

Date of Hearing: July 3, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 268 (Wiener) – As Amended June 26, 2019

SENATE VOTE: (vote not relevant)

SUBJECT: Ballot measures: local taxes.

SUMMARY: Makes changes to ballot label requirements for a local measure that imposes or increases a tax with more than one rate, or authorizes the issuance of bonds, as specified.

Specifically, **this bill:**

- 1) Exempts a local ballot measure that imposes or increases a tax with more than one rate or authorizes the issuance of bonds from existing provisions of law that require the ballot label for all local ballot measures that impose a tax or raise the rate of a tax to include in the statement of the measure to be voted on the amount of money to be raised annually and the rate and duration of the tax to be levied, and instead allows the proponents of a measure or the jurisdiction submitting a proposed measure that imposes or increases a tax with more than one rate, or authorizes the issuance of bonds, to include in the statement of the measure to be voted on the words “See voter guide for information.”
- 2) Requires the proponents of a measure or the jurisdiction submitting a proposed measure that imposes or increases a tax with more than one rate, or authorizes the issuance of bonds, that choose to include in the statement of the measure to be voted on the words “See voter guide for information” to include the following in the tax rate statement required to be mailed with the county voter information guide pursuant to existing law:
 - a) A concise description of the purpose of the tax proposed, including how the bond proceeds or tax revenue will be spent to benefit the community.
 - b) If the measure imposes a tax with more than one tax rate, a list of all the tax rates that would apply and a description of how the tax will be imposed.
 - c) A plain language description of any mechanism that would cause the tax rate or rates to vary over time.
 - d) An explanation of the duration of the tax stating whether the tax expires on a specific date, expires upon final payment of indebtedness, does not expire until further action by the voters or the local governing body, or expires as the result of some other action or occurrence.
 - e) The best estimate from official sources of the average annual dollar amount of taxes that would be collected during the ten-year period following the initial levy.
 - f) If the tax measure would authorize the issuance of bonds, the security for which constitutes a lien on the property for ad valorem taxes, all the disclosures required pursuant to existing law.

- 3) Provides that for purposes of an election to approve a tax under the Mello-Roos Community Facilities Act of 1982, or a charter city's authority under Section 5 of Article XI of the California Constitution, the statement required to be mailed voters with the sample ballot may consist entirely of a complete copy of the report and resolution of formation pursuant to existing law, or, in the case of a charter city, the applicable charter or ordinance provision.
- 4) Prohibits any estimate or projection included in the statement of the measure from restricting the tax imposed in accordance with the measure.
- 5) Provides it is the intent of the Legislature that elections officials prepare ballot materials for the March 3, 2020 primary election in compliance with the provisions of this bill.
- 6) Makes corresponding technical changes.

EXISTING LAW:

- 1) Requires the ballot statement for a local ballot measure to be a true impartial synopsis of the purpose of the proposed measure and be in language that is neither argumentative nor likely to create prejudice for or against the measure.
- 2) Requires the ballot statement for a local ballot measure that imposes a tax or raises the rate of a tax, including measures authorizing the issuance of bonds or the incurrence of debt, to include in the statement of the measure to be voted on the amount of money to be raised annually and the rate and duration of the tax to be levied.
- 3) Requires a local government agency, when submitting bond measures that will be secured by an ad valorem tax for voter approval, to mail a statement to voters with the sample ballot for the bond election. Requires the statement to be filed with the elections official conducting the election not later than the 88th day before the election, and to include all of the following:
 - a) The best estimate from official sources of the average annual tax rate that would be required to be levied to fund that bond issue over the entire duration of the bond debt service, based on assessed valuations available at the time of the election or a projection based on experience within the same jurisdiction or other demonstrable factors. Requires the estimate to also identify the final fiscal year in which the tax is anticipated to be collected.
 - b) The best estimate from official sources of the highest tax rate that would be required to be levied to fund that bond issue, and an estimate of the year in which that rate will apply, based on assessed valuations available at the time of the election or a projection based on experience within the same jurisdiction or other demonstrable factors.
 - c) The best estimate from official sources of the total debt service, including the principal and interest, that would be required to be repaid if all the bonds are issued and sold. Permits the estimate to include information about the assumptions used to determine the estimate.
- 4) Allows the statement, in addition, to contain a declaration of policy of the legislative or governing body of the applicable jurisdiction, proposing to use revenues other than ad valorem taxes to fund the bond issue, and the best estimate from official sources of these

revenues and the reduction in the tax rate levied to fund the bond issue resulting from the substitution of revenue.

