

CALIFORNIA COASTAL COMMISSION

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BILL ANALYSIS PROPOSITION 26

SUMMARY

Proposition 26 would amend the California Constitution by reclassifying certain state-imposed fees as taxes that would require a two-thirds vote in each house of the Legislature. Similarly, certain local fees would be reclassified as taxes requiring approval by two-thirds of the electorate in a local election. In general, unless a new fee is limited to recovering the reasonable expenses incurred by the State or local government in conferring a specific benefit or service to the fee-payer, that fee would be treated as a tax. This would limit the authority of the State and local governments to enact new fees intended to mitigate the environmental, social, or other effects of private activities if that mitigation does not confer a specific benefit to the fee payer or if the fee exceeds the cost incurred by public agencies in conferring that benefit, and would overturn the California Supreme Court's ruling in *Sinclair Paint Co. v. State Board of Equalization* with respect to legislation enacted since January 1, 2010. Based on the analysis below, the impact of Proposition 26 on the Coastal Commission would be negative and the Coastal Commission takes a position of **OPPOSE** on Proposition 26.

The initiative is broadly worded, leaving a great deal of uncertainty as to how the initiative would be interpreted if it were enacted. There will likely be numerous lawsuits filed to clarify the meaning of its various provisions. This analysis identifies ways in which the initiative might affect the California Coastal Commission, but it is not intended to present the best interpretation of its provisions or to constitute a definitive statement of how the Commission should interpret the initiative if enacted.

PURPOSE OF THE INITIATIVE

The stated purpose of this initiative is to:

- Expand the scope of the term “tax” in the California Constitution to include certain levies, charges and exactions (with very narrow exceptions) imposed by the Legislature and local governments.
- Require the Legislature to enact by a two-thirds vote and local governments to seek approval by a two-thirds majority of voters before imposing certain levies, charges and exactions, which would be reclassified as taxes.
- Repeal conflicting state statutes enacted after January 1, 2010, unless they are reapproved by two-thirds vote. The repeal would become effective on November 2, 2011.
- Require the State or any local government, in a lawsuit challenging a fee, to prove “by a preponderance of the evidence” that the fee is not a tax within the meaning of the initiative.
- Require that any legislation that raises taxes for any taxpayer be approved by a two-thirds vote of the Legislature even if the legislation does not result in a net increase in tax revenue.

The proponents of the initiative contend that the Legislature has improperly characterized new revenue measures as fees rather than as taxes in order to circumvent the stringent constitutional requirements regarding the enactment of new taxes and that this measure is necessary to curb such abuses. Opponents contend that the initiative is largely intended to shield industry from requirements to pay for mitigation of the societal and environmental effects of industrial activity.

EXISTING LAW

The California Constitution currently provides that any changes in state taxes enacted for the purpose of increasing revenues must be approved by a two-thirds vote of each house of the legislature. New or increased local taxes that are dedicated to specific purposes generally must be approved by two-thirds of the electorate in that locality. Exactions that currently qualify as fees, however, may be authorized by majority vote of the Legislature or the local legislative body or, where authorized by statute, pursuant to administrative agency action.

The California Supreme Court has rejected the argument that, under current constitutional provisions, fees must be limited to costs incurred by public agencies in carrying out their regulatory activities. Payments to compensate for the adverse societal effects of an entity's activities can also qualify as fees. (*See Sinclair Paint Co. v. State Board of Equalization* (1997) 15 Cal.4th 866.) Proposition 26 would overturn *Sinclair Paint*, by amending the State Constitution to reclassify this category of fees as taxes.

In *Sinclair Paint*, the Sinclair Paint Company (Sinclair) sought to have the fees it paid under the Childhood Lead Poisoning Prevention Act (Act) refunded to it as unconstitutional taxes. The Board of Equalization denied the claim and Sinclair sued, claiming the Act violated the requirement that new taxes be imposed by a two-thirds vote of the Legislature. The state Supreme Court found that the fees imposed by the Act were proper because the fees were "to mitigate the actual or anticipated adverse effects of the fee payers' operations" and under the Act, bore a reasonable relationship to those adverse effects. Re-classifying regulatory fees as taxes would require a two-thirds vote of the Legislature or local government to impose new fees that require mitigation of adverse environmental or human health effects caused by a specific industry or company.

