

October 20, 2009

09-0064

VIA PERSONAL DELIVERY

The Honorable Edmund G. Brown, Jr.
Attorney General
1300 I Street
Sacramento, CA 95814

RECEIVED

OCT 20 2009

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Krystal Paris, Initiative Coordinator

Re: Request for Title and Summary- Initiative Constitutional Amendment

Dear Mr. Brown:

I am one of three proponents of the attached initiative constitutional amendment. Pursuant to Article II, Section 10(d) of the California Constitution and Section 9002 of the Elections Code, I hereby request that a title and summary be prepared. Included with this submission is the required proponent affidavit signed by myself as one of three proponents of this measure pursuant to section 9608 of the California Elections Code. Enclosed is a check for \$200.00. My residence address is attached.

All inquires or correspondence relative to this initiative should be directed to Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, 1415 L Street, Suite 1200, Sacramento, CA 95814; Attention: Steve Lucas (telephone: 415/389-6800).

Thank you for your assistance.

Sincerely,

PROPONENTS:

Joshua Shaw

Christopher K. McKenzie

James N. Earp

Enclosure: Proposed Initiative

SECTION 1. Title.

This act shall be known and may be cited as the "Local Taxpayer, Public Safety, and Transportation Protection Act of 2010."

SECTION 2. Findings and Declarations.

The people of the State of California find and declare that:

(a) In order to maintain local control over local taxpayer funds and protect vital services like local fire protection and 9-1-1 emergency response, law enforcement, emergency room care, public transit, and transportation improvements, California voters have repeatedly and overwhelmingly voted to restrict state politicians in Sacramento from taking revenues dedicated to funding local government services and dedicated to funding transportation improvement projects and services.

(b) By taking these actions, voters have acknowledged the critical importance of preventing State raids of revenues dedicated to funding vital local government services and transportation improvement projects and services.

(c) Despite the fact that voters have repeatedly passed measures to prevent the State from taking these revenues dedicated to funding local government services and transportation improvement projects and services, state politicians in Sacramento have seized and borrowed billions of dollars in local government and transportation funds.

(d) In recent years, state politicians in Sacramento have specifically:

(1) Borrowed billions of dollars in local property tax revenues that would otherwise be used to fund local police, fire and paramedic response and other vital local services;

(2) Sought to take and borrow billions of dollars in gas tax revenues that voters have dedicated to on-going transportation projects and tried to use them for non-transportation purposes;

(3) Taken local community redevelopment funds on numerous occasions and used them for unrelated purposes;

(4) Taken billions of dollars from local public transit like bus, shuttle, light-rail and regional commuter rail, and used these funds for unrelated state purposes.

(e) The continued raiding and borrowing of revenues dedicated to funding local government services and dedicated to funding transportation improvement projects and services can cause severe consequences, such as layoffs of police, fire and paramedic first

responders, fire station closures, healthcare cutbacks, delays in road safety improvements, public transit fare increases and cutbacks in public transit services.

(f) State politicians in Sacramento have continued to ignore the will of the voters, and current law provides no penalties when state politicians take or borrow these dedicated funds.

(g) It is hereby resolved, that with approval of this ballot initiative, state politicians in Sacramento shall be prohibited from seizing, diverting, shifting, borrowing, transferring, suspending or otherwise taking or interfering with tax revenues dedicated to funding local government services or dedicated to transportation improvement projects and services.

SECTION 3. Statement of Purpose.

The purpose of this measure is to conclusively and completely prohibit state politicians in Sacramento from seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with revenues that are dedicated to funding services provided by local government or funds dedicated to transportation improvement projects and services.

SECTION 4. Article XVII is added to the California Constitution, to read:

SECTION 1. The Legislature may not reallocate, transfer, borrow, appropriate, restrict the use of, or otherwise use the proceeds of any tax imposed or levied by a local government solely for the local government's purposes.

SEC. 2. On and after the effective date of the measure adding this article, and notwithstanding subparagraphs (B) and (C) of paragraph (1) of subdivision (a) of Section 25.5 of Article XIII of this Constitution or any other law, the Legislature may not suspend subparagraph (A) of paragraph (1) of subdivision (a) of Section 25.5 of Article XIII. The Legislature may not change the pro rata shares in which ad valorem property taxes are allocated among local agencies to transfer property taxes to a local government when the Legislature or any state agency mandates a new program or higher level of service on that local government.

