



**BALLOT INITIATIVE #1935 (FILED AS #21-0042A1)
LIMITS ABILITY OF VOTERS AND STATE AND LOCAL GOVERNMENTS TO RAISE
REVENUES FOR GOVERNMENT SERVICES.**

Eligible for November 5, 2024 California General Election Ballot

BACKGROUND

The purported “Taxpayer Protection and Government Accountability Act,” a statewide initiative measure sponsored by the [California Business Roundtable](#) (“CBRT”), would revise the state Constitution in a manner that could significantly undermine local control and disrupt the ability of state and local governments to provide essential services and infrastructure. If enacted, public agencies would face a drastic rise in litigation that could severely restrict their ability to meet essential services and infrastructure needs.

Initiative 1935, previously labeled 21-0042A1, is often called the “CBRT Initiative”, a reference to its proponents, an entity representing California’s wealthiest corporations. A growing opposition coalition has dubbed the initiative the “[Taxpayer Deception Act](#).” Additionally, a Committee to Oppose to Initiative 1935, sponsored by the League of California Cities, calls the initiative the “[Corporate Tax Trick](#).”

On February 1, 2023, California Secretary of State Shirley Weber issued a [memo to all county clerks/registrars of voters](#) announcing that proponents had filed the necessary number of valid signatures to make Initiative 1935 eligible for the November 5, 2024 General Election ballot. Proponents now have until June 27, 2024 to consider withdrawing the initiative before the Secretary of State officially certifies it for the ballot.

In Fall of 2023, Governor Gavin Newsom, joined by the California State Legislature and former State Senate President pro Tem John Burton, filed an emergency petition to the California Supreme Court for a pre-election challenge to Initiative 1935. On November 29, 2023, the Court issued an order to show cause why the measure should not be removed from the ballot and established a schedule for briefing the court, which is expected to rule on the matter before the end of June.

An amicus brief filed by CSDA and 10 other local government partners argues the measure is an unlawful revision of the state Constitution because of the ways the measure would redistribute authority between state and local governments and undermine essential functions of local governments.

Moreover, Initiative 1935 is so poorly drafted that it raises many interpretive issues that will not be simply resolved without requiring extensive litigation after passage. What follows is a summary of provisions that could significantly impact local governments pending future legal rulings.



SUMMARY

According to the Legislative Analyst’s Office (“LAO”) Ballot Initiative [21-0042A1](#) would result in “potentially substantially lower” state and local revenues, restricting the ability of local agencies and the State of California to fund services and infrastructure by:

- Adopting new and stricter rules for raising taxes, fees, assessments, and property-related fees.
- Revising the State Constitution, including portions of Propositions 13, 218, and 26 among other provisions, to the advantage of the initiative’s proponents and plaintiffs; creating new grounds to challenge these funding sources and disrupting fiscal certainty.
- Restricting the ability of local governments to issue fines and penalties to corporations and property owners that violate local environmental, water quality, public health, public safety, fair housing, nuisance and other laws and ordinances.

The initiative includes provisions that would retroactively void *all* state and local taxes or fees adopted after January 1, 2022 that do not adhere to the provisions of this initiative, unless the tax or fee is reenacted in compliance with the initiative within 12 months. Compliance with the initiative could require placement of the invalidated revenue on a ballot for two-thirds voter approval. This may also affect indexed fees that adjust over time for inflation or other factors. Effectively, it would allow voters throughout California to invalidate the prior actions of local voters, undermining local control and voter-approved decisions about investments needed in their communities.

Specifically, including other provisions effecting the state government, the initiative would impact local agencies through revisions to the California Constitution as follows:

Local Tax and Fee Authority to Provide Local Services

Fees:

- One potentially adverse interpretation of the measure may require that, with few exceptions, fees and charges shall not exceed the “actual cost” of providing the product or service for which the fee is charged.
 - “Actual cost” is defined as the “...*minimum amount necessary...less other sources of revenue including, but not limited to taxes, other exempt charges, grants, and state or federal funds...*”
- The burden on the local government to prove the fee or charge does not exceed “actual cost” is heightened from a “*preponderance of the evidence*” to “*clear and convincing evidence*”.



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- In addition to limiting fees and charges to the so-called “actual cost” to the local government for providing the service, fees and charges must also be “reasonable” to the payor; no definition is provided for this possible new subjective reasonableness test.
- Defines *all* sources of revenue as either taxes or “exempt charges.”
- Lists Article XIID charges in Proposition 218 under the definition of “exempt” charges subjecting them to potential litigation.
- Exposes previously established fees indexed to inflation or other metrics to new standards and legal challenges.
- Adds to the Constitution a requirement for a board action to adopt, enact, create, establish, collect, increase, or extend any and all fees.

