

The Taxpayer Protection & Government Accountability Act Economic Development Analysis



The Taxpayer Protection and Government Accountability Act¹

The Taxpayer Protection and Government Accountability Act (Act),² is an initiative proposed for the state ballot sponsored by the California Business Roundtable.³ The measure, which is currently “on the street” collecting signatures, proposes significant new tax and fee limitations on both state and local governments, reversing numerous court decisions, and retroactively voiding any state or local laws, decisions, or administrative actions in conflict with its provisions enacted after January 1, 2022.

- Text of measure: [https://oag.ca.gov/system/files/initiatives/pdfs/21-0042A1 \(Taxes\).pdf](https://oag.ca.gov/system/files/initiatives/pdfs/21-0042A1%20(Taxes).pdf)
- Legislative Analyst Fiscal Analysis: <https://lao.ca.gov/BallotAnalysis/Initiative/2021-042>
- Attorney General’s Title and Summary: [https://oag.ca.gov/system/files/initiatives/pdfs/Title and Summary \(21-0042A1\).pdf](https://oag.ca.gov/system/files/initiatives/pdfs/Title%20and%20Summary%20(21-0042A1).pdf)

Effects on State laws and regulatory activities:

- 1) Requires that every levy, charge, or exaction of any kind “*imposed*” by “*state law*” which results in any taxpayer paying a new or higher tax or a new or higher “*exempt charge*,”⁴ must be subject to new and more rigorous approval requirements.
- 2) Defines “*imposed*” as to “*adopt, enact, reenact, create, establish, collect, increase, or extend.*”
- 3) Defines “*extend*” to “*include, but is not limited to, any of the following related to a tax or an exempt charge: lengthening its duration, delaying or eliminating its expiration, expanding its application to a new territory or class of payor, or expanding the base to which its rate is applied.*”
- 4) Defines “*state law*” as including, but not limited to, “*any state statute, state regulation, state executive order, state resolution, state ruling, state opinion letter, or other legal authority or interpretation⁵ adopted, enacted, enforced, issued, or implemented by the legislative or executive branches of state government.*”⁶

State Taxes:

- 1) Increases the limitations on the Legislature to enact a new or higher tax. Existing law requires a two-thirds vote in each legislative house and the Governor’s signature. The Act requires state voters to approve all new or higher state taxes by majority vote.
- 2) Requires any tax (or any future changes to the use of the tax) to be submitted to the voters (either by the Legislature or by voter initiative) to include, both within the text of the measure and in the title and summary and ballot label, the following information:
 - a. Duration of the tax
 - b. Estimate of annual expected revenue
 - c. Legal, binding and enforceable limitation on how the revenue can be spent
 - d. If the revenue can be spent for general purposes, the phrase “unrestricted general revenue purposes” must be included in a separate stand-alone section

¹ Analysis prepared 4/20/2022 for the California Association for Local Economic Development (CALED) by Dan Carrigg, Daniel Carrigg Consulting, carriggdaniel99@gmail.com

² This proposed initiative is referred to as 21-0042A1 by the Attorney General and Legislative Analyst’s Office. The Secretary of State reports that it surpassed 25% of required signatures as of March 16, 2022.

³ The proponents of this measure filed a similar measure in 2018, which included a provision requiring all local taxes to be subject to a two-thirds vote. While the measure secured sufficient signatures to be placed on the ballot, it was ultimately pulled from the ballot by the sponsors as part of a legislative agreement to adopt legislation which imposed a 12-year ban on local taxes on soda.

⁴ The term “*exempt charge*” is likely unfamiliar to many. The bottom line with this measure is that it deems *everything* a tax, unless it falls into one of the categories of “*exempt charges*,” as defined in this Act.

⁵ The full breadth of the implications of these terms is difficult to contemplate.

⁶ Does not include actions taken by UC, CSU or community colleges.