SEC. 3. On and after the effective date of the measure adding this article, and notwithstanding Section 15 of Article XI of this Constitution or any other law, the Legislature may not change the allocation of revenues described in Section 15 of Article XI to reimburse a city, county, or city and county when the Legislature or any state agency mandates a new program or higher level of service on that city, county, or city and county.

SEC. 4. On and after the effective date of the measure adding this article, and notwithstanding Article XIX of this Constitution or any other law:

(a) Revenues from taxes imposed by the State on motor vehicle fuels for use in motor vehicles upon public streets and highways, over and above the costs of collection and any refunds authorized by law, shall be deposited into the Highway Users Tax Account (Section 2100 of the Streets and Highways Code) or its successor, which is hereby declared to be a trust

fund, and shall be used solely for the purposes identified in subdivisions (a) and (b) of Section 1 of Article XIX.

(b) The Legislature may, by a two-thirds vote of the membership in each house, modify the statutory allocations in effect on June 30, 2009 only in accordance with the procedures specified in Section 3 of Article XIX. Any bill modifying the statutory allocations in effect on June 30, 2009 must remain in its final form for at least 12 days prior to passage in either house of the Legislature.

(c) Revenues from taxes described in subdivision (a) allocated to cities, counties, and areas of the State may be used solely by the entity to which they are allocated, and solely for the purposes described in Sections 1 and 4 of Article XIX; and Section 5 of Article XIX subject to the requirements of subdivision (e). The Legislature may not take any action that permanently or temporarily borrows, diverts, appropriates for unrelated purposes, or delays, defers, suspends, or otherwise interrupts the payment, allocation, distribution, disbursal, or transfer of revenues from taxes described in subdivision (a) to cities, counties, and areas of the State pursuant to the procedures in effect on June 30, 2009.

(d) If the Legislature reduces or repeals the taxes described in subdivision (a) and adopts an alternative source of revenue to replace the moneys derived from those taxes, the replacement revenue shall be deposited and allocated in the same manner, and dedicated to the same purposes, as the revenues being replaced.

(e)(1) Revenues allocated to any city or county pursuant to Section 3 of Article XIX for the purposes specified in subdivision (a) of Section 1 of Article XIX shall not be used by the State for any purpose, including, but not limited to, payment of principal and interest on voter-approved bonds issued by the State. Up to 25 percent of the revenues allocated to any city or county pursuant to Section 3 of Article XIX for the purposes specified in subdivision (a) of Section 1 of Article XIX may be used by any city or county for the payment of principal and interest on voter-approved bonds issued by that city or county for such purposes.

(2) Up to 25 percent of the revenues allocated to the State pursuant to Section 3 of Article XIX for the purposes specified in subdivision (a) of Section 1 of Article XIX may be pledged or used by the State, upon approval of the voters and appropriation by the Legislature, for the payment of principal and interest on voter-approved bonds issued by the State for such purposes on or after November 2, 2010.

SEC. 5. On and after the effective date of the measure adding this article, and notwithstanding Section 1 of Article XIX A of this Constitution or any other law:

(a) All of the following shall be deposited no less than quarterly into the Public Transportation Account (Section 99310 of the Public Utilities Code), or its successor, which is hereby declared to be a trust fund:

(1) All revenues specified in paragraphs (1) through (3), inclusive, of subdivision (a) of Section 7102 of the Revenue and Taxation Code, as that section read on June 1, 2001.

(2) All moneys in the Transportation Investment Fund that are allocated for public transit and mass transportation pursuant to paragraph (A) of subdivision (c) of Section 1 of Article XIX B.

(b) Funds in the Public Transportation Account may only be used for transportation planning and mass transportation purposes. The Legislature may not take any action that permanently or temporarily borrows, diverts, appropriates for unrelated purposes, or delays, defers, suspends, or otherwise interrupts the quarterly deposit of the funds specified in subdivision (a) into the Public Transportation Account. Funds in the Public Transportation Account may not be loaned or otherwise transferred to the General Fund or any other fund or account in the State Treasury.

(c) For the purposes of subparagraph (A) of paragraph (1) of subdivision (e), "transportation planning" means only the purposes described in subdivisions (c) through (f), inclusive, of Section 99315 of the Public Utilities Code, as that section read on July 30, 2009.

