

November 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****NOV 22 2017****INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE**

Attention: Ashley Johansson, Initiative Coordinator

Re: Request for Title and Summary for Proposed Initiative Constitutional Amendment

Dear Ms. Johansson:

Pursuant to Article II, Section 10(d) of the California Constitution, I hereby submit the attached proposed Initiative Constitutional Amendment to your office and request preparation of a title and summary of the measure as provided by law. Included with this submission is the required proponent affidavit signed by the proponent of this measure pursuant to Section 9608 of the California Elections Code. My address as a registered voter is attached to this letter, along with a check for \$2,000.00.

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 Taxpayer Protection 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, 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 adds considerably more to this total.

(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 9<sup>th</sup> 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.

(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 fees and taxes by hiding them and simply calling them by another name such as a "charge" 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 fees 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 of voters at the local level, for increases in state and local government revenue, 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 revenue measures that were created or increased by regulation or other bureaucratic action.

(f) In enacting this measure, the voters also 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) All state revenue generating measures are either a tax, or a charge described in paragraphs (1) through (4) of subdivision (c).

(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 any levy, charge, or exaction of any kind imposed by the State~~ includes, but is not limited to, any and every possible type of charge, levy, fee, payment, consideration, compensation, rate, exaction, toll, recompense, remuneration, or assessment, whether measured in currency or some other form of property or value, except 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 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 charge imposed for the reasonable actual regulatory costs to the State incident to issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural or tourism marketing orders or assessments, 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, penalty, or other monetary charge imposed by the judicial branch of government or the State, as a result of 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.~~

~~*(d) As used in this section, "state law" includes, but it 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. "State law" does not include acts of the University of California.*~~

~~*(e) (1) No new, increased, or extended tax shall be valid or given any effect unless:*~~

~~*(A) The state law creating, increasing, or extending the tax contains a specific and legally binding and enforceable limitation on how the proceeds of the tax can be spent. If the proceeds of the tax can be spent for unrestricted general revenue purposes, then a statement that the tax proceeds can be spent for "unrestricted general revenue purposes" shall be included in the separate, stand-alone section required by subparagraph (B).*~~

~~*(B) A statement of facts explicitly and affirmatively identifying each tax and the specific limitation on how the proceeds thereof can be spent is set forth in the state law as a separate,*~~

stand-alone section containing no other information. A statement of facts made pursuant to subdivision (d) of Section 8 of Article IV shall only satisfy this subparagraph if the statement of facts explicitly and affirmatively identifies each tax and the specific limitation on how the proceeds thereof can be spent, and contains no other information.

(C) The proceeds of the tax are not used for any purpose other than those identified pursuant to this paragraph.

(2) The specific and legally binding and enforceable limitation on how the proceeds of 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.

(f) The characterization of a charge or other revenue generating measure as being voluntary or compulsory, paid in exchange for a benefit or asset or nothing in return, or payable to or retained by a non-government entity shall not be factors in determining whether the charge or other revenue generating measure is a tax.

(g)(1) ~~(d)~~ The State bears the burden of proving by a preponderance of the clear and convincing evidence that a levy, charge, or other exaction charge sought pursuant to paragraph (1) through paragraph (2) of subdivision (c) is not a tax, that the amount is no more than necessary to cover the reasonable actual costs of the governmental activity service or product or regulatory program, that the charge is not used for any purpose other than that for which it is sought, 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 are proportional based on the service or product provided to the payor as described in paragraph (1) of subdivision (c), or the regulatory costs to the State described in paragraph (2) of subdivision (c) created by the payor.

(2) In any action alleging that a state revenue generating measure should have been approved by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature:

(A) Where a state government entity administers the state revenue generating measure, the state government entity shall be a defendant. Where the state revenue generating measure is payable to or retained by a non-government entity pursuant to state law, the Attorney General shall be a defendant.

(B) If the action is successful either by way of a final judgment, settlement, or resolution by administrative or legislative action, then all of the following shall apply:

(i) The state revenue generating measure shall be unenforceable and null and void unless and until it is readopted in compliance with the requirements of this section.

(ii) There is hereby continuously appropriated from the General Fund to the Controller, without regard to fiscal years, the amount of money necessary to repay those who made payments pursuant to the state revenue generating measure and reimburse the fees and costs incurred by the person bringing the action. The Controller shall establish a claims procedure for this purpose.

(iii) The person bringing action shall be entitled to recover attorneys' fees and costs.

(3) The remedies described in paragraph (2) shall be in addition to any other remedies available.

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

**SECTION 3.1.**

(a) Except as provided in subdivision (d), this section shall apply to all regulations that contain a new, increased, or extended state revenue generating measure.

(b) All regulations containing a new, increased, or extended state revenue generating measure adopted or amended during any one-year period that begins each January 1 and continues through the following December 31 expire at 11:59 p.m. on the June 30 that follows such one-year period unless the Legislature by bill acts to repeal the expiration of the specific regulation containing the new, increased, or extended state revenue generating measure.

(c) If the state revenue generating measure contained in the regulation is a tax, then the Legislature can only postpone the regulation's expiration by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature. If the state revenue generating measure contained in the regulation is not a tax, then the Legislature can postpone the regulation's expiration by an act passed by not less than a majority of all members elected to each of the two houses of the Legislature.