State “Exempt Charges:”

- 3) Shifts all authority for “imposing” enacting and approving *new or higher* state “exempt charges” (covers fees, levies, exactions and all other charges not deemed “taxes”) from state agencies to the Legislature. Requires these exempt charges to be approved by majority vote approval of both legislative houses and Governor’s signature.
- 4) Defines “exempt charges” by making various changes to existing definitions in the Constitution that describe various charges that are *not considered taxes*, as follows:
 - a. Deletes entirely a definition that provides that a tax does not include “*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.*”⁷”
 - b. Substantively narrows a second definition in the Constitution that describes a permitted 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 costs to the State of conferring the benefit or granting the privilege to the payor.” By requiring costs not exceed “actual” rather than “reasonable” costs this measure will reduce revenue and increase costs for documentation.⁸
 - c. Requires that a charge for the entrance to or use of state property, or the purchase, rental, or lease of state property both be “reasonable” and not exceed “actual” costs.⁹”
 - d. Deletes reference to “other monetary charge” from the exception in the Constitution for fines and penalties imposed by a Court or the State, as a result of a violation of law. Instead, the Act requires that interest for nonpayment of fines and penalties may be collected, and that fines and penalties levied by the state must be via “*a state administrative enforcement agency*”¹⁰ pursuant to *adjudicatory due process*.¹¹”
 - e. Adds two new categories of “exempt charge” to include
 - i. a levy, charge or exaction collected from local units of government, health care providers or health care service plans related to reimbursement rates or payments under the State Medi-Cal Program.
 - ii. a levy, charge or exaction collected for the promotion of California Tourism, under the California Tourism Marketing Act.¹²
 - f. Defines “actual cost” as:
 - i. “(i) *the minimum amount necessary to reimburse the government for the cost of providing the service or product to the payor, and (ii) where the amount charged by the government is not used for any other purpose other than reimbursing that cost.*”
 - ii. “(ii) *the maximum amount that may be imposed is the actual cost less all other sources of revenue, including but not limited to taxes, other exempt charges, grants, and state or federal funds, received to provide such service or product.*”¹³

⁷ This deletion represents a major change in the law which previously gave clarity on a Constitutional test to determine the validity of various fees and charges were not “taxes.” It is unclear the full scope of activities the elimination of this general definition could apply to, and will open up new areas for legal disputes.

⁸ The effect of this change will be to require state agencies to keep a detailed and precise accounting of all costs because any charge cannot exceed the “actual” costs. This is a major change that will spark debates over minute details associated with calculating the cost of a state charge. An identical provision is also applied to local governments.

⁹ The injection of the term “reasonable” related to charges related to the rental or use of state property could limit amounts that the state can charge companies seeking to drill, mine or otherwise extract resources from state public lands. Opponents allege that this provision would reduce the ability of local governments to collect franchise fees from oil, utility, gas suppliers, cable companies, and other corporations that seek to use public property.

¹⁰ It is unclear which “state administrative enforcement agency” is being referred to here. Is this an existing agency, or is there an expectation that a new agency would be created?

¹¹ This “adjudicatory due process” is not defined. Corporations facing fines for violation of law may use disputes over the meaning of this term to delay or attempt to avoid payment.

¹² Such targeted exemptions raises the question over what programs or activities are being left out and now considered “taxes.” In addition, under this measure, any new or higher charges from these “exempted” entities would still require legislative approval.

¹³ Such a detailed definition will not only significantly expand the workload of state agencies to rigorously document and account for every possible penny of costs, it will likely foster a new industry of private accountants and litigators to argue over and contest every item. In some cases, a government service or product could be cancelled to avoid the excessive costs, arguments and litigation associated with attempting to offer it.

Increased burden of proof: Increases the legal burden of proof for the state to establish that any levy, charge or exaction is *not a tax*, from the existing “preponderance of evidence” standard to a higher standard of “clear and convincing evidence.”¹⁴ Under this Act, the state must prove both that the charge is reasonable and does not exceed the actual cost, which is more restrictive than the current standard (which this Act deletes).¹⁵

Retroactive repeal: Declares null and void any tax or exempt charge not adopted in compliance with the Act after January 1, 2022, and prior to the effective date of the Act, unless reenacted (consistent with this Act) within 12 months of the effective date of the Act.

Poison Pills: Declares that the provisions of this measure should it receive, more affirmative votes shall supersede over any conflicting measure on the same ballot.¹⁶ Also, provides for the appointment of special counsel paid for by the state if the Attorney General declines to defend the Act against legal challenges.

