



November 22, 2021

21 - 0026 Amdt. #1

Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

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Attention: Ms. Anabel Renteria
Initiative Coordinator

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional Taxpayer Protection and Government Accountability Act initiative (A.G. File No. 21-0026, Amendment #1).

BACKGROUND

State Government

Taxes and Fees. This year's state budget spends over \$255 billion in state funds. Over 90 percent of the state budget is funded with revenues from taxes. These include, for example, sales taxes paid on goods and income taxes paid on wages and other sources of income. Much of the rest of the state budget is funded by fees and other charges. Examples include: (1) charges relating to regulatory activities; (2) charges for specific government services or products, like fees charged to drivers to improve roads; (3) charges for entering state property, such as a state park; and (4) judicial fines, penalties, and other charges. The State Constitution requires the state to set fees at a reasonable level, generally reflecting the costs of the services or benefits provided. The state uses revenue from taxes and fees to fund a variety of programs and services, including education, health care, transportation, and housing and homelessness services.

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 or a majority vote of the statewide electorate. The Legislature can reduce taxes with a majority vote of each house, provided the change does not result in an increase in taxes paid by any single taxpayer. Fees and other charges can be changed—either up or down—by a majority vote of each house of the Legislature or a majority vote of the statewide electorate. In many cases, the Legislature has enacted statutes that delegate its authority to adjust fees and other charges to administrative entities, like state departments. In these cases, these charges can be increased or changed by the department within certain limits.

Legislative Analyst's Office
California Legislature
Gabriel Petek, Legislative Analyst
925 L Street, Suite 1000, Sacramento, CA 95814
(916) 445-4656

Local Government

Taxes and Fees. The largest local government tax is the property tax, which raises roughly \$75 billion annually. Other local taxes include sales taxes, utility taxes, and hotel 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. In order to be considered a fee, the charge cannot exceed the reasonable costs to the local government of providing the associated product or service. Local governments use revenues from taxes and fees to fund a variety of services, like fire and police, public works, and parks.

Vote Threshold for Changing Local Taxes. State law requires increases in local taxes to receive approval of the local governing body—for example, a city council or county board of supervisors—as well as approval of voters in that local jurisdiction. Most proposed taxes require a two-thirds vote of the local governing board before being presented to the voters. Special taxes (those used for a specific purpose) require a two-thirds vote of the electorate while other types of taxes require a majority vote of the electorate. The majority-vote general taxes can be used for any purpose. General taxes must be placed before the voters in a regularly scheduled general election. Recent case law suggests that citizen initiative special taxes may be approved by majority vote, rather than a two-thirds vote.

Vote Thresholds for Changing Local Fees. Fee increases may be approved by a majority vote of the local governing body and do not require voter approval. (Exceptions that require voter approval include certain property-related fees.) Citizen initiatives increasing 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.

State and Local Government 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 fees and other charges. For example, certain charges imposed for a benefit or privilege granted to a payer but not granted to those not charged would no longer be considered fees. As a result, the measure could increase the number of revenue proposals subject to the higher state and local vote requirements for taxes discussed below.

Requires Voter Approval for State Taxes. The measure increases the vote requirements for increasing state taxes. Specifically, the measure requires legislatively proposed tax increases receive approval by two-thirds of each house *and* a majority vote of the statewide electorate. Voters would still be able to increase taxes by majority vote of the electorate without legislative action, however. Any state tax approved between October 1, 2021 and the effective date of this measure would be nullified unless it fulfills the requirements of the measure.

Requirements for Approving Local Taxes. The measure establishes the same approval requirements for increasing local taxes whether sought by the local governing body or the

electorate and increases some vote requirements for increasing local taxes. All tax increases proposed by the local legislative body would first need approval by two-thirds of the body before the proposed tax increase could be placed before the voters. The measure requires all proposed tax increases to be placed before voters at a regularly scheduled general election, as opposed to a special election, except in cases of an emergency declared unanimously by the local legislative body. Any local tax approved between October 1, 2021 and the effective date of this measure would be nullified unless it fulfills the requirements of the measure.

Allowable Uses and Duration of State and Local Tax Revenues Must Be Specified. The measure requires tax measures to identify the duration of the tax increase and include a statement of how much revenue would be raised and how those revenues would 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. Any subsequent change to the allowable uses of revenue would have to be passed by (1) a two-thirds vote of the Legislature and a majority vote of the electorate in the case of the state or (2) a two-thirds vote of the local governing body and two-thirds vote of the electorate in the case of local government taxes.

State and Local Government Fees

Increases Vote Threshold for State and Local Fees. The measure also increases the vote thresholds for increasing state and local fees. Specifically, the measure requires that all increases in state and local fees receive approval by two-thirds vote of each house of the Legislature or local governing body, respectively. Fee increases could no longer be approved by administrative action, such as an executive order or regulation issued by a state or local department. Additionally, the measure also provides that *local* fees and other charges levied by a local legislative body may be overturned via referenda. Any fee approved between October 1, 2021 and the effective date of this measure would be nullified unless it fulfills the requirements of the measure.

Some New State and Local Fees Could Not Exceed Actual Costs. For some categories of fees, if the Legislature or a local governing body wished to enact a new fee or make changes to an existing fee, the measure generally would require that the charge be both reasonable and reflect the actual costs to the state or local government of providing the service. In many cases, existing fees already reflect the government’s actual costs. In other cases, some fees would have to more closely approximate the payer’s actual costs in order to remain fees. If a fee payer challenged the charge, the state or local government would need to provide clear and convincing evidence that the fee meets this threshold. State and local governments also would bear the burden of providing clear and convincing evidence that the levy is a fee—which is not subject to a vote by the electorate—and not a tax under the new definition.

FISCAL EFFECTS

Lower State Tax and Fee Revenue. By expanding the definition of a tax and increasing the vote requirements for approving both taxes and fees, the measure makes it harder for the Legislature to increase nearly all types of state revenues. The extent to which revenues would be

lower under the measure would depend on various factors, most notably future decisions made by the Legislature and voters. For example, requirements for legislative approval of all increases in fees—including those currently set administratively—could result in lower fee revenues, depending on future votes of the Legislature. That lower 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 it could be substantial.

Lower Local Government Tax and Fee Revenue. Compared with the state, local governments generally face greater restrictions to raising revenue. By expanding the definition of taxes and increasing vote thresholds for taxes and fees, the measure would make it somewhat harder for local governments to raise revenue. The future reduction in local tax revenue could be substantial. Consequently, future local tax and fee revenue could be lower than they would be otherwise. The extent to which revenues would be lower is unknown, but could be particularly significant for fees. The actual impact on local government revenue would depend on various factors, including future decisions by the courts, local governing bodies, and voters.

Possible Increased State and Local Administrative Costs to Change Some Fee Levels. In some cases, state and local departments would need to develop methods for setting fees to reflect actual costs if the Legislature or local governing bodies wanted to change those fees in the future. Estimating actual costs by program and fee source could involve some added workload for those state and local departments, which likely would be supported by fee revenue. The extent of these administrative costs would depend on (1) whether the state and local governments determine a fee increase is needed in order to maintain their current level of programs and services funded through fee revenue and (2) future court decisions.

Summary of Fiscal Effects. We estimate that this measure would have the following major fiscal effects:

- Potentially substantially lower annual state and local revenues, depending on future actions of the Legislature, local governing bodies, voters, and the courts.

Sincerely,



for Gabriel Petek
Legislative Analyst



for Keely Martin Bosler
Director of Finance