(d) For the purposes of this article and Article XIX B, "mass transportation," "public transit," and "mass transit" have the same meaning as "public transportation." "Public transportation" means:

(1)(A) Surface transportation service provided to the general public, complementary paratransit service provided to persons with disabilities as required by 42 U.S.C. 12143, or similar transportation provided to people with disabilities or the elderly; (B) operated by bus, rail, ferry, or other conveyance on a fixed route, demand response, or otherwise regularly available basis; (C) generally for which a fare is charged; and (D) provided by any transit district, included transit district, municipal operator, included municipal operator, eligible municipal operator, or transit development board, as those terms were defined in Article 1 of Chapter 4 of Part 11 of Division 10 of the Public Utilities Code on January 1, 2009, a joint powers authority formed to provide mass transportation services, an agency described in subdivision (f) of Section 15975 of the Government Code, as that section read on January 1, 2009, any recipient of funds under Sections 99260, 99260.7, 99275, or subdivision (c) of Section 99400 of the Public Utilities Code, as those sections read on January 1, 2009, or a consolidated agency as defined in Section 132353.1 of the Public Utilities Code, as that section read on January 1, 2009.

(2) Surface transportation service provided by the Department of Transportation pursuant to subdivision (a) of Section 99315 of the Public Utilities Code, as that section read on July 30, 2009.

(3) Public transit capital improvement projects, including those identified in subdivision (b) of Section 99315 of the Public Utilities Code, as that section read on July 30, 2009.

(e)(1) Revenues deposited into the Public Transportation Account pursuant to paragraph (1) of subdivision (a) are hereby continuously appropriated to the Controller without regard to fiscal years for allocation as follows:

(A) Fifty percent pursuant to subdivisions (a) through (f), inclusive, of Section 99315 of the Public Utilities Code, as that section read on July 30, 2009.

(B) Twenty-five percent pursuant to subdivision (b) of Section 99312 of the Public Utilities Code, as that section read on July 30, 2009.

(C) Twenty-five percent pursuant to subdivision (c) of Section 99312 of the Public Utilities Code, as that section read on July 30, 2009.

(2) Revenues deposited into the Public Transportation Account pursuant to paragraph (2) of subdivision (a) are hereby continuously appropriated to the Controller without regard to fiscal years for allocation as follows:

(A) Twenty-five percent pursuant to subdivision (b) of Section 99312 of the Public Utilities Code, as that section read on July 30, 2009.

(B) Twenty-five percent pursuant to subdivision (c) of Section 99312 of the Public Utilities Code, as that section read on July 30, 2009.

(C) Fifty percent for the purposes of subdivisions (a) and (b) of Section 99315 of the Public Utilities Code, as that section read on July 30, 2009.

SEC. 6. On and after the effective date of the measure adding this article, and notwithstanding any other provision of this Constitution or any other law, the percentage of the tax imposed pursuant to Section 7202 of the Revenue and Taxation Code allocated to local transportation funds shall not be reduced below the percentage that was transmitted to such funds during the 2008 calendar year. Revenues allocated to local transportation funds shall be transmitted in accordance with Section 7204 of the Revenue and Taxation Code and deposited into local transportation funds in accordance with Section 29530 of the Government Code, as those sections read on June 30, 2009.

SEC. 7. (a) On and after the effective date of the measure adding this article, and notwithstanding subdivision (d) of Section 1 of Article XIX B of this Constitution or any other law, all revenues that are collected during the fiscal year from taxes under the Sales and Use Tax Law, or any successor to that law, upon the sale, storage, use, or other consumption in this State of motor vehicle fuel, as defined in Section 7326 of the Revenue and Taxation Code on June 30, 2009, shall be deposited quarterly into the Transportation Investment Fund (subdivision (a) of Section 7104 of the Revenue and Taxation Code) or its successor, which is hereby declared to be a trust fund. The Legislature may not take any action that permanently or temporarily borrows, diverts, appropriates for unrelated purposes, or delays, defers, suspends, or otherwise interrupts the quarterly deposit of these funds into the Transportation

Investment Fund. Funds in the Transportation Investment Fund may not be loaned or otherwise transferred to the General Fund or any other fund or account in the State Treasury.

(b) (1) If the Legislature reduces or repeals the taxes described in subdivision (a) and adopts an alternative source of revenue to replace the moneys derived from those taxes, the replacement revenue shall be deposited and allocated in the same manner, and dedicated to the same purposes, as the revenues being replaced.