Taxes:

- Increases the threshold for voters to pass a local special tax initiative placed on the ballot by voters from a simple majority to a two-thirds majority, likely to address concerns over the 2017 California Supreme Court decision in *California Cannabis Coalition v. City of Upland*.
- Requires voter approval when an expansion of boundaries extends existing taxes or fees to new territory.
- New taxes can be imposed only for a specific duration.

Fines and Levees:

- Interferes with local enforcement efforts, by making it more difficult to impose fines and penalties for state and local law violations related to activities such as water discharge, waste recycling, weed abatement, fireworks, and housing code violations and unlawful commercial marijuana sales, just to name a few. The measure converts administratively imposed fines and penalties into taxes unless a new, undefined, and ambiguous “adjudicatory due process” is followed.

Litigation Exposure

- Significantly increases a public agency’s burden of proof from “preponderance of evidence” to “clear and convincing evidence” to prove compliance with the new fee requirements. By changing evidence standards to favor corporations suing public agencies, the initiative will promote costly litigation.
 - The local government would bear the burden of proving by clear and convincing evidence that a levy, charge or exaction is an “exempt charge” and not a tax.
- By enacting a new requirement that all fees must be “reasonable” to the payor but offering no definition as to what “reasonable” means, the initiative may provide a new avenue to challenge fees by enabling a plaintiff to claim a fee is not “reasonable” even if the fee meets the “actual cost” of service.



- Prop. 218 currently requires fees cover the *reasonable* cost of service. This initiative, however, may be viewed by some proponents as a revision to the Constitution that would require the near-impossible standard of predicting *actual* costs years into the future. To compound this challenge, the new standard also factors in the receipt of external revenues that are constantly shifting and typically outside the control of the local agency. It defines “actual costs” as:
 - “(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 is not used by the government for any purpose other than reimbursing that cost. In computing “actual cost” 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.”
- The initiative will foster endless litigation challenging local fees claiming they are not the “minimum amount necessary”. For instance:
 - Do roads need to be paved every 10 years or 50 years?
 - Does infrastructure need to be upgraded or replaced or not improved at all?
 - What is the minimum emergency response time necessary?

IMPACTS

- Could prevent new fees or assessments to fund water, sewer, trash, fire protection, parks and recreation, and other essential services and infrastructure.
 - Places billions of dollars in local government fee and charge revenues at heightened legal peril.
- Jeopardizes the public health and safety of communities by cutting off new revenue intended to pay for essential local services and infrastructure.
 - Substantially increases the legal and administrative cost of public infrastructure financing.
- With billions of dollars in deferred maintenance and unmet needs for California’s infrastructure, exacerbates the neglect and deterioration of our roads, dams, waterways, and other facilities.
- By limiting revenues to the “minimum amount necessary”, imposes a “race-to-the-bottom” in California that will halt investment in technological advancements that future generations will depend upon.
- Prevents critical investments in climate adaptation and community resilience to address drought, flooding, and wildfire as well as reduce emissions and harmful pollutants.
- Exposes taxpayers to a new wave of costly litigation, limits the discretion and flexibility of locally elected boards to respond to the needs of their communities, and injects uncertainty into the financing and sustainability of critical infrastructure.
- Restricting local services and infrastructure to the lowest and minimum amount possible will disproportionately impact the most underserved communities the hardest.



SUPPORT

- California Business Roundtable (CBRT) – Sponsor
 - Direct contributors to Initiative 1935 include, but are not limited to:
 - AMR Holdco, Inc., private ambulance company based in Colorado
 - Michael K. Hayde, Including Western National Group and Affiliated Entities
 - Kilroy Realty
 - Hudson Pacific Properties and Affiliated Entities
 - Douglas Emmett Properties, LP and Affiliated Entities
 - Shorenstein Realty Services and Affiliated Entities
 - Financial contributors to the CBRT Issues PAC include, but are not limited to:
 - Aera Energy
 - Albertsons Safeway
 - Blackstone Real Estate Partners
 - California Business PAC, Sponsored by CalChamber
 - Dart Container
 - Howard Jarvis Taxpayers Association
 - Majestic Realty
 - Pacific Ethanol
 - PEPSICO
 - Pharmaceutical Research and Manufacturers of America
 - Sempra Energy
 - State Farm Insurance
 - Sutter Health
 - 7-Eleven

OPPOSITION

- Alliance for a Better California
- AFSCME California
- CalCities (League of California Cities)
- California Alliance for Jobs
- California Contract Cities Association
- California Professional Firefighters
- California Special Districts Association
- California State Association of Counties
- California State Council of Laborers
- Rebuild SoCal Partnership
- SEIU California
- Nearly 200 local agencies, including over 100 special districts