The Coastal Act expressly authorizes the Commission to require "a reasonable filing fee and the reimbursement of expenses" for permit applications and other filings. (Pub. Resources Code, § 30620(c).) In addition, the Commission has the authority to impose fees on permit applicants in order to mitigate the effects of proposed development on coastal resources. (*Ocean Harbor House Homeowners Assn. v. California Coastal Commission* (2008) 163 Cal.App.4th 215.)

ANALYSIS

Proposition 26 is referred to by proponents as a constitutional amendment that will "Stop Hidden Taxes" and by opponents as "The Polluter Protection Act." The primary goals of Proposition 26 are to expand the scope of what constitutes a state or local tax and limit the scope of what qualifies as a fee. Various categories of what currently constitute fees would require approval by either two-thirds of each house of the Legislature or by two-thirds of a local jurisdiction's electorate.

If passed by the voters, the initiative would expand the scope of taxes to encompass many payments currently considered fees or charges. In particular, the initiative would define a tax as “**any levy, charge, or exaction of any kind imposed by the state (or local government)**” with certain exceptions.¹ (emphasis added.) The primary exceptions are for charges for a specific benefit or government service provided to the fee payer that do not exceed the reasonable costs to the State or local government of providing that benefit or service. The types of fees and charges that would become a tax would include ones that government imposes to address health, environmental or other societal and economic effects of an activity but that do not convey a specific benefit or service to the payer or that exceed the cost to public agencies of providing the benefit or service. Regulatory and mitigation fees that benefit the public broadly, in particular would be subject to this change. For example, a new in-lieu mitigation fee required for an environmental impact could potentially be reclassified as a tax. By including “exaction[s] of any kind,” the expanded definition of taxes might also be construed as encompassing non-monetary requirements, such as requirements to dedicate easements.

In addition, since certain state and local regulatory fees would be reclassified as taxes, requiring a two-thirds vote in the Legislature or, for local taxes, a two-thirds vote of the local electorate, the initiative would make it much more difficult for the Legislature and local governments to enact new fees intended to mitigate the effects of private activity, including environmental effects.

¹ The initiative excludes the following as a tax if imposed by the **state**:

(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of conferring the benefit or granting the privilege to the payor.

(2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of providing the service or product to the payor.

(3) A charge imposed for the reasonable regulatory costs to the State incident to issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(4) A charge imposed for entrance to or use of state property, or the purchase, rental, or lease of state property, except charges governed by Section 15 of Article XI.

(5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or the State, as a result of a violation of law.

The initiative excludes the following as a tax if imposed by a **local government**:

(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

(2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.

(3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

(5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.

(6) **A charge imposed as a condition of property development.**

(7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.

Finally, the initiative would repeal any state fee or tax enacted between January 1, 2010 and November 2, 2010, unless that fee or tax was enacted consistently with the requirements of the initiative or is re-enacted by a two-thirds vote of each house of the Legislature prior to November 2, 2011. For example, recently passed fuel tax laws, which requires gasoline suppliers to pay higher fuel taxes while decreasing other fuel taxes paid by gasoline retailers, would likely be found to be in conflict with the initiative because it was not passed by a two-thirds vote of each house of the Legislature. If the fuel tax law is repealed, the state General Fund costs would increase by about \$1 billion annually for about two decades.²

Potential Impact on Implementation of the Coastal Act:

If enacted, this measure probably will not directly change the Commission's existing statutory authority to require application fees, mitigation fees, or other exactions such as easements or offers-to-dedicate (OTDs) that are intended to mitigate impacts to coastal resources. Applicants, however, sometimes challenge the Commission's statutory authority to impose mitigation fees or require OTDs or easements. Although current caselaw upholds the Commission's authority to require mitigation fees (see *Ocean Harbor House Homeowners Assn. v. California Coastal Commission*, 163 Cal.App.4th 215), it is conceivable that a future judicial decision may cast doubt on the Commission's authority to require payment of mitigation fees in certain circumstances. This initiative would make it significantly more difficult for the Commission to obtain legislation to resolve such possible future questions about the Commission's statutory authority.

