



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

12/8/2015 Board Meeting

8-5

Subject

Express opposition to the "No Blank Checks" initiative

Executive Summary

The "No Blank Checks" initiative (NBC), ([Attachment 1](#)), requires statewide voter approval before any revenue bonds can be issued or sold by the state for projects that are financed, owned, operated or managed by the state or any joint powers agency created by or including the state, if the bond amount exceeds \$2 billion. The initiative prohibits dividing projects into multiple separate projects to avoid the statewide voter approval requirement.

Under the initiative, projects financed with revenue bonds over \$2 billion would be subject to statewide voter approval irrespective of the fact that all of the state's voters would not be responsible for repayment of the debt. In addition, joint powers authorities (JPAs), created by the state or in which the state is a member, would also be covered by the new requirements. Cities, counties, school districts, special districts and community college districts would be exempt except to the extent they issued debt through a covered joint powers authority.

By requiring voter approval of projects in statewide elections, which are only held every two years, this measure could result in significant delays and new costs to build critical and essential infrastructure. The measure does not clearly define the term "project" which could lead to considerable uncertainty, litigation and judicial interpretation that could stall or derail infrastructure projects.

Details

On November 2, 2015, the California Secretary of State's office determined that the NBC initiative constitutional amendment is eligible for the November 2016 ballot. An eligible measure is one in which the required number of signatures have been submitted to and verified by the county elections officials. The measure qualifies on the 131st day prior to the November 2016 general election.

The NBC would create voter approval requirements for state debt issuances that do not exist today. Under current law, only certain types of public financing require voter approval. For example, state general obligation bonds must be approved by a simple majority of the voters. Local agency general obligation bonds must generally be approved by two-thirds of the voters within the jurisdiction of the local agency. School bonds must be approved by a 55 percent majority of the voters.

In contrast, under current law, there are other financing vehicles available to state and local agencies that do not require voter approval. Revenue bonds are commonly understood to mean long-term debt instruments that are retired by identified, dedicated revenue streams, such as user fees, contract payments, or enterprise earnings. With a revenue bond, the repayment risk is shifted from the general taxpayers to the bondholders who assume the risk in the event that the revenue stream is not adequate to repay the debt.

Under the NBC, "projects" financed with revenue bonds over \$2 billion would be subject to voter approval despite the fact that general taxpayers would not be responsible for repayment of the debt. Furthermore, the NBC's required aggregation of related construction efforts into its definition of a single "project" would potentially subject university campus or other small but related infrastructure efforts to its provisions. The NBC

also does not define what it means by the term “revenue bonds,” thus opening an additional area of possible dispute or litigation.

In addition, the initiative has a mandatory legal defense provision. Under state law, the Governor and Attorney General have the power to decline to legally defend an initiative against a lawsuit alleging a violation of federal law, even if the initiative is approved by the voters. Thus, even a voter approved initiative may be invalidated if attacked by its opponents in court and the Governor declines to defend it. The NBC creates new law requiring the Attorney General, in the event that both the Governor and the Attorney General refuse to defend the initiative, to appoint independent legal counsel “to faithfully and vigorously defend” the initiative on behalf of the State of California. The initiative also mandates a “continuous appropriation” to fund such independent counsel for whatever length of time necessary to defend its provisions.

Impacts to Metropolitan

The NBC theoretically could impact any capital project or work over \$2 billion that involves any state agency, department, or JPA in which the state is a member and which is funded by revenue bonds. For example, facilities such as water storage, distribution, and flood control infrastructure improvements; convention centers; stadiums; transportation infrastructure; University of California and California State University facilities; and state correctional facilities are often funded by lease and enterprise revenue bonds.

The NBC does not explicitly reference California WaterFix, the Bay Delta Conservation Plan, or the Delta Habitat Conservation and Conveyance Program. If passed by the voters, however, project opponents might use the initiative’s provisions as a basis to challenge project financing by the Department of Water Resources, to the extent that financing vehicles that fall within the NBC’s definition of “revenue bonds” were involved.

While large statewide infrastructure projects funded by revenue bonds appear to be the intended target of the NBC, many terms are undefined creating significant uncertainty and a potentially much larger reach. As a result, the measure could result in:

1. A requirement that voters in one region vote on the future of an infrastructure project in an entirely separate region of the state, even if they are neither directly impacted by the project, nor have any obligation to pay for it;
2. Reduction of infrastructure development and corresponding jobs and economic benefits;
3. Increased financing costs for projects that proceed with private financing in place of tax-exempt public financing;
4. Increased state interest expenses to the extent refinancing of existing debt is delayed or prevented;
5. Reduced ability to respond quickly to natural disasters and emergencies; and
6. Increased litigation, delays and costs on a wide range of infrastructure projects.