- 5) Defines the term “tax rate” to mean tax rate per \$100 of assessed valuation on all property to be taxed to fund a bond.
- 6) Provides that failure to comply with existing law does not affect the validity of any bond issue following the sale and delivery of the bonds.
- 7) Provides that the Legislature declares that the essence of compliance with existing law is good faith in presenting to voters the most accurate available information for their use in effecting comparisons and exercising judgement in casting their ballots.
- 8) Requires the statement of all measures submitted to the voters to be abbreviated on the ballot in a ballot label. Prohibits the ballot label from containing more than 75 words and requires it to be the condensed version of the ballot title and summary including the financial impact summary prepared pursuant to existing law.

FISCAL EFFECT: Unknown. State-mandated local program; contains reimbursement direction.

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

Elections Code Section 13119 recently was amended to require a local measure that imposes or increases a tax to include in the ballot label for the measure “the amount of money raised annually and the rate and duration of the tax to be levied.” The legislative intent was to expand transparency, but for bonds and tiered taxes, this requirement has proven to confuse and mislead voters with financial terms such as “tax per assessed value” that cannot be explained on the 75-word ballot label.

Voter Confusion

Many voters have never seen a property tax bill, either because they are not the person in their household who pays the bills, their property taxes are collected and paid through a mortgage company, or because the property taxes they pay are included in rent to a landlord. The term “assessed value” is commonly misunderstood as market value, when in fact assessed value often has little relationship to the market value of a property, depending on when the property was last transferred in a manner triggering reassessment. When voters don’t understand financial terminology in the ballot label, they often vote no. Jurisdictions eking out a supermajority to fund schools, hospitals, or flood protection can’t afford to lose any votes to confusion.

SB 268 Expands Transparency Without Voter Confusion

SB 268 would require a measure that imposes or increases tiered tax rates or authorizes the issuance of bonds to include in the voter information guide, using plain language, key financial information in a context with room for explanation.

New disclosures for bonds and tiered tax rates would include a list of all tax rates that would apply, a description of how the taxes will be imposed including anything that would cause the rates to vary over time, an explanation of the duration of the tax, and the estimated average annual dollar amount of taxes that would be collected over the first ten years of the initial levy.

Existing disclosures for bonds in the tax rate statement would remain in the voter information guide including the average tax rate, the highest tax rate, and the total debt service for bonds. Simple flat rate taxes, such as sales taxes, would continue to provide the rate, duration, and estimated annual revenue in the ballot label.

Forces Regressive Flat Rate Taxation

For tiered tax rates with multiple rate categories, even a bare-bones description of the rates would consume all the 75 words allowed on ballot labels. Over time, local agencies will be forced to take simpler flat rate approaches to local taxation that favor large property owners and the wealthy, while applying a higher tax burden on the owners of smaller properties and low-income communities.

Over-Simplifications Don't Make Sense

For bond measures, ballot labels that comply with new provisions in the Elections Code are misleading voters. The tax rate for bonds issued in multiple series under one voter approval may fluctuate significantly and unpredictably over time. Attempting to comply with the new law, local agencies for both bonds and tiered tax rates are forced to insert rates into their ballot label language that are averages, projections, ranges, or statutory maximums that don't tell the voter how much the cost of the tax would be for them. These over-simplifications in the context of bonds and tiered tax rates don't make sense voters.

