



# Board of Administration

## Agenda Item 8c

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**March 20, 2024**

**Item Name:** Initiative 21-0042A1: Taxpayer Protection and Government Accountability Act

**Program:** Legislation

**Item Type:** Action

### **Executive Summary**

The Taxpayer Protection and Government Accountability Act (Act or measure) amends the State Constitution to change the definitions and processes state and local governments use to impose new or higher taxes or other charges, as defined.

### **Background**

#### Current Law

The State Constitution requires approval by two-thirds of each house of the Legislature or a majority vote of the statewide electorate to increase state taxes. A reduction of state taxes only requires a majority vote by each house of the Legislature. The Legislature may also enact statutes that delegate its authority to state entities to increase or change fees within certain limits.

State law requires the approval of a local governing body and approval of voters in the local jurisdiction to increase local taxes. Tax increases used for a specific purpose (special taxes) require two-thirds vote of the local electorate while tax increases used for any purpose (general taxes) only require a majority-vote of the local electorate. Local governing bodies may delegate to local administrative entities the ability to increase or change fees and other charges within certain limits.

#### Current Litigation

On September 26, 2023, the Governor, Legislature of the State of California, and John Burton filed an Emergency Petition for Writ of Mandate (*Legislature of the State of California et al. v. Weber (Hiltachk)* – Case No. S281977) with the Supreme Court of the State of California which argued that the measure was invalid because it would revise, not amend, the State Constitution. Several local governments, employer associations, and labor groups have provided amicus curiae briefs in support of the petition. On the other side, taxpayer groups among others filed

amicus curiae briefs in defense of the measure.<sup>1</sup> The case has been fully briefed and it has been reported that the court will likely hear arguments in March and make a decision by late June.

## Analysis

This measure was submitted to the Office of the Attorney General (OAG) on January 4, 2022. On February 3, 2022, the OAG released the title and summary of the measure. The measure is eligible to be placed on the November ballot. On June 27, 2024, the Secretary of State will certify the measure as qualified for the November 5, 2024, General Election ballot, unless withdrawn by the proponent before June 27, 2024. If the measure is placed on the November ballot and passes, it will do the following:

As it pertains to the State, the Act:

- Sets forth that every levy, charge or exaction is either a tax or exempt charge
- Requires proposed new or higher taxes passed by the Legislature to also be approved by a majority vote of the electorate
- Specifies that each act to impose a new or higher tax shall:
  - Include the duration of time the tax will be imposed
  - Include an estimate of the annual amount expect to be derived from the tax
  - Include a specific, legally binding, and on how revenue generated from the tax can be spent
  - Clearly state and identify in a separate, stand-alone section any tax revenue that can be spent for “unrestricted general revenue purposes”
- Provides that if the use of the revenue changes, the tax shall be adopted by a separate act passed by a two-thirds vote of each house and submitted to the electorate and approved by a majority vote
- Prescribes that the title, summary, ballot label, or question required for a measure include:
  - The type and amount or rate of the tax
  - The duration of the tax
  - The use of the revenue derived from the tax
- Defines an exempt charge as:
  - A reasonable charge for a specific government service or product, as specified, that does not exceed the actual costs
  - A charge for the reasonable regulatory costs, as specified
  - A levy, charge or exaction collected from local units of government, health care providers or health care service plans 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
  - A reasonable charge for entrance to or use of state property, or the purchase, rental, or lease of state property

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<sup>1</sup> [https://appellatecases.courtinfo.ca.gov/search/case/partiesAndAttorneys.cfm?dist=0&doc\\_id=2757336&doc\\_no=S281977&request\\_token=NilwLSEnXkw9W1ApSCNTEJIUDg0UDxTKyJOIz1SQCAgCg%3D%3](https://appellatecases.courtinfo.ca.gov/search/case/partiesAndAttorneys.cfm?dist=0&doc_id=2757336&doc_no=S281977&request_token=NilwLSEnXkw9W1ApSCNTEJIUDg0UDxTKyJOIz1SQCAgCg%3D%3)

- A fine or penalty imposed by the judicial branch of government or a state administrative enforcement agency
- A levy, charge, assessment or exaction collected for the promotion of California tourism
- Requires that proposed new or higher exempt charges must be imposed by an act passed by the Legislature and that the act shall specify the type of exempt charge and the amount and rate of the exempt charge
- Specifies that tax means every levy, charge, or exaction imposed by state law that is not an exempt charge
- Sets forth that 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 the measure is void 12 months after the effective date of the act unless the tax or exempt charge is reenacted as provided for by the measure
- Provides that the State bears the burden of proving, as specified, that an exempt charge is not a tax and that the amount of the exempt charge is reasonable and does not exceed the actual cost of the service or product provided
- Establishes definitions of key terms for the enactment of this measure

Proposed changes to the State Constitution for local governments are similar with a few exceptions:

- Specifies that no local law, whether proposed by a governing body or by an elector, may impose, extend, or increase a general tax or impose a special tax unless it has been submitted to the electorate and approved by a majority vote.
- Provides that if the proposed tax is a general tax, the title, summary, ballot label or question must include the phrase "for general government use" and that 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.
- States that only the governing body of a local government, as specified, shall have the authority to impose an exempt charge.
- Prohibits a Charter amendment which provides for the imposition, extension, or increase of a tax or exempt charge from being submitted to or approved by electors, nor may any Charter amendment, as specified above, submitted to or approved by the electors become effective "for any purpose".

The measure also includes changes to property taxes provisions.

### *Arguments in Support*

As an example, the Taxpayer Protection and Government Accountability Act website<sup>2</sup> states that this measure 1) Empowers voters with the right to approve or reject all new state and local taxes; 2) Increases accountability and transparency so politicians spend our tax dollars more efficiently; and 3) Stops politicians from using "hidden taxes" disguised as fees to drive up the cost of government services.

### *Arguments in Opposition*

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<sup>2</sup> <https://taxpayerprotection.com/>

As an example, CitiPAC writes in its March 30 press release<sup>3</sup>, this measure 1) Undermines voter rights, transparency, and accountability; and 2) Jeopardizes vital local and state services.

### **Budget and Fiscal Impacts**

The Fiscal Impact Estimate Report released by the Legislative Analyst of the Legislative Analyst's Office and the Director of the Department of Finance on January 19, 2022 estimated that this measure would have the following "major fiscal effects:" "[l]ower annual state and local revenues, potentially substantially lower, depending on future actions of the Legislature, local governing bodies, voters, and the courts."

### **Attachments**

Attachment 1 – Initiative Text

Attachment 2 – Title and Summary

Attachment 3 – LAO Analysis

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<sup>3</sup> <https://citipac.org/news/>