Effects on Local Government:

- 1) Expands the existing definition of “local government” to include an elector pursuant to Article II of the California Constitution, the initiative power.¹⁷
- 2) Prohibits an advisory measure (that would indicate that the revenue from the general tax will, would, or should be used for a specific purpose) from being placed on the ballot in conjunction for approval of a local general tax.
- 3) Declares that every levy, charge or exaction imposed by “local law” of any kind is either a “tax” or an “exempt charge.” Defines “tax” to mean every levy, charge or exaction imposed by a local law, that is not an “exempt charge.”
- 4) Requires any local “exempt charge” to be imposed or increased by local ordinance.¹⁸ Prohibits any “exempt charge” from being imposed by local initiative.
- 5) Prohibits any (city or county) charter amendments which would impose, extend or increase a tax or an exempt charge from being submitted to or approved by the voters.
- 6) Prohibits property tax surcharges based on the value of property.¹⁹
- 7) Declares retroactively void any local tax or exempt charge adopted after January 1, 2022, and before the effective date of the Act, that is not in compliance with it, unless it is reenacted in compliance with this Act within 12 months.
- 8) Increases the legal burden of proof for the local government to establish that any levy, charge or exaction is *not a tax*, from the existing “preponderance of evidence” standard to a higher standard of “clear and convincing evidence.”²⁰

14 Preponderance of the Evidence In most civil cases, the burden of persuasion that applies is called “a preponderance of the evidence.” This standard requires the jury to return a judgment in favor of the plaintiff if the plaintiff is able to show that a particular fact or event was more likely than not to have occurred. Some scholars define the preponderance of the evidence standard as requiring a finding that at least 51 percent of the evidence favors the plaintiff’s outcome.

Clear and Convincing Evidence This burden of proof requires the plaintiff to prove that a particular fact is substantially more likely than not to be true. Some courts have described this standard as requiring the plaintiff to prove that there is a high probability that a particular fact is true. This standard sets a higher threshold than the preponderance of the evidence standard, but it does not quite rise to the widely recognized standard used in criminal cases, known as “beyond a reasonable doubt.”

¹⁵ Current standard being deleted includes the following phrasing: “*amount is no more than necessary to cover the reasonable costs...and bear a fair and reasonable to the payors...burdens on, or benefits received from the governmental activity.*”

¹⁶ Specifically references the Housing Affordability and Tax Cut Act of 2022 (which proposed a property tax surcharge) as conflicting with this measure. It is not clear if this measure is collecting signatures; it is not listed, among other proposed initiatives, by the Secretary of State as collecting 25% of needed signatures.

¹⁷ This change is designed to counter recent Court decisions, beginning with *Upland*, which held that the two-thirds vote requirement applicable to local special taxes only applied to measures placed on the ballot by the local legislative body, and not by voter initiative. Under this Act, local voter initiatives would be subject to the same approval thresholds (majority approval for general taxes and two-thirds approval for special taxes) as those placed on the ballot by legislative bodies.

¹⁸ This would require all manner of local fees to be imposed by the legislative body, rather than a local city/county department or agency.

¹⁹ Clarifies in this limitation that it does not affect taxes levied as part of a community facilities district levied as authorized by statute on December 31, 2021.

²⁰ See footnote #14 on impact of similar changes applied to the state.

- 9) Adds a definition of “local law” into the Constitution described as “*including, but not limited to, any ordinance, resolution, regulation, ruling, opinion letter, or other legal authority or interpretation adopted, enacted, enforced, issued, or implemented by a local government.*”²¹
- 10) Defines, exempt charge as follows:
 - a. Repeals entirely the definition that provides that a tax does not include “*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.*”²²
 - b. Makes other similar changes and limitations to local government authority (not repeated here for brevity) that are detailed in comment 4, subdivisions (b) through (d), which apply to state activities. See page #2 and 3 of this analysis.
 - c. Adds new categories of “exempt charge” applicable to local government, to include:
 - i. Prohibits any levy, charge or exaction regulating or related to vehicle miles travelled that may be imposed as a condition of property development or occupancy.²³
 - ii. Defines as “exempt charges,” assessments imposed on a business in a tourism marketing district, a parking and business improvement area, or a property and business improvement district.
 - iii. Defines as an “exempt charge,” a charge imposed for a specific “health care service”²⁴ provided directly to the payor and not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the health care service.
- 11) Uses the same definitions of “Actual cost,” “Extend,” and “Impose” as this Act applies to state activities. See page #1 of this analysis.
- 12) Requires the ballot labels associated with approval of a local tax must include the type and amount or rate of the tax, its duration and its use. If it is for general purposes, the phrase “for general government use” is required. This Act also prohibits local advisory measures.
- 13) Requires all proceeds from the taxation of property by the state or local governments to be apportioned according to law to the districts within the county.²⁵
- 14) Grandfathers non ad-valorem taxes approved by a two-thirds qualified electors for community facilities districts created consistent with statute in effect on December 31, 2021.