Finally, the legal defense funding provisions for the NBC are perpetual and cannot be changed short of a new initiative to amend or repeal it. This would create a standing state General Fund obligation.

Proponents assert that the NBC will:

1. Hold state government accountable by requiring all major state bonds to go to a vote of the people;
2. Force politicians to be more responsible with long-term debt spending;
3. Give voters a say when state government wants to incur new debt that the voters will have to repay; and
4. Ensure voters understand the full cost of future projects, including interest payments, that they are expected to pay.

The NBC is sponsored by Stockton farmer Dean Cortopassi and his wife, Joan.

Opponents include, but are not limited to, the Association of California Water Agencies, California Chamber of Commerce, California State Building and Construction Trades Council, Los Angeles Area Chamber of Commerce, Orange County Business Council, Southern California Water Committee, California Alliance for Jobs, among others.

Policy

Long-Term Sustainability in the Delta: Minute Item No. 46637 (April 11, 2006)

Delta Visioning (Delta Action Plan): Minute Item No. 47135 (June 12, 2007)

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it 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 defined as a project and is not subject to 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

Option #1

Adopt the CEQA determination that the proposed action is not defined as a project and is not subject to CEQA, and

Authorize the General Manager to oppose the No Blank Checks initiative.

Fiscal Impact: Uncertain. Could impact financing for State Water Project improvements, including new Delta conveyance, resulting in increased costs and project delays.

Business Analysis: Ambiguous nature of definitions in measure could lead to uncertainty, litigation, delays and costs that would stall or derail infrastructure projects.

Option #2

Take no position on No Blank Checks initiative.

Fiscal Impact: Uncertain. Could impact financing for State Water Project improvements, including new Delta conveyance, resulting in increased costs and project delays.

Business Analysis: Would restrict Metropolitan’s ability to educate its member agencies and ratepayers on potential impacts of initiative.

Staff Recommendation

Option #1



Dee Zinke
Deputy General Manager, External Affairs

11/24/2015

Date



Jeffrey Kightlinger
General Manager

11/24/2015

Date

Attachment 1 – “No Blank Checks” Initiative

January 7, 2015

RECEIVED
JAN 07 2015

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

VIA PERSONAL DELIVERY

The Honorable Kamala D. Harris
Attorney General
1300 I Street, 17th Floor, P.O. Box 944255
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

Re: Request for Title and Summary for Proposed Initiative Constitutional
Amendment

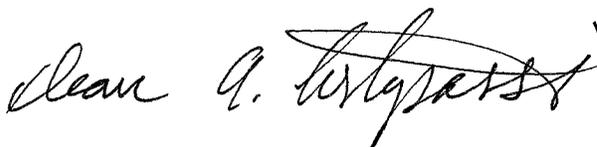
Dear Ms. Harris:

Pursuant to Article II, Section 10(d) of the California Constitution, I hereby submit the attached proposed Initiative Constitutional Amendment, entitled the "No Blank Checks Initiative," to your office and request that you prepare a title and summary of the measure as provided by law. Included with this submission is the required proponent affidavit signed by the proponent of this measure pursuant to Section 9608 of the California Elections Code. My address as a registered voter is attached to this letter, along with a check for \$200.00.

All inquires or correspondence relative to this initiative should be directed to Nielsen, Merksamer, Parrinello, Gross & Leoni, LLP, 1415 L Street, Suite 1200, Sacramento, CA 95814, (916) 446-6752, Attention: Kurt Oneto (telephone: 916/446-6752).

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, reading "Dean A. Cortopassi". The signature is written in a cursive style with a large, sweeping flourish over the last name.

Dean Cortopassi, Proponent

Enclosure: Proposed Initiative Constitutional Amendment

Section 1. Title.

This Act shall be known and may be cited as the No Blank Checks Initiative.

Section 2. Findings and Declarations.

The People of the State of California find and declare as follows:

(a) The politicians in Sacramento have mortgaged our future with long-term bond debt obligations that will take taxpayers, our children, and future generations decades to pay off.