The initiative would also make it significantly more difficult for the Commission to obtain new authority to require mitigation fees or other exactions to address threats to coastal resources that are beyond the Commission's existing statutory authority.

In addition, the initiative would make it more difficult for the Legislature to authorize fees that either directly benefit the Commission or that would pay for programs administered by other agencies but that would benefit coastal resources. One potential example is the recently enacted "rigs-to-reefs" legislation (AB 2503). This legislation allows the owner or operator of an offshore oil structure to apply for authorization to remove only a portion of an inactive structure rather than remove it entirely. One provision of the statute requires the applicant to pay a portion of the cost savings associated with partial removal into a variety of funds, including one that funds the Coastal Commission. Because this payment would not be determined by reference to costs incurred by the State in reviewing or approving the application, the status of this legislation if the initiative passes would be in doubt.

The initiative would also cast doubt on the authority of local governments to adopt new mitigation fees or other exactions as part of local coastal programs. The initiative does exclude "charge[s] imposed as a condition of property development" from the definition of local taxes, but it does not define the term "charges." If "charges" are restricted to

² Office of the California Secretary of State, Legislative Analysis of Proposition 26 (<http://www.voterguide.sos.ca.gov/propositions/26/analysis.htm>)

monetary exactions, the initiative could restrict the ability of local governments to amend LCPs with respect to requirements to dedicate real property interests such as easements or OTDs. Because the initiative does not define “charges,” it may also encourage litigation over the authority of local governments to impose various categories of monetary fees as a condition of property development.

Finally, the initiative makes it easier to challenge fees through litigation by shifting the burden of proof. Normally, plaintiffs have the burden of proof in litigation. Under this initiative, the burden would be shifted to public agencies to demonstrate by a preponderance of the evidence that a challenged exaction is not a tax. This plaintiff-friendly burden of proof may encourage litigation regarding contested exactions, potentially including mitigation fees or OTDs required by the Commission.

FISCAL IMPACT

The Legislative Analyst’s Office (LAO) estimates that the initiative would make it difficult for the Legislature to pass future laws to raise revenues once associated as fees. The LAO therefore estimates that the “the fiscal effect of this change could be major...reduc[ing] government revenues and spending statewide by up to billions of dollars annually compared with what otherwise would have occurred.” (See Exhibit 1). Further, the LAO also considered legislation that would be repealed by this initiative, noting that the repealed laws “could have a variety of fiscal effects.” Generally, the LAO found that any fiscal effects could be remedied if the Legislature approves the repealed laws again by a two-thirds vote of each house.

RECOMMENDATION

Staff recommends that the Commission **OPPOSE PROPOSITION 26.**

ADDITIONAL INFORMATION

More information regarding this initiative and the initiative process is available on the website of the California Secretary of State. (<http://www.sos.ca.gov/>).

Website of the proponents of Proposition 26, “Vote Yes to Stop Hidden Taxes”:
<http://www.no25yes26.com>

Website of the opponents of Proposition 26, “No on 26 Don’t Protect Polluters”:
<http://www.stoppolluterprotection.com>

Sinclair Paint Co. v. State Board of Equalization (1997) 15 Cal.4th 866

EXHIBITS

1. Official Title, Summary, LAO Analysis
2. Ballot Pamphlet Arguments in Favor of and Against Proposition 26
3. Text of Proposition 26

PROPOSITION
26

REQUIRES THAT CERTAIN STATE AND LOCAL FEES BE APPROVED BY TWO-THIRDS VOTE. FEES INCLUDE THOSE THAT ADDRESS ADVERSE IMPACTS ON SOCIETY OR THE ENVIRONMENT CAUSED BY THE FEE-PAYER’S BUSINESS. INITIATIVE CONSTITUTIONAL AMENDMENT.