Comments:

- 1) **Sponsors and Supporters:** The sponsors and supporters of this measure which include the California Business Roundtable, California Business Properties Association, Howard Jarvis Taxpayers Association offer multiple arguments in favor of this measure in the findings and declarations of the Taxpayer Protection and Government Accountability Act including the following:
 - a. Californians are overtaxed, paying the nation’s highest income, sales tax, and gasoline tax. Still state lawmakers continue to introduce new tax proposals totaling more than \$234 billion in 2021.
 - b. Californians pay billions more in hidden fees, in the price they pay for products, food, services, fuel, utilities and housing. Since 2010, government revenues from fees have more than doubled.
 - c. These fees and taxes are pushing working families and job-providing businesses out of the state.

²¹ This Act requires all of these actions that are interpreted to be a “tax” or an “exempt charge” to be subject to approval either by the voters (if a tax) or by the legislative body (if an exempt charge).

²² One of the likely impacts of deleting this “general” definition in the Constitution, and then having only a list of specific exemptions (tourism marketing, health care service, etc.) is that any activity that is not specifically listed an “exempt charge” will be determined to be a tax.

²³ This is a major change of benefit to property developers in rural and suburban settings designed to blunt state and local efforts to reduce greenhouse gas emissions through recognizing the relationship between sprawling development patterns without sufficient access to transit and increased reliance on private vehicles.

²⁴ Defined by cross reference to include clinics, out patients, and health facilities as listed in Chapters 1, 1.3 and 2 of Division 2 of the Health and Safety Code.

²⁵ This is an effort by the proponents to counter prior efforts by the advocates for a split-roll property tax to levy and then distribute a state tax on properties valued over certain amounts.

- d. California voters have tried repeatedly, at great expense, to assert control over whether and how taxes and fees are raised, including by approving Propositions 13 (1978), 62 (1986), 218 (1996), and 26 (2010). Contrary to voter's intent, these measures have been weakened and hamstrung by the Legislature, government lawyers and the courts, making it necessary to pass another measure to close loopholes and reverse hostile court decisions.
- e. Court decisions proposed to be reversed by this measure include: *Cannabis Coalition v. City of Upland*, *Chamber of Commerce v Air Resources Board*, *Schmeer v. Los Angeles County*, *Johnson v County of Mendocino*, *Citizens Assn. of Sunset Beach v Orange County LAFCO*, and *Wilde v. City of Dunsmuir*.

Supporters Materials: <https://naiopsv.org/wp-content/uploads/Taxpayer-Information-Packet-2-24-22.pdf>

- 2) **Opponents:** An opposition coalition has formed which include the League of California Cities, California State Association of Counties, California Special Districts Association, California Professional Firefighters, California Alliance for Jobs, AFSCME, SEIU California, and the CA State Association of Laborers. Key arguments they make against the measure include:
- a. Gives wealthy corporations a major loophole to avoid paying their fair share, forcing local residents and taxpayers to pay more.
 - b. Allows corporations to dodge enforcement when they violate environmental, health, public safety and other laws, by making it more difficult to issue fines and levies on violators.
 - c. Jeopardizes vital local and state services, and puts billions of dollars used for funding state and local infrastructure and services at risk. Could force cuts to public schools, fire and emergency response, law enforcement, public health, parks, libraries, affordable housing, services for the homeless, mental health services and more.
 - d. Opens the door to frivolous lawsuits, bureaucracy and red tape that will cost taxpayers and hurt our communities.
 - e. Undermines voter rights, transparency and vital services, by retroactively canceling measures that were approved by local voters, limiting voter input on advisory measures, and make it more difficult for local and state voters to pass measures to improve local services and infrastructure.

