and Accountability Act” would drastically limit local revenue authority. In part, it 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. It also requires that a tax contained in a regulation adopted by a state agency must be approved by two-third vote of the Legislature. For cities and

other local agencies, it applies retroactively and may void some local measures approved by local voters on or after Jan. 1, 2018.

Proponents have until June 28 to qualify their initiative for the ballot.