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

REQUIRES THAT CERTAIN STATE AND LOCAL FEES BE APPROVED BY TWO-THIRDS VOTE. FEES INCLUDE THOSE THAT ADDRESS ADVERSE IMPACTS ON SOCIETY OR THE ENVIRONMENT CAUSED BY THE FEE-PAYER’S BUSINESS. INITIATIVE CONSTITUTIONAL AMENDMENT.

- Requires that certain state fees be approved by two-thirds vote of Legislature and certain local fees be approved by two-thirds of voters.
- Increases legislative vote requirement to two-thirds for certain tax measures, including those that do not result in a net increase in revenue, currently subject to majority vote.

Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:

- Decreased state and local government revenues and spending due to the higher approval requirements for new revenues. The amount of the decrease would depend on future decisions by governing bodies and voters, but over time could total up to billions of dollars annually.
- **Additional state fiscal effects from repealing recent fee and tax laws: (1) increased transportation program spending and increased General Fund costs of \$1 billion annually, and (2) unknown potential decrease in state revenues.**

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

State and local governments impose a variety of taxes, fees, and charges on individuals and businesses. Taxes—such as income, sales, and property taxes—are typically used to pay for general public services such as education, prisons, health, and social services. Fees and charges, by comparison, typically pay for a particular service or program benefitting individuals or businesses. There are three broad categories of fees and charges:

- User fees—such as state park entrance fees and garbage fees, where the user pays for the cost of a specific service or program.

- Regulatory fees—such as fees on restaurants to pay for health inspections and fees on the purchase of beverage containers to support recycling programs. Regulatory fees pay for programs that place requirements on the activities of businesses or people to achieve particular public goals or help offset the public or environmental impact of certain activities.
- Property charges—such as charges imposed on property developers to improve roads leading to new subdivisions and assessments that pay for improvements and services that benefit the property owner.

Figure 1 Approval Requirements: State and Local Taxes, Fees, and Charges		
	State	Local
Tax	Two-thirds of each house of the Legislature for measures increasing state revenues.	<ul style="list-style-type: none"> • Two-thirds of local voters if the local government specifies how the funds will be used. • Majority of local voters if the local government does not specify how the funds will be used.
Fee	Majority of each house of the Legislature.	Generally, a majority of the governing body.
Property Charges	Majority of each house of the Legislature.	Generally, a majority of the governing body. Some also require approval by a majority of property owners or two-thirds of local voters.

PROP 26 REQUIRES THAT CERTAIN STATE AND LOCAL FEES BE APPROVED BY TWO-THIRDS VOTE. FEES INCLUDE THOSE THAT ADDRESS ADVERSE IMPACTS ON SOCIETY OR THE ENVIRONMENT CAUSED BY THE FEE-PAYER'S BUSINESS. INITIATIVE CONSTITUTIONAL AMENDMENT.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

State law has different approval requirements regarding taxes, fees, and property charges. As Figure 1 shows, state or local governments usually can create or increase a fee or charge with a majority vote of the governing body (the Legislature, city council, county board of supervisors, etc.). In contrast, increasing tax revenues usually requires approval by two-thirds of each house of the state Legislature (for state proposals) or a vote of the people (for local proposals).

Disagreements Regarding Regulatory Fees. Over the years, there has been disagreement regarding the difference between regulatory fees and taxes, particularly when the money is raised to pay for a program of broad public benefit. In 1991, for example, the state began imposing a regulatory fee on businesses that made products containing lead. The state uses this money to screen children at risk for lead poisoning, follow up on their treatment, and identify sources of lead contamination responsible for the poisoning. In court, the Sinclair Paint Company argued that this regulatory fee was a tax

because: (1) the program provides a broad public benefit, not a benefit to the regulated business, and (2) the companies that pay the fee have no duties regarding the lead poisoning program other than payment of the fee.

In 1997, the California Supreme Court ruled that this charge on businesses was a regulatory fee, not a tax. The court said government may impose regulatory fees on companies that make contaminating products in order to help correct adverse health effects related to those products. Consequently, regulatory fees of this type can be created or increased by (1) a majority vote of each house of the Legislature or (2) a majority vote of a local governing body.