Opponents Materials: <https://www.calcities.org/detail-pages/news/2022/03/30/opposition-mounts-to-wealthy-corporation-backed-ballot-measure-threatening-voter-rights-and-local-services>

- 3) **Reversing Multiple Court Decisions:** The intent language in this Act state's that its intent includes reversing the following CA Supreme Court and CA Appellate decisions decided over the last decade – on topics ranging from plastic bags, Cap and Trade emissions, annexations and cannabis taxes approved by local voters:
- a. *Cannabis Coalition v. City of Upland (2017)*: The CA Supreme Court held that citizen initiatives which proposed a tax could be adopted with a majority vote.
 - b. *Chamber of Commerce v Air Resources Board (2017)*: The CA Supreme Court upheld an appellate decision affirming the ability of the State Air Resources Board to adopt the Cap and Trade emissions reduction program.
 - c. *Schmeer v. Los Angeles County (2013)*: CA 2nd District Court of Appeals upheld a Los Angeles County ordinance banning the sale of plastic bags and authorizing grocers to collect 10-cents per paper bag to offset their costs and encourage use of reusable bags.
 - d. *Johnson v County of Mendocino (2018)*: CA 1st District Court of Appeals upheld a county ordinance imposing a tax on commercial cannabis via majority vote, with an accompanying advisory measure.
 - e. *Citizens Assn. of Sunset Beach v Orange County LAFCO (2012)*: CA Court of Appeals rejected a challenge by property owners in territory annexed into a city who alleged that they shouldn't have to pay the same taxes as other city residents without a 2/3rds vote.

f. Wilde v. City of Dunsmuir (2020): The CA Supreme Court rejected a contention that local water rates and other utility charges could be challenged by referendum.²⁶

- 4) **Disruptive Changes to State and Local Governance:** This Act proposes disruptive changes to the powers, authority and process of state and local governments and the people's power over the initiative. By enacting new legal hurdles, definitions and criteria, these changes will make it more difficult for the state and local agencies to raise revenues, and slow administrative enforcement and regulatory activities.
- 5) **Economic Development Considerations:** Economic Development is the creation of wealth from which community benefits are realized. It is more than a jobs program, it's an investment in growing your economy and enhancing the prosperity and quality of life for all residents. As such, economic development implementation is rooted in maintaining a thriving local economy which also benefits the prosperity and quality of life of residents.

Given the multiple provisions in this measure, the sponsors are obviously frustrated by actions of the Legislature, state and local tax levels, regulatory activities, a series of Court decisions, and recent voter actions they disagree with. At the same time, local leaders are elected and accountable to voters, and need to retain the flexibility to govern, which includes raising revenues for services and adopting and enforcing regulations.

CALED members should consider whether this measure effectively furthers their community's economic development goals.

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Some Recent Press Coverage:

January 23, Daily Breeze, OP-ED Jon Coupal, Howard Jarvis Taxpayers Association:

<https://www.dailybreeze.com/2022/01/23/the-fight-to-limit-taxation-continues/>

February 22, Sacramento Bee <https://www.sacbee.com/article258549943.html>

March 2, LA Times Editorial: <https://www.latimes.com/business/story/2022-03-02/california-taxpayer-protection-and-government-accountability-act>

March 16, Sacramento Business Journal: <https://www.bizjournals.com/sacramento/news/2022/03/16/california-roundtable-ballot-measure-taxes.html>

CONTACT:

The California Association for Local Economic Development (CALED) is the voice of economic development practitioners and stakeholders. With more than 800 members, CALED is one of the largest economic development organizations in the country. We believe that through partnership and collaboration with local economic developers, the state of California can leverage the energy of California's economic development network to create positive impacts that benefit our businesses and residents.

<http://caled.org> or (916) 448-8252

²⁶ It does not appear that this Act alters this Court decision. There is no mention of the power of referendum in the measure.