Negative Effects of Voter Confusion

In 2018, numerous local agencies saw a decrease of 5 to 15 percentage points in their polling as a result of the new Elections Code ballot label requirements. This contributed to the failure of a number of bonds, and also forced numerous local agencies to reduce the size of their bonds or not place their bonds on the ballot. Polling shows this does not reflect a change in voters' personal beliefs, but rather is a result of voter confusion. All local tax measures already require a supermajority for passage and fund vital public services like schools, roads, flood protection, and hospitals. Requiring that confusing financial terms be included in ballot labels over time will have the unintended effect of less public investment in local communities and could yield disastrous results for public health and safety.

Smart Transparent Taxes = Smart Policy Outcomes

SB 268 addresses a serious problem in current law that both confuses voters and depresses their support for funding vital public services. The current law essentially prohibits local tax mechanisms that cannot be accurately explained in the 75-word ballot label. Those mechanisms tend to be the ones that drive a policy outcome such as the flexibility to issue bonds when the funds are needed, the provision of tax-based incentives for enterprise zones or the preservation of agricultural lands, or the levying of taxes in tiers to more justly lighten the tax burden for those least able to afford it. SB 268 enhances transparency without

unnecessary voter confusion and without quashing innovations in local taxation that support desired policy outcomes.

- 2) **Local Ballot Measure Ballot Statements and Previous Legislation:** In 2015, the Legislature passed and the Governor signed AB 809 (Obernolte), Chapter 337, Statutes of 2015, which required the ballot, if a proposed local initiative imposed a tax or raised the rate of a tax, to include in the statement of the ordinance the amount of money to be raised annually and the rate and duration of the tax to be levied. AB 809 took effect in January 2016.

A 2017 Los Angeles County Superior Court ruling regarding the ballot label for a local tax measure placed on the ballot by a government agency subsequently prompted the introduction of AB 195 (Obernolte), Chapter 105, Statutes of 2017. According to previous analyses, the superior court ruled that Elections Code Section 13119 (b) applied only to initiative measures that qualify for the ballot through a petition signed by voters of the local jurisdiction and did not apply to a ballot measure placed on the ballot by a local government agency. Moreover, the intent of AB 195 was to clarify current law to better reflect the intent of AB 809 and to ensure the ballot label for all local tax measures placed on the ballot, not only initiative tax measures, are required to include the rate of the proposed tax increase, its duration, and an estimate of the amount of revenue to be raised. AB 195 was signed into law by Governor Brown.

- 3) **Ballot Form:** Current law requires a ballot to comply with a variety of laws that dictate its content. For example, a ballot must contain the title of each office, the names of all qualified candidates, as specified, ballot designations, as specified, titles and summaries of measures submitted to voters, and instructions to voters, among other things. Moreover, current law requires a ballot to be printed in a certain form, as specified. Once all of these requirements are met, there is limited space left on the ballot to accommodate further requirements. Consequently, it is common practice to include other important election information in the voter information guide that is sent to all registered voters.
- 4) **75 Word Ballot Label Restriction:** Current law requires the statement of all measures submitted to the voters to be abbreviated on the ballot in a ballot label. Additionally existing law prohibits the ballot label from containing more than 75 words and requires it to be the condensed version of the ballot title and summary including the financial impact summary prepared pursuant to existing law. Because this bill requires certain information to be included on the ballot label, that information will count toward the 75 word limit in current law.
- 5) **Tax Rate Statement:** In 1968, the Legislature passed and the Governor signed SB 838 (Petris), Chapter 813, Statutes of 1968, which required the elections official to mail to voters with the sample ballot a tax rate statement for local bond measures. The purpose of the tax rate statement is to provide tax rate information and educate voters on what they will be voting on. Until 2014, aside from a few technical changes that were made, the information included in this statement had mostly been unchanged since it was signed into law in 1968.

In 2014, the Legislature passed and Governor Brown signed AB 2551 (Wilk), Chapter 908, Statutes of 2014, which added a new requirement to the tax rate statement. Specifically, AB 2551 required the statement to include the best estimate from official sources of the total debt

service, including the principal and interest, that would be required to be repaid if all the bonds are issued and sold. According to the previous analyses, the author of the measure argued that the tax rate statement needed to be updated to ensure voters understood how the estimate of the tax rate was reached and what the costs would be throughout the 30-40 year period of the bond. Additionally, the author argued that the Legislative Analyst's Office already includes the "fiscal effect" of any costs related to the approval of a statewide General Obligation Bond in the statewide ballot pamphlet sent to voters and that this bill adds similar language into the "tax rate" statement required to be sent with the sample ballot for all local bond measures.

