



● **Board of Directors**  
***Communications and Legislation Committee***

5/11/2010 Board Meeting

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**8-8**

**Subject**

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Express opposition to Proposition 16: Taxpayers' Right to Vote Act

**Description**

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Proposition 16 ([Attachment 1](#)), on the June 8, 2010 ballot, the "Taxpayers' Right to Vote Act," seeks to impose a new two-thirds voter approval requirement for any local government to incur debt or use public funds to establish or expand electric delivery service, to provide community choice aggregation services (which would allow local governments to combine their citizens' purchasing power to buy electricity for the benefit of local residents and businesses), or to offer retail electric service to retail customers in its jurisdiction that replaces the local public utility.

If approved, Proposition 16 would require voter approval requirement of local agency obligations payable from ratepayer revenues. Presently, under California statutes and the state Constitution, voters must authorize special taxes before a local agency can issue general obligation bonds that are secured by those tax revenues, but obligations to be repaid from rates and other revenues do not require voter approval. Proposition 16's proposed voter approval requirement would take away the discretion of local governments to use ratepayer revenues to expand electric service beyond their current boundaries or to enter into the electric service market in the future. The requirements under Proposition 16 also conflict with existing annexation procedures.

The initiative proposes adding new section 9.5 to Article XI of the California Constitution. Article XI grants powers to local government agencies. Section 9 of Article XI gives municipal corporations the power to establish and operate utilities for light, water, power, heat, transportation and communications services and provides that persons or corporations may establish and operate utilities to provide these services under regulations prescribed by the city. Proposed section 9.5 would then limit the authorization for municipalities to provide electric service that was granted to them in section 9 of Article XI, providing that "no local government shall, at any time, incur any bonded or other indebtedness or liability in any manner or use any public funds for the construction or acquisition of facilities, works, goods, commodities, products or services to establish or expand electric delivery service, or to implement a plan to become an aggregate electricity provider" without the approval of two-thirds of the voters within the jurisdiction of the local government and two-thirds of the voters within any expanded territory to be served. "Local government" is defined broadly in the proposed law and would include Metropolitan and its member agencies: "[A] municipality or municipal corporation, a municipal utility district, a public utility district, an irrigation district, a city, including a charter city, a county, a city and county, a district, a special district, an agency, or a joint powers authority that includes one or more of these entities."

The net effect of this initiative would be to limit the ability of publicly owned utilities to provide expanded electric service compared with investor-owned utilities, which can spend funds to expand facilities and services without voter approval. This bill would usurp local government autonomy and set a dangerous precedent - mandating a two-thirds voting requirement for public agencies expending funds derived from revenue-supported operations.

Proposition 16 is sponsored by Pacific Gas & Electric (PG&E). Opponents of the bill include Association of California Water Agencies, California Municipal Utilities Association (CMUA), League of California Cities,

Sierra Club, California Association of Realtors, and countless cities and counties throughout California, including the cities of Pasadena, Glendale, and Riverside. The listed supporters are PG&E, California Taxpayers Association, and California Chamber of Commerce.

Legal challenges have been filed against the initiative, including one brought by CMUA, Modesto Irrigation District, Sacramento Municipal Utility District, the city and county of San Francisco, San Francisco Local Agency Formation Commission, city of Moreno Valley, city of Redding, San Joaquin Valley Power Authority, and the Merced Irrigation District. This challenge seeks to compel the Secretary of State to disqualify Proposition 16 (**Attachment 1**) from the June 8, 2010 ballot for being false and misleading, and for concealing its true nature and purpose from the voters. The challengers allege that the initiative fails to disclose that Proposition 16 would effectively eliminate local governments' ability to develop alternatives to investor-owned utilities, as well as eliminate the ability of citizens to choose how they receive electricity. To date, this challenge is unresolved.

Staff recommends that Metropolitan oppose this initiative.

## **Policy**

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By Minute Item 41941, dated June 11, 1996, the Board adopted a set of policy principles on energy/restructuring.

By Minute Item 47598, dated August 19, 2008, the Board adopted a set of policy principles on energy.

## **California Environmental Quality Act (CEQA)**

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CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because the proposed action involves continuing administrative activities such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

## **Board Options**

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### **Option #1**

Adopt the CEQA determination and oppose Proposition 16 as stated in the letter.