PROPOSAL

This measure expands the definition of a tax and a tax increase so that more proposals would require approval by two-thirds of the Legislature or by local voters. Figure 2 summarizes its main provisions.

Figure 2

Major Provisions of Proposition 26

- ✓ **Expands the Scope of What Is a State or Local Tax**
 - Classifies as taxes some fees and charges that government currently may impose with a majority vote.
 - As a result, more state revenue proposals would require approval by two-thirds of each house of the Legislature and more local revenue proposals would require local voter approval.
- ✓ **Raises the Approval Requirement for Some State Revenue Proposals**
 - Requires a two-thirds vote of each house of the Legislature to approve laws that increase taxes on any taxpayer, even if the law's overall fiscal effect does not increase state revenues.
- ✓ **Repeals Recently Passed, Conflicting State Laws**
 - Repeals recent state laws that conflict with this measure, unless they are approved again by two-thirds of each house of the Legislature. Repeal becomes effective in November 2011.

Definition of a State or Local Tax

Expands Definition. This measure broadens the definition of a state or local tax to include many payments currently considered to be fees or charges. As a result, the measure would have the effect of increasing the number of revenue proposals subject to the higher approval requirements summarized in Figure 1. Generally, the types of fees and charges that would become taxes under the measure are ones that government imposes to address health, environmental, or other societal or economic concerns. Figure 3 provides examples of some regulatory fees that could be considered taxes, in part or in whole, under the measure. This is because these fees pay for many services that benefit the public broadly, rather than providing services directly to the fee payer. The state currently uses these types of regulatory fees to pay for most of its environmental programs.

Certain other fees and charges also could be considered to be taxes under the measure. For example, some business assessments could be considered to be taxes because government uses the assessment revenues to improve shopping districts

(such as providing parking, street lighting, increased security, and marketing), rather than providing a direct and distinct service to the business owner.

Some Fees and Charges Are Not Affected. The change in the definition of taxes would not affect most user fees, property development charges, and property assessments. This is because these fees and charges generally comply with Proposition 26's requirements already, or are exempt from its provisions. In addition, most other fees or charges in existence at the time of the November 2, 2010 election would not be affected unless:

- The state or local government later increases or extends the fees or charges. (In this case, the state or local government would have to comply with the approval requirements of Proposition 26.)
- The fees or charges were created or increased by a state law—passed between January 1, 2010 and November 2, 2010—that conflicts with Proposition 26 (discussed further below).

Approval Requirement for State Tax Measures

Current Requirement. The State Constitution currently specifies that laws enacted “for the purpose

**Figure 3
Regulatory Fees That Benefit the Public Broadly**

Oil Recycling Fee

The state imposes a regulatory fee on oil manufacturers and uses the funds for:

- Public information and education programs.
- Payments to local used oil collection programs.
- Payment of recycling incentives.
- Research and demonstration projects.
- Inspections and enforcement of used-oil recycling facilities.

Hazardous Materials Fee

The state imposes a regulatory fee on businesses that treat, dispose of, or recycle hazardous waste and uses the funds for:

- Clean up of toxic waste sites.
- Promotion of pollution prevention.
- Evaluation of waste source reduction plans.
- Certification of new environmental technologies.

Fees on Alcohol Retailers

Some cities impose a fee on alcohol retailers and use the funds for:

- Code and law enforcement.
- Merchant education to reduce public nuisance problems associated with alcohol (such as violations of alcohol laws, violence, loitering, drug dealing, public drinking, and graffiti).

of increasing revenues” must be approved by two-thirds of each house of the Legislature. Under current practice, a law that increases the amount of taxes charged to some taxpayers but offers an equal (or larger) reduction in taxes for other taxpayers has been viewed as not increasing revenues. As such, it can be approved by a majority vote of the Legislature.

New Approval Requirement. The measure specifies that state laws that result in *any* taxpayer paying a higher tax must be approved by two-thirds of each house of the Legislature.

State Laws in Conflict With Proposition 26

Repeal Requirement. Any state law adopted between January 1, 2010 and November 2, 2010 that conflicts with Proposition 26 would be repealed one year after the proposition is approved. This repeal would not take place, however, if two-thirds of each house of the Legislature passed the law again.