(d) This section shall not apply to any regulation promulgated pursuant to a state tax that was adopted in compliance with Section 3.

(e) For purposes of this section, "regulation" has the same meaning as found in Section 11342.600 of the Government Code, as that section read on January 1, 2017.

**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 thereof 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 any levy, charge, or exaction of any kind imposed by a local government that is not a tax-like charge or Article XIII D assessment, fee, or charge, except the following:

(e) "Tax-like charge" means all of 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 levy, charge, or exaction 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 levy, charge, or exaction imposed for the reasonable 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 levy, charge, or exaction imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

~~(4)~~ (5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.

~~(6)~~ A charge imposed as a condition of property development.

~~(7)~~ Assessments and property-related fees imposed in accordance with the provisions of Article XIII D:

*(f) The characterization of a charge or other revenue generating measure as being voluntary or compulsory, paid in exchange for a benefit or asset or nothing in return, or payable to or retained by a non-government entity shall not be factors in determining whether the charge or other revenue generating measure is a tax or a tax-like charge.*

*(g) This section and Section 2 shall not apply to tourism marketing assessments or charges imposed as a condition of property development.*

*(h)(1) The local government bears the burden of proving by a preponderance of the clear and convincing evidence that a levy, charge, or other exaction is a tax-like charge and not a tax, that the amount is no more than necessary to cover the reasonable actual costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair and reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.*

*(2) In any action alleging that a local revenue generating measure should have been approved by a two-thirds vote of the local government:*

*(A) Where a local government administers the local revenue generating measure, the local government shall be a defendant. Where the local revenue generating measure is payable to or retained by a non-government entity pursuant to a local government law, the governing body of the local government that adopted, enforces, or administers the local revenue generating measure shall be a defendant.*

*(B) If the action is successful by way of final judgment, settlement, or resolution by administrative or legislative action, then both of the following shall apply:*

(i) The local revenue generating measure shall be unenforceable and null and void unless and until it is readopted in compliance with the requirements of this Article.

(ii) There is hereby continuously appropriated from the general fund of the applicable local government, without regard to fiscal years, the amount of money necessary to repay those who paid the invalid local revenue generating measure and reimburse the fees and costs incurred by the person bringing the action. The governing body of the local government shall establish a claims procedure for this purpose.

(iii) The person bringing the action shall be entitled to recover attorneys' fees and costs.

(3) The remedies described in paragraph (2) shall be in addition to any other remedies available.

**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) All local revenue generating measures, including, but not limited to, each and every possible type of charge, levy, fee, payment, consideration, compensation, rate, exaction, toll,

recompense, remuneration, or assessment, whether measured in currency or some other form of property, is either a tax, a tax-like charge, or Article XIII D assessment, fee, or charge.

(b)(1) (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.

(2) 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.

(c)(1) The governing body of any county, city, city and county, including a charter city or county, special district, or other local or regional governmental entity shall not impose, extend, or increase any tax-like charge unless and until the act containing the tax-like charge is passed by not less than two-thirds of all members elected to the governing body.

(2) Every tax-like charge imposed, extended, or increased by the governing body shall automatically expire two years from the date of its adoption unless the tax-like charge is submitted to the electorate of the local government at a general or special election and approved by a two-thirds vote prior to its expiration. More than one tax-like charge may be submitted to the electorate in a single measure.

(3) Paragraph (2) shall not apply to an increase in the amount of a tax-like charge if the amount of the increase does not exceed the annual rate of inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Bureau of Labor Statistics (or successor agency) for the 12 months immediately preceding the increase. A tax-like charge shall not be increased more than once per calendar year pursuant to this paragraph.

(d) No initiative in any county, city, city and county, including a charter city or county, special district, or other local or regional governmental entity may impose, extend, or increase any tax-like charge unless and until the tax-like charge is submitted to the electorate and approved by a two-thirds vote.

(e)(1) No new, increased, or extended tax or tax-like charge shall be valid or given any effect unless:

(A) The act creating, increasing, or extending the tax or tax-like charge contains a specific and legally binding and enforceable limitation on how the proceeds of the tax or tax-like charge can be spent. If the proceeds of a tax can be spent for unrestricted general revenue purposes, then a statement that the tax proceeds can be spent for “unrestricted general revenue purposes” shall be included in the separate, stand-alone section required by subparagraph (B), and included in the ballot question presented to voters.

(B) A statement of facts explicitly and affirmatively identifying each tax or tax-like charge and the specific limitation on how the proceeds thereof can be spent is set forth in the act as a separate, stand-alone section containing no other information, and is included in the ballot question presented to voters.

(C) The proceeds of the tax or tax-like charge are not used for any purpose other than those specifically identified pursuant this paragraph.

(2) A change in how the proceeds of a tax or tax-like charge can be spent shall be treated as a new tax or tax-like charge and shall be approved in accordance with the requirements of this section.

(f) An Article XIII D assessment, fee, or charge shall be extended, imposed, or created pursuant to Article XIII D.

(g)(1) Any imposition, increase, or extension of a local government tax that was voted on the by electorate of the local government after November 1, 2017, but prior to the effective date of this subdivision, and which does not satisfy the 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 complied with subdivision (e).

(C) The ballot question presented to voters for the tax imposition, increase, or extension strictly complied with subdivision (e).

**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. Liberal Construction.**

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

**Section 10. 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 enactment 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 11. 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 12. 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.