

THE CBRT MEASURE

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League of California Cities
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The Taxpayer Protection and Government Accountability Act “CBRT Measure”

Supporters

- Combats overtaxation by giving the people a vote on all taxes and requiring all charges and fees to be passed by elected governing bodies rather than unelected “bureaucrats”

Opponents

- An unprecedented change to California’s fundamental government structures that would gravely undermine the ability of government to raise revenue of any kind

Positions Taken by the League and Cities

The League of Cities

- The League joined an amicus letter brief urging the Court to accept review of *Legislature v. Weber* and then joined an amicus brief arguing that the Measure should be withheld from the ballot

Cities

- San Francisco and Los Angeles joined the same amicus briefs as the League
- The Mayors of the cities of San Diego, Los Angeles, San Jose, San Francisco, Sacramento, Long Beach, Oakland, and Irvine sent an amicus letter brief urging the Court to accept review of the case
- No local governments have filed any amicus briefs in opposition

TODAY'S PRESENTATION

1. The Measure's Provisions
2. The Legal Challenge
3. How to Prepare for the Measure's Possible Passage

Changes the Legislature's Tax and Spending Powers

Today

The Legislature can enact taxes with a two-thirds vote.

The Legislature can direct and redirect the revenues generated by state taxes as it sees fit, consistent with requirements set forth in the constitution and statutes passed via initiative.

The Measure

The Legislature could propose state taxes, but only the voters would have the power to approve taxes.

New state taxes would be either general or special taxes. The Legislature would be bound to spend special tax revenues as approved by the voters.

Potential Consequences

- Fewer new, increased, or changed State taxes
- Taxes would be drafted to appeal to the voters
- Slower taxes
- Cities could not rely on State revenue to the same extent that they do today

Expands the Definition of a “Tax” and Narrows the Definition of a “Charge”

Today

- Charges imposed by the government are “taxes” unless they fall into one of seven exemptions or are outside the definitions according to caselaw
- The government has the burden to prove:
 - a charge is not a tax by a preponderance of evidence
 - for some charges, that the amount is not more than necessary to cover the reasonable costs of the activity
 - for some charges, the way the costs are allocated bears a fair or reasonable relationship to the payor’s burdens or benefits from the activity

The Measure

- Charges imposed by the government are either taxes or exempt charges unless they fall into one of six narrowed exemptions
- The government has the burden to prove:
 - a charge is not a tax by clear and convincing evidence
 - the amount is reasonable
 - the amount does not exceed the actual cost of providing the product or service

Potential Consequences

- The Measure would eliminate the exemption for “a specific benefit conferred or privilege granted directly to the payor”
 - Franchise fees, professional licensing fees, and regulatory fees, like fees on manufacturers of consumer products with adverse environmental impacts, would become taxes unless another exemption is deemed to include them
- If an agency does not believe it can prove by clear and convincing evidence that a fee reflects the actual cost of a service or product, it might decide to treat the fee as a tax
 - Court filing fees and utility service charges could become taxes.
- The Measure would limit charges imposed by the judicial branch or State for violations of the law to include only fines imposed “to punish” a violation of law after undefined “adjudicatory due process.”
 - The punitive portions of drought rates for water, parking tickets, and library fines might become taxes

Changes the Powers of the State and Local Executive Branches

Today

- Executive branch agencies have the power to perform duties delegated to them by the legislative branch, regardless of revenue impact
- Executive branch agencies have authority to enforce and interpret the law, and to promulgate regulations

The Measure

- Executive branch agencies would lose the ability to impose charges of any kind by any means
- All such charges would have to be approved by the legislative branch and the voters if defined as a tax or the legislative branch alone if defined as a charge

Potential Consequences

- Administrative agencies would lose the power to do much of the work they do today
- Administrative agencies could no longer promulgate a regulation or interpret an ordinance in ways that would result in even a single individual paying a new or higher fee; these actions would require approval by the legislative body and the voters as an increased “tax”
- Administrative agencies could no longer impose non-tax administrative fees under their delegated authority; these actions would require approval by the legislative body
- Applies to opinion letters, enforcement actions, hearing officer decisions, property assessments, legal interpretations, etc.

