

November 16, 2009

Hon. Edmund G. Brown Jr.
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Krystal Paris
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to voter approval requirements for local government taxes (A.G. File No. 09-0052).

BACKGROUND

Property Tax Debt Overrides

The California Constitution limits property taxes to 1 percent of the value of property. Property taxes may exceed or “override” this limit only to pay for (1) local government debts approved by the voters prior to July 1, 1978 or (2) bonds to buy or improve real property that receive voter approval after July 1, 1978.

The Constitution establishes a two-thirds voter approval requirement for local government bonds, but provides a lower voter-approval threshold (55 percent) for local school facility bonds that meet the conditions summarized in Figure 1.

Figure 1

Existing 55 Percent School Bond Voter Approval Requirements

- Bond funds can be used only for construction, rehabilitation, equipping of school facilities, or the acquisition or lease of real property for school facilities. The funds may not be used for school employee salaries or other operating expenses.
- The bond measure includes a specific list of school projects to be funded and certification that the school board has evaluated safety, class size reduction, and information technology needs in developing the list.
- The school board agrees to conduct annual, independent financial and performance audits until all bond funds have been spent to ensure that the bond funds have been used only for the projects listed in the measure.

Special Taxes

Under the Constitution, local governments may impose or increase taxes (other than ad valorem property taxes) and earmark their funds for use for a specific purpose. The Constitution refers to these taxes as “special taxes” and requires local governments to obtain approval from two-thirds of their voters before imposing or increasing them. The most common taxes imposed as a special tax include sales, business license, utility users, hotel, and parcel taxes.

PROPOSAL

This measure amends the Constitution to lower to 55 percent the voter approval requirement for all local bonds and special taxes, provided these measures comply with certain new conditions. The new vote threshold would apply to special taxes proposed by all local governments (cities, counties, special districts, redevelopment agencies, transportation authorities, and K-14 school and community college districts) and for bonds proposed by noneducation local governments.

New Conditions. The measure’s conditions are similar to the existing constitutional provisions related to school bonds (summarized in Figure 1). For example, the measure requires that local agencies use the bond proceeds or special tax revenues only for the purposes specified and that the local agency contract for an annual independent audit of the funds. In addition, the measure requires local governments to post the results of the audit in a manner that is easily accessible to the public.

FISCAL EFFECTS

This proposition would make it easier for voters to approve local bond and special tax measures. As a result, local governments probably would propose more of these measures and voters probably would approve more of them.

The fiscal effect of the reduced voter threshold would depend on future local government and voter decisions, but the overall fiscal effect probably would be major increases in local government taxes and spending. Over time, as discussed below, we estimate that local spending related to these new revenues probably would increase by at least billions of dollars annually.

Bond/Property Tax Debt Override Measures. California’s experience with lowering the local voter approval requirement for school bonds suggests that this action could result in voters approving billions of dollars more in bonds (and increasing property taxes to pay for them) than otherwise would have been the case. Specifically, during the 14 years before the voter threshold for school bonds was lowered to 55 percent (1986-2000), Californians approved 55 percent of proposed school bonds, raising \$18 billion. Another 34 percent of school bond measures totaling \$9 billion would have been approved if the vote threshold had been 55 percent. After the vote threshold was lowered,

voter approval of school bonds increased. Specifically, between 2000 and 2005, voters approved 80 percent of school bond measures, raising about \$26 billion. While many factors probably contributed to this increased passage rate, the decrease in voter approval threshold appears to have been a significant factor. Given the range of services provided by cities, counties, special districts, and transportation agencies and these agencies' facility needs, we would expect that lowering these agencies' voter approval threshold would result in major increases in voter approved bond debt and property taxes to pay for this debt.

Special Taxes. California local governments' recent experience with special tax elections suggest that the fiscal effect of lowering the voter approval threshold from two-thirds to 55 percent also could be large. In 2003 and 2004, for example, local governments proposed 396 special taxes. Voters approved less than half of them. If the voter approval threshold had been 55 percent level, however, over 60 percent of these measures would have passed. While some of the failed tax measures that earned more than 55 percent approval involved small sums, some of them were very large. For example, in 2004, the Los Angeles County half-cent sales tax failed because it received approval by only 60 percent of local voters. Had the measure passed, it would have raised about \$500 million annually for local public safety programs.

Summary of Fiscal Effect

The measure would have the following major fiscal effect:

- Major increases in local government revenues and spending. Depending on local voter approval of future tax and bond proposals, local government spending related to these new revenues would probably reach at least billions of dollars annually over time.

Sincerely,

Mac Taylor
Legislative Analyst

Michael C. Genest
Director of Finance