(b) Under current rules, the sale of state bonds only needs to be approved by voters if they will be repaid out of the state's general revenues. But state politicians can sell billions of dollars of additional bond debt without ever getting the voters' approval if the bonds will be repaid with specific revenue streams or charges imposed directly on Californians like taxes, fees, rates, tolls, or rents. The politicians should not be allowed to issue blank checks Californians have to pay for. Voters must provide prior approval for all major state bond sale decisions, because voters are the ones who ultimately pay the bill.

(c) According to a 2014 report from California's independent, nonpartisan Legislative Analyst's Office, the State of California is carrying \$340 billion in public debt. (*Legislative Analyst's Office*, "Addressing California's Key Liabilities," Mar. 7, 2014.) Interest and principal payments on our long-term debt obligations will cripple the state if we keep spending the way we do now—reducing cash available for public safety, schools, and other vital state programs.

(d) Moreover, voters are rarely told the true costs of bond-funded projects. We were originally told that the bullet train would cost \$9 billion. But now the estimated cost has ballooned to nearly \$70 billion. (*Los Angeles Times*, "The Hazy Future of California's Bullet Train," Jan. 14, 2014.)

(e) This measure puts the brakes on our state's public debt crisis by giving the voters a say in all major state bond debt proposals that must be repaid through specific revenue streams or charges imposed directly on Californians like taxes, fees, rates, tolls, or rents.

Section 3. Statement of Purpose.

The purpose of this measure is to bring the state's public debt crisis under control by giving the voters a say in all major state bond-funded projects that will be paid off through specific revenues streams or higher taxes, fees, rates, tolls, or rents collected from Californians, their children, and future generations.

Section 4. Section 1.6 is added to Article XVI of the California Constitution, to read:

Section 1.6. (a) Notwithstanding any other provision of law, all revenue bonds issued or sold by the State in an amount either singly or in the aggregate over two billion dollars (\$2,000,000,000) for any single project financed, owned, operated, or managed by the State must first be approved by the voters at a statewide election. "State" means the State of California, any agency or department thereof, and any joint powers agency or similar body created by the State or in which the State is a member. "State" as used herein does not include a city, county, city and county, school district, community college district, or special district. For purposes of this section, "special district" refers only to public entities formed for the performance of local governmental functions within limited boundaries.

(b) A single project for which state revenue bonds are issued or sold in an amount over two billion dollars (\$2,000,000,000) may not be divided into, or deemed to be, multiple separate projects in order to avoid the voter approval requirements contained in this section. For purposes of this section, multiple allegedly separate projects shall be deemed to constitute a single project including, but not limited to, in the following circumstances: (1) where the allegedly separate projects will be physically or geographically proximate to each other; or (2) where the allegedly separate projects will be physically joined or connected to each other; or (3) where one allegedly separate project cannot accomplish its stated purpose without the completion of another allegedly separate project.

(c) The two billion dollar (\$2,000,000,000) threshold contained in this section shall be adjusted annually to reflect any increase or decrease in inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Bureau of Labor Statistics. The Treasurer's Office shall calculate and publish the adjustments required by this subdivision.

Section 5. Liberal Construction.

This act shall be liberally construed in order to effectuate its purposes.

Section 6. Conflicting Measures.

(a) In the event that this measure and another measure or measures relating to voter approval requirements for state bonds shall appear on the same statewide election ballot, the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure or measures shall be null and void.

(b) If this measure is approved by the voters but superseded in whole or in part by any other conflicting initiative approved by the voters at the same election, and such conflicting initiative is later held invalid, this measure shall be self-executing and given full force and effect.

Section 7. Severability.

The provisions of this Act are severable. If any portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application of this Act is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this Act. The People of the State of California hereby declare that they would have adopted this Act and each and every portion, section, subdivision, paragraph, clause, sentence, phrase, word, and application not declared invalid or unconstitutional without regard to whether any portion of this Act or application thereof would be subsequently declared invalid.

Section 8. Legal Defense.

If this Act is approved by the voters of the State of California and thereafter subjected to a legal challenge alleging a violation of federal law, and both the Governor and Attorney General refuse to defend this Act, then the following actions shall be taken:

(a) Notwithstanding anything to the contrary contained in Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code or any other law, the Attorney General shall appoint

independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.

(b) Before appointing or thereafter substituting independent counsel, the Attorney General shall exercise due diligence in determining the qualifications of independent counsel and shall obtain written affirmation from independent counsel that independent counsel will faithfully and vigorously defend this Act. The written affirmation shall be made publicly available upon request.

(c) A continuous appropriation is hereby made from the General Fund to the Controller, without regard to fiscal years, in an amount necessary to cover the costs of retaining independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.