**Fiscal Impact:** None

**Business Analysis:** None

### **Option #2**

Take a neutral watch position, leaving the member agencies to take positions as they deem appropriate.


**Fiscal Impact:** None

**Business Analysis:** None

**Staff Recommendation**

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Option #1

  
Linda Waade  
Deputy General Manager, External Affairs

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4/22/2010  
Date

  
Jeffrey Kightlinger  
General Manager

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4/22/2010  
Date

**Attachment 1 – Proposition 16**

Ref# ea12605633

**TEXT OF PROPOSED LAWS**

(PROPOSITION 15 CONTINUED)

*Franchise Tax Board shall adjust, on or before September 1, the minimum contribution amount specified in subdivision (b) as follows:*

*(1) The minimum estimated contribution amount for the calendar year shall be an amount equal to the product of the minimum estimated contribution amount for the calendar year multiplied by the inflation factor adjustment as specified in subparagraph (A) of paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.*

*(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.*

*(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.*

SEC. 6. The provisions of Section 81012 of the Government Code, which allow legislative amendments to the Political Reform Act of 1974, shall apply to all of the provisions of this act that are placed on the June 8, 2010, ballot, except that Section 91157 of the Government Code, and Article 8.6 (commencing with Section 18798) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, may be amended or repealed by a statute passed in each house of the Legislature, a majority of the membership concurring, and signed by the Governor.

SEC. 8. The section of this act that adds Chapter 12 (commencing with Section 91015) to Title 9 of the Government Code shall be deemed to amend the Political Reform Act of 1974 as amended and all of the provisions of the Political Reform Act of 1974 as amended that do not conflict with Chapter 12 shall apply to the provisions of that chapter.

**PROPOSITION 16**

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the California Constitution.

This initiative measure expressly amends the California Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

**PROPOSED LAW****Section 1. FINDINGS AND DECLARATIONS**

The People do find and declare:

(a) This initiative shall be known as “The Taxpayers Right to Vote Act.”

(b) California law requires two-thirds voter approval for tax increases for specific purposes.

(c) The politicians in local governments should be held to the same standard before using public funds, borrowing,

issuing bonds guaranteed by ratepayers or taxpayers, or obtaining other debt or financing to start or expand electric delivery service, or to implement a plan to become an aggregate electricity provider.

(d) Local governments often start or expand electric delivery service, or implement a plan to become an aggregate electricity provider, without approval by a vote of the people.

(e) Frequently the start-up, expansion, or implementation plan requires either construction or acquisition of facilities or other services necessary to deliver the electric service, to be paid for with public funds, borrowing, bonds guaranteed by ratepayers or taxpayers, or other debt or financing.

(f) The source of the public funds, borrowing, debt, and bond financing is generally the electricity rates charged to ratepayers as well as surcharges or taxes imposed on taxpayers.

(g) Such use of public funds and many forms of borrowing, debt or financing do not presently require approval by a vote of the people, and where a vote is required, only a majority vote may be required.

**Section 2. STATEMENT OF PURPOSE**

(a) The purpose of this initiative is to guarantee to ratepayers and taxpayers the right to vote any time a local government seeks to use public funds, public debt, bonds or liability, or taxes or other financing to start or expand electric delivery service to a new territory or new customers, or to implement a plan to become an aggregate electricity provider.

(b) If the start-up or expansion requires the construction or acquisition of facilities or services that will be paid for with public funds, or financed through bonds to be paid for or guaranteed by ratepayers or taxpayers, or to be paid for by other forms of public expenditure, borrowing, liability or debt, then two-thirds of the voters in the territory being served and two-thirds of the voters in the territory to be served, voting at an election, must approve the expenditure, borrowing, liability or debt. Also, if the implementation of a plan to become an aggregate electricity provider requires the use of public funds, or financing through bonds guaranteed by ratepayers or taxpayers, or other forms of public expenditure, borrowing, liability or debt, then two-thirds of the voters in the jurisdiction, voting at an election, must approve the expenditure, borrowing, liability or debt.