In 2017, AB 1194 (Dababneh), Chapter 795, Statutes of 2017, was signed in law and required the tax statement that is required to be included in the sample ballot for local bond measures to include the best estimate from official sources of the average annual tax rate that would be required to be levied to fund the bond issue over the entire duration of the bond debt service, as specified, and required the estimate to identify the final fiscal year in which the tax is anticipated to be collected.

This bill creates new tax rate statement disclosure requirements for a local measure that imposes or increases a tax with more than one rate, or authorizes the issuance of bonds, as specified. Other measures would be required to follow the current tax rate statement requirements.

- 6) **County Voter Information Guide and Suggested Technical Amendment:** Elections Code Section 13300.7 permits a local elections official to establish procedures designed to permit a voter to opt out of receiving their county voter information guide, state voter information guide, notice of polling place, and associated materials by mail, and instead obtain them electronically via email or by accessing them on the county's or city's internet website, as specified. This bill references this code section in various parts of the bill. Committee staff recommends the following technical amendment:

On page 3, in line 6, after the word "voters" insert the following "*or electronically transmitted to the voters pursuant to Section 13300.7,*"

- 7) **Arguments in Support:** In support, a coalition of local groups that represent labor, counties, schools, special districts, and hospitals write:

SB 268 would require a local measure that imposes or increases tiered tax rates, authorizes the issuance of bonds, or imposes a tax with a rate structure that cannot be accurately described in the ballot label, to include in the ballot label the words "See voter guide for information." The local tax measure would be exempted from the requirement to provide the rate, duration, and annual revenue in the ballot label, but would be required to include in the voter information guide key financial measures that include all those in existing law and more. Specifically:

- Public Benefits – How tax revenue will be spent to provide public benefits;
- Rates – A list of all the tax rates that would apply;
- Duration – An explanation of when or if the tax expires;
- Annual Revenue – Best estimate of annual tax revenue;

- Tax Amount Changes – Any factor that would change the amount of tax paid over time;
- Average Tax Rate – If rates vary year to year, such as with bonds, provide an average tax rate;
- Highest Tax Rate – If rates vary year to year, provide the estimated highest tax rate and the year it would apply; and
- Total Debt Service for Bonds – The estimated cost of borrowing if all the bonds are issued and sold.

This bill also would clarify that financial measures stated in the ballot label or in the voter information guide are estimates, and not caps above which a local jurisdiction would be subject to legal challenge.

8) **Arguments in Opposition:** In opposition, the California Taxpayers Association (Cal-Tax) writes:

- Reduces Local Tax Transparency - In 2017, the Legislature and Governor Jerry Brown passed CalTax-supported AB 195 (Chapter 105, Statutes of 2017), requiring local jurisdictions to include vital tax information in the ballot question. SB 268 would reduce voter transparency by exempting local jurisdictions from this law and only require tax information to be in lengthy voter guides, where the information would be less accessible.
- Unnecessary Exemption - In the November 2018 election, 327 of the 398 local tax and bond measures placed on the ballot passed while complying with the law. Attached to this letter are several examples of local ballot measures on the November 2018 ballot that complied with the law and were approved by voters.

REGISTERED SUPPORT / OPPOSITION:

Support

AFSCME Council 57
 Association of California Healthcare Districts
 California Special Districts Association
 California State Association of Counties
 California State Council of SEIU
 California Teachers Association
 Coalition for Adequate School Housing
 Community College Facility Coalition
 Community College League of California
 Compton Unified School District
 County of Santa Cruz
 Non-Profit Housing Association of Northern California (NPH)
 San Diego Housing Federation
 Santa Clara Valley Water District
 School Energy Coalition
 Silicon Valley at Home

Small School Districts' Association
State Building and Construction Trades Council of California
Urban Counties of California

Opposition

California Taxpayers Association
5 Individuals

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