

Date of Hearing: June 14, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 348 (Leyva) – As Amended March 20, 2017

SENATE VOTE: 34-3

SUBJECT: County voter information guide: taxpayer notice.

SUMMARY: Requires an elections official to include a specified notice in the county voter information guide regarding the existing process for challenging the levy of a special tax, as specified. Specifically, **this bill:**

- 1) Requires an elections official, if a local special tax measure is presented to the voters for approval, to include a notice in the county voter information guide regarding the process for initiating a validation action challenging the levy of a special tax pursuant to existing law.
- 2) Requires the notice to be no smaller than 12-point, in bold and all capital letters with one-eighth inch border, and immediately follow the analysis of the special tax measure. Requires, under the heading "Important Notice for Taxpayers," the following to be printed:

"State law generally requires that a legal challenge be filed within 60 days of voter-approval of a special tax. The validity of the special tax cannot be challenged after that time."

EXISTING LAW:

- 1) Authorizes, except as specified, the legislative body of any city, county, or district to propose the adoption of a special tax by ordinance or resolution.
- 2) Requires that the special tax proposition be submitted to the voters of the city, county, or district. Permits the city, county, or district to levy the tax upon approval of two-thirds of the votes cast by voters voting upon the proposition. Permits, if an ordinance or resolution is adopted and approved by the voters, a validation action challenging the levy of the special tax to be commenced within 60 days of the effective date of the tax increase.
- 3) Requires an elections official to send to each voter a county voter information guide that contains, among other things, impartial analyses of local ballot measures, including measures to levy special taxes.
- 4) Requires county elections officials to mail a county voter information guide to each voter in the jurisdiction, as specified.
- 5) Requires the county voter information guide to contain, among other things, a copy of the official ballot (sample ballot), a complete copy of each local measure, and an analysis of each local ballot measure, including measures to levy special taxes.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rules 28.8, negligible state costs.

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

The state's validation statutes allow 60 days for a governmental agency or private party to file a lawsuit to determine the validity of certain municipal agency actions or tax measures. Unfortunately, it is unlikely that many taxpayers are aware of this short time frame.

It is the intent of SB 348 to ensure that voters are aware and well informed of this requirement. SB 348 will provide voter education, as well as hopefully minimize unnecessary litigation years after a tax has already been enacted.

2) **Local Special Taxes and the California Constitution:** On November 5, 1996, California voters approved Proposition 218, known as "The Right to Vote on Taxes Act." Proposition 218 added articles XIIC and XIID to the state Constitution, and enacted numerous specified restrictions on the ways in which local government can raise revenue, including taxes, assessments, and property related fees. Section 1 of Article XIIC defines a "general tax" as any tax imposed for general government purposes and defines a "special tax" as any tax imposed for specific purposes, including taxes imposed for specific purposes and placed into a general fund. Section 2 of Article XIIC states that all taxes imposed by any local government are either general taxes or special taxes. Additionally, Section 2 states that no local government may impose, extend, or increase any general taxes unless submitted to the electorate and approved by a majority vote or impose, extend, or increase a special tax unless submitted to the electorate and approved by a two-thirds vote. Section 3 of Article XIIC allows the voters to use the initiative process to reduce or repeal any local tax, assessment, fee, or charge, as specified.3) **Current Practice:** Local agencies generally propose to increase taxes by adopting an ordinance or a resolution at a public hearing. Current law requires the ordinance or resolution to include the type of tax and rate of tax to be levied, the method of collection, and the date of the tax measure election. Additionally, local agencies are required to provide a statement indicating the specific purpose of the special tax, create an account into which the tax proceeds are deposited, and create an annual report on the amount of funds collected and expended and the status of any project funded by these funds.

Moreover, Section 860 of the Code of Civil Procedure permits a governmental agency or private party to file a lawsuit in a superior court to determine the validity of certain actions of a municipal agency, including the levying of a special tax. The time period allowed for filing a validation lawsuit is 60 days. If no private party files a validation lawsuit, a municipal agency's actions are de facto validated once the statute of limitations runs.