Recent Fuel Tax Law Changes. In the spring of 2010, the state increased fuel taxes paid by gasoline suppliers, but decreased other fuel taxes paid by gasoline retailers. Overall, these changes do not raise more state tax revenues, but they give the state greater spending flexibility over their use.

Using this flexibility, the state shifted about \$1 billion of annual transportation bond costs from the state’s General Fund to its fuel tax funds. (The General Fund is the state’s main funding source for schools, universities, prisons, health, and social services programs.) This action decreases the amount of money available for transportation programs, but helps the state balance its General Fund budget. Because the Legislature approved this tax change with a majority vote in each house, this law would be repealed in November 2011—unless the Legislature approved the tax again with a two-thirds vote in each house.

Other Laws. At the time this analysis was prepared (early in the summer of 2010), the Legislature and Governor were considering many new laws and funding changes to address the state’s major budget difficulties. In addition, parts of this measure would be subject to future interpretation by the courts. As a result, we cannot determine the full range of state laws that could be affected or repealed by the measure.

FISCAL EFFECTS

Approval Requirement Changes. By expanding the scope of what is considered a tax, the measure would make it more difficult for state and local governments to pass new laws that raise revenues. This change would affect many environmental, health, and other regulatory fees (similar to the ones in Figure 3), as well as some business assessments and other levies. New laws to create—or extend—these types of fees and charges would be subject to the higher approval requirements for taxes.

The fiscal effect of this change would depend on future actions by the Legislature, local governing boards, and local voters. If the increased voting requirements resulted in some proposals not being approved, government revenues would be lower than otherwise would have occurred. This, in turn, likely would result in comparable decreases in state spending.

Given the range of fees and charges that would be subject to the higher approval threshold for taxes, the fiscal effect of this change could be major. Over time, we estimate that it could reduce government revenues and spending statewide by up to billions of dollars annually compared with what otherwise would have occurred.

Repeal of Conflicting Laws. Repealing conflicting state laws could have a variety of fiscal effects. For example, repealing the recent fuel tax laws would increase state General Fund costs by about \$1 billion annually for about two decades and increase funds available for transportation programs by the same amount.

Because this measure could repeal laws passed *after* this analysis was prepared and some of the measure’s provisions would be subject to future interpretation by the courts, we cannot estimate the full fiscal effect of this repeal provision. Given the nature of the proposals the state was considering in 2010, however, it is likely that repealing any adopted proposals would decrease state revenues (or in some cases increase state General Fund costs). Under this proposition, these fiscal effects could be avoided if the Legislature approves the laws again with a two-thirds vote of each house.

26 PROP REQUIRES THAT CERTAIN STATE AND LOCAL FEES BE APPROVED BY TWO-THIRDS VOTE.
FEES INCLUDE THOSE THAT ADDRESS ADVERSE IMPACTS ON SOCIETY OR THE ENVIRONMENT
CAUSED BY THE FEE-PAYER'S BUSINESS. INITIATIVE CONSTITUTIONAL AMENDMENT.

★ ARGUMENT IN FAVOR OF PROPOSITION 26 ★

YES ON PROPOSITION 26: STOP POLITICIANS FROM ENACTING HIDDEN TAXES

State and local politicians are using a loophole to impose Hidden Taxes on many products and services by calling them “fees” instead of taxes. Here’s how it works:

At the State Level:

- California’s Constitution requires a two-thirds vote of the Legislature for new or increased taxes, but the politicians use a gimmick to get around this by calling their taxes “fees” so they can pass them with only a *bare majority vote*.

At the Local Level:

- Most tax increases at the local level require voter approval. Local politicians have been calling taxes “fees” so they can bypass voters and raise taxes without voter permission—taking away your right to stop these Hidden Taxes at the ballot.

PROPOSITION 26 CLOSES THIS LOOPHOLE

Proposition 26 requires politicians to meet the same vote requirements to pass these Hidden Taxes as they must to raise other taxes, protecting California taxpayers and consumers by requiring these Hidden Taxes to be passed by a two-thirds vote of the Legislature and, at the local level, by public vote.