(2) In addition to the requirements contained in subdivision (e) of Section 1 of Article XIX B, any bill modifying the percentage shares set forth in subdivision (c) of Section 1 of Article XIX B must remain in its final form for at least 12 days prior to passage in either house of the Legislature.

SEC. 8. (a) The Legislature may not require a community redevelopment agency (1) to pay, remit, loan or otherwise transfer, directly or indirectly, taxes on ad valorem real property and tangible personal property allocated to the agency pursuant to Section 16 of Article XVI to or for the benefit of the State, any agency of the State, or any jurisdiction; or (2) to use, restrict, or assign a particular purpose for such taxes for the benefit of the State, any agency of the State, or any jurisdiction, other than (A) for making payments to affected taxing agencies pursuant to Sections 33607.5 and 33607.7 of Health and Safety Code or similar statutes requiring such payments, as those statutes read on January 1, 2008; or (B) for the purpose of increasing, improving, and preserving the supply of low and moderate income housing available at affordable housing cost.

(b) "Jurisdiction" has the meaning specified in Section 95 of the Revenue and Taxation Code, as that section read on July 1, 2009.

SEC. 9. (a) If any challenge to invalidate an action that violates Sections 4 through 8, inclusive, of this article is successful either by way of a final judgment, settlement, or resolution by administrative or legislative action, there is hereby continuously appropriated from the General Fund to the Controller, without regard to fiscal years, that amount of revenue necessary to restore the fund or account from which the revenues were unlawfully taken or diverted to its financial status had the unlawful action not been taken.

(b) If any challenge to invalidate an action that violates Sections 1 through 3, inclusive, of this article is successful either by way of a final judgment, settlement, or resolution by administrative or legislative action, there is hereby continuously appropriated from the General Fund to the local government an amount of revenue equal to the amount of revenue unlawfully taken or diverted.

(c) Interest calculated at the Pooled Money Investment Fund rate from the date or dates the revenues were unlawfully taken or diverted shall accrue to the amounts required to be restored pursuant to this section. Within thirty days from the date a challenge is successful, the

Controller shall make the transfer required by the continuous appropriation and issue a notice to the parties that the transfer has been completed.

(d) If in any challenge brought pursuant to this section a restraining order or preliminary injunction is issued, the plaintiffs or petitioners shall not be required to post a bond obligating the plaintiffs or petitioners to indemnify the government defendants or the State of California for any damage the restraining order or preliminary injunction may cause.

SECTION 5.

Section 16 of Article XVI of the Constitution requires that a specified portion of the taxes levied upon the taxable property in a redevelopment project each year be allocated to the redevelopment agency to repay indebtedness incurred for the purpose of eliminating blight within the redevelopment project area. Section 16 of Article XVI prohibits the Legislature from reallocating some or all of that specified portion of the taxes to the State, an agency of the State, or any other taxing jurisdiction, instead of to the redevelopment agency. The Legislature has been illegally circumventing Section 16 of Article XVI in recent years by requiring redevelopment agencies to transfer a portion of those taxes for purposes other than the financing of redevelopment projects. A purpose of the amendments made by this measure is to prohibit the Legislature from requiring, after the taxes have been allocated to a redevelopment agency, that the redevelopment agency transfer some or all of those taxes to the State, an agency of the State, or a jurisdiction; or use some or all of those taxes for the benefit of the State, an agency of the State, or a jurisdiction.

SECTION 6. Continuous Appropriations.

The continuous appropriations provided for in this Act are intended to be "appropriations made by law" within the meaning of Section 7 of Article XVI of the California Constitution.

SECTION 7. Liberal Construction.

The provisions of this Act shall be liberally construed in order to effectuate its purposes.

SECTION 8. Conflicting Statutes.

Any statute enacted between October 21, 2009 and the effective date of this measure, that would have been prohibited if this measure were in effect on the date the statute was enacted, is hereby repealed.

SECTION 9. Conflicting Ballot Measures.

In the event that this measure and another measure or measures relating to the direction or redirection of revenues dedicated to funding services provided by local

governments and/or transportation projects or services appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure or measures shall be null and void.

SECTION 10. Severability.

It is the intent of the People that the provisions of this Act are severable and that if any provision of this Act, or the application thereof to any person or circumstance, is held invalid such invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application.