According to background material provided to the committee, in November 2009, the voters in the County of Alameda approved ballot measures I and J levying special parcel taxes by the Albany Unified School District. Property owner Golden Gate Hill Development Company, Inc. paid the parcel taxes for the next three fiscal years but sued the county and the district in 2014 for a refund. Golden Gate argued the taxes assessed under the measures were improper because different rates were imposed on residential and nonresidential properties,

as well as on nonresidential properties of different sizes. The court and the district objected, contending that the complainant failed to state a claim because, under existing law, any claim challenging the validity of the measures had to be brought within 60 days of the date they were passed. The court agreed with the Respondents and upheld the 60 day validation timeframe in *Golden Gate Hill Development Company v. County of Alameda* (2015), 242 Cal. App. 4th 760.

This bill requires certain information to be included in the voter information guide to ensure voters are adequately informed of their ability to challenge a voter approved special tax. Specifically, this bill requires an elections official, if a local special tax measure is presented to the voters for approval, to include in the county voter information guide a notice regarding the process for initiating a validation action challenging the levy of a special tax, as specified.

4) **Arguments in Support:** In support, the California Chamber of Commerce writes:

In 2015, the Court of Appeals in *Golden Gate Hill Development Co. Inc., v. County of Alameda*, 242 Cal.App.4th 760 (2015), held a taxpayer seeking a refund for parcel taxes imposed by a school district on the grounds that the taxes were invalid, was barred from obtaining a refund because the taxpayer did not challenge the validity of the public agency's adoption of the tax within 60 days of the adoption, as required by Code of Civil Procedure Sections 860-870. This decision is significant as it requires a taxpayer to immediately challenge the illegality of a local tax instead of doing so as the basis for a refund within four years of payment of the tax.

While we do not necessarily agree that the period in which to challenge a local tax should be limited to 60 days after adoption given that a taxpayer may not even understand how he/she/it will be impacted by the tax, or appreciate the illegality of the tax within such a short time-frame, we do believe that, at a minimum, such taxpayer should be provided notice of the process for a validation action as required by SB 348.

5) **Arguments in Opposition:** In opposition, the California School Boards Association writes:

Transparency measures and public information initiatives are undertaken to encourage a specific action or behavior. The state does not undertake an effort to ensure that residents know about all laws, therefore the dissemination of selected information is not neutral. Ostensibly a transparency measure, the outcome of this bill can only be to serve as a suggestion to challenge badly-needed school funding measures that have been approved by the voters. For example, if voter guides were required to include information about recalling State Legislators, it stands to reason that such a disclosure would result in more recall petitions being filed.

Proponents argue that this bill is needed to serve as notice, to ensure that courts reject validation actions filed after the 60 day period. But a cornerstone of our legal system is that ignorance of the law is not an excuse. This is evidenced by the 2015 decision of the California Court of Appeal in *Golden Gate Hill Development Co. Inc. v. County of Alameda et al.*, which held that validation actions must be

filed within 60 days of passage.

SB 348 will result in an increase in frivolous lawsuits which will in turn delay the implementation of educational programs, and the building and modernization of school facilities. The primary mission of local education agencies is to educate students. This bill would increase election-related and legal costs for [local education agencies], thereby diverting resources away from educational services for students. Public resources are rightfully spent on efforts to educate the public, but given the limited resources of our schools, these should be allocated towards measures that improve outcomes for students.

- 6) **Double-Referral:** This bill is double-referred to the Assembly Local Government Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of REALTORS (sponsor)
California Apartment Association
California Chamber of Commerce
California Taxpayers Association
Howard Jarvis Taxpayers Association

Opposition

Association of California School Administrators
California School Boards Association
Coalition of Adequate School Housing

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