Changes the Voters' Power

Today

- The referendum can't be used to challenge taxes, defined broadly
- Local voters can amend their charters in many ways
- Citizen-initiated special taxes require a majority vote
- Advisory measures can accompany general taxes

The Measure

- Narrows the definition of taxes for purposes of the referendum
- Prohibits voters from amending their charters to increase taxes
- Citizen-initiated special taxes would require a supermajority vote
- Prohibits advisory measures for general taxes

Potential Consequences

- Every single revenue-raising measure in the State would be subject to voter approval either as a tax needing initial voter approval or as an exempt charge subject to referendum
- It would become easier for voters who oppose taxes to prevent new or increased taxes
- It would become more difficult for voters who support greater revenues to enact new or increased taxes

Changes to Past Enactments

- The Measure includes a retroactivity provision requiring that any tax or exempt charge that was adopted since January 1, 2022 and which does not comply with the Measure will be void in 12 months unless re-enacted to comply with the Measure
- This applies to all state and local taxes and charges enacted over a 34-month period

Potential Consequences

- For noncompliant taxes and charges, governments will have to choose between off-year elections and budget cuts
- Governments will have to navigate a lot of uncertainty over the meaning of the Measure, including which charges fit in the new definition of “exempt charges”
- There will Likely be many off-year elections in 2025 with crowded ballots
- We estimate:
 - 102-131 potentially non-compliant local taxes in 117 jurisdictions placing \$1.3 to \$1.9 billion in annual local revenue at risk
 - 87 potentially endangered local bond measures in 81 jurisdictions
 - 15 endangered state taxes
 - An unknown but likely very large number of endangered exempt charges

The Legal Challenge

Legislature v. Weber

Cal. Supr. Court Case No. S281977

- Filed as an original writ petition on September 26, 2023
- Petitioners: the Legislature, the Governor, and John Burton
- Respondent: Secretary of State Shirley N. Weber
- Real Party in Interest: Thomas W. Hiltachk
- Main Legal Issues
 - Pre-election review
 - The Measure unlawfully revises the Constitution
 - The Measure would interfere with essential government services
- Sixteen Amicus Briefs: 12 in favor and 4 opposed

Preelection Review

- Preelection review is appropriate when a measure is challenged on the ground that it “cannot lawfully be enacted through the initiative process,” including when the measure is challenged as a constitutional revision (*Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020)
- Petitioners argue that preelection review is necessary because the retroactivity provision is already affecting government decisions
- The fact that the Supreme Court issued an order to show cause suggests – but does not ensure – that they have resolved this issue

Legal Theory: The Measure is beyond the power of the voters to enact because it revises the Constitution.

Legal Standard

- A ballot initiative revises the Constitution if it would make a far-reaching change in the fundamental governmental structure or the foundational power of its branches as set forth in the Constitution.

Example

- Provision of Proposition 115 that required California courts to construe the state constitutional rights of criminal defendants consistently with the U.S. Supreme Court was a revision. (*Raven v. Deukmejian* (1990) 52 Cal.3d 336.)

The Measure is a revision because:

- It revokes the Legislature's core power to levy taxes and limits its spending power over the revenues from special taxes
- It shifts substantial power between the executive and legislative branches of government by prohibiting the legislative branch from delegating certain duties to the executive branch and compelling the legislative branch to assume those executive branch duties
- It restructures the voters' fiscal powers by reducing their power to raise taxes and increasing their power to lower and challenge taxes

Legal Theory: The Measure would interfere with essential government functions.

The Rule

- The initiative or referendum process cannot be used if it would seriously impair essential government functions.
- A city's increase in water rates was not subject to referendum in part because to rule otherwise risked impairment of the city's ability to provide water. (*Wilde v. City of Dunsmuir* (2020) 9 Cal.5th 1105.)

The Measure

- The government's ability to manage its fiscal affairs is arguably the most essential government function.
- The Measure would interfere with the ability of state and local governments to manage their fiscal affairs.

How to Prepare for the Measure's Possible Passage

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- Determine which tax ordinances and agency actions might be subject to the Measure's retroactivity clause
- Analyze whether the identified taxes and agency actions complied with the Measure
- Consider whether and to what extent the city wishes to conform future tax ordinances or agency actions to the Measure's requirements
- Consider what steps the city will take to ensure non-compliant taxes or agency actions are made to comply with the Measure. Such steps could include:
 - Determining whether to seek clarification from the courts if it is unclear how the Measure would apply;
 - Deciding whether to call a special election; and
 - Making budget cuts or adjustments to prepare for the potential loss of revenue



Questions?