PROPOSITION 26 PROTECTS ENVIRONMENTAL AND CONSUMER REGULATIONS AND FEES

Don't be misled by opponents of Proposition 26. California has some of the strongest environmental and consumer protection laws in the country. Proposition 26 preserves those laws and PROTECTS LEGITIMATE FEES SUCH AS THOSE TO CLEAN UP ENVIRONMENTAL OR OCEAN DAMAGE, FUND NECESSARY CONSUMER REGULATIONS, OR PUNISH WRONGDOING, and for licenses for professional certification or driving.

DON'T LET THE POLITICIANS CIRCUMVENT OUR CONSTITUTION TO TAKE EVEN MORE MONEY FROM US

Politicians have proposed more than \$10 billion in Hidden Taxes. Here are a few examples of things they could apply Hidden

Taxes to unless we stop them:

- Food
- Cell Phones
- Emergency Services
- Gas
- Electricity
- Insurance
- Toys
- Water
- Beverages
- Entertainment

PROPOSITION 26: HOLD POLITICIANS ACCOUNTABLE

“State politicians already raised taxes by \$18 billion. Now, instead of controlling spending to address the budget deficit, they’re using this gimmick to increase taxes even more! It’s time for voters to STOP the politicians by passing Proposition 26.” —Teresa Casazza, California Taxpayers’ Association

Local politicians play tricks on voters by disguising taxes as “fees” so they don’t have to ask voters for approval. They need to control spending, not use loopholes to raise taxes! It’s time to hold them accountable for runaway spending and to stop Hidden Taxes at the local level.

YES ON PROPOSITION 26: PROTECT CALIFORNIA FAMILIES

California families and small businesses can’t afford new and higher Hidden Taxes that will kill jobs and hurt families. When government increases Hidden Taxes, consumers and taxpayers pay increased costs on everyday items.

“The best way out of this recession is to grow the economy and create jobs, not increase taxes. Proposition 26 will send a message to politicians that it’s time to clean up wasteful spending in Sacramento.” —John Kabateck, National Federation of Independent Business/California

VOTE YES ON PROPOSITION 26 TO STOP HIDDEN TAXES—www.No25Yes26.com

TERESA CASAZZA, President
California Taxpayers’ Association

ALLAN ZAREMBERG, President
California Chamber of Commerce

JOEL FOX, President
Small Business Action Committee

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 26 ★

Do you want corporations to write special protections into California’s Constitution?

Should California protect polluters at the expense of public safety?

That’s what Prop. 26 is: big oil, tobacco, and alcohol companies want taxpayers to pay for cleaning their mess. As a result, local police and fire departments will have fewer resources to keep us safe.

The claim that Prop. 26 won’t harm consumers and the environment is false. Corporations are spending millions misleading voters into thinking that the payments made by companies that pollute or harm public health are “hidden taxes.” The campaign’s own website cited “Oil severance fee to mitigate oil spill clean up, and build larger response and enforcement capabilities” as a hidden tax.

Here are some other fees they don’t want to pay—listed in their own documents:

- Fees on polluters to clean up hazardous waste
- Fees on oil companies for oil spill cleanup
- Fees on tobacco companies for the adverse health effects of tobacco products.

PROPOSITION 26 IS BAD FOR THE ENVIRONMENT, PUBLIC SAFETY, & TAXPAYERS.

The California Professional Firefighters, League of Women Voters of California, California Nurses Association, Sierra Club, Planning & Conservation League, Californians Against Waste, and California Tax Reform Association all oppose 26 because it would force ordinary citizens to pay for the damage done by polluters.

Californians can’t afford to clean up polluters’ messes when local governments are cutting essential services like police and fire departments.

**WE NEED TO PROTECT THE PUBLIC, NOT POLLUTERS!
VOTE NO on 26.**

RON COTTINGHAM, President
Peace Officers Research Association of California

WARNER CHABOT, Chief Executive Officer
California League of Conservation Voters

PATTY