Section 3. Section 9.5 is added to Article XI of the California Constitution to read:

*SEC. 9.5. (a) Except as provided in subdivision (h), no local government shall, at any time, incur any bonded or other indebtedness or liability in any manner or use any public funds for the construction or acquisition of facilities, works, goods, commodities, products or services to establish or expand electric delivery service, or to implement a plan to become an aggregate electricity*

**TEXT OF PROPOSED LAWS**

(PROPOSITION 16 CONTINUED)

provider, without the assent of two-thirds of the voters within the jurisdiction of the local government and two-thirds of the voters within the territory to be served, if any, voting at an election to be held for the purpose of approving the use of any public funds, or incurring any liability, or incurring any bonded or other borrowing or indebtedness.

(b) "Local government" means a municipality or municipal corporation, a municipal utility district, a public utility district, an irrigation district, a city, including a charter city, a county, a city and county, a district, a special district, an agency, or a joint powers authority that includes one or more of these entities.

(c) "Electric delivery service" means (1) transmission of electric power directly to retail end-use customers, (2) distribution of electric power to customers for resale or directly to retail end-use customers, or (3) sale of electric power to retail end-use customers.

(d) "Expand electric delivery service" does not include (1) electric delivery service within the existing jurisdictional boundaries of a local government that is the sole electric delivery service provider within those boundaries, or (2) continuing to provide electric delivery service to customers already receiving electric delivery service from the local government prior to the enactment of this section.

(e) "A plan to become an aggregate electricity provider" means a plan by a local government to provide community choice aggregation services or to replace the authorized local public utility in whole or in part for electric delivery service to any retail electricity customers within its jurisdiction.

(f) "Public funds" means, without limitation, any taxes, funds, cash, income, equity, assets, proceeds of bonds or other financing or borrowing, or rates paid by ratepayers. "Public funds" do not include federal funds.

(g) "Bonded or other indebtedness or liability" means, without limitation, any borrowing, bond, note, guarantee or other indebtedness, liability or obligation, direct or indirect, of any kind, contingent or otherwise, or use of any indebtedness, liability or obligation for reimbursement of any moneys expended from taxes, cash, income, equity, assets, contributions by ratepayers, the treasury of the local government, or other sources.

(h) This section shall not apply to any bonded or other indebtedness or liability or use of public funds that (1) has been approved by the voters within the jurisdiction of the local government and within the territory to be served, if any, prior to the enactment of this section; or (2) is solely for the purpose of purchasing, providing or supplying renewable electricity from biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, or providing electric delivery service for the local government's own end use and not for electric delivery service to others.

**Section 4. CONFLICTING MEASURES**

A. This initiative is intended to be comprehensive. It is the intent of the people that in the event that this initiative and another initiative relating to the same subject appear on the same statewide election ballot, the provisions of the other initiative or initiatives are deemed to be in conflict with this initiative. In the event this initiative shall receive the greater number of affirmative votes, the provisions of this initiative shall prevail in their entirety, and all provisions of the other initiative or initiatives shall be null and void.

B. If this initiative is approved by voters but superseded by law or by any other conflicting ballot initiative approved by the voters at the same election, and the conflicting law or ballot initiative is later held invalid, this initiative shall be self-executing and given full force of law.

**Section 5. SEVERABILITY**

The provisions of this initiative are severable. If any provision of this initiative or its application is held to be invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

**PROPOSITION 17**

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends a section of, and adds a section to, the Insurance Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout~~ type and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

**PROPOSED LAW****SECTION 1. Title**

This measure shall be known as the Continuous Coverage Auto Insurance Discount Act.

SEC. 2. The people of the State of California find and declare that:

(a) Under California law, the Department of Insurance regulates insurance rates and determines what discounts auto insurance companies can give drivers.

(b) However, an inconsistency in California's insurance laws allows insurers to provide a discount for drivers who continue with the same insurer, but prohibits them from offering this discount to new customers. Drivers who maintain insurance coverage are not able to keep a continuous coverage discount if they change insurers.

(c) This measure corrects that inconsistency and ensures that all drivers who continually maintain their automobile insurance are eligible for this discount even if they change their insurance company.

(d) This measure does not change the provisions in current law that require insurers to base their rates primarily on driving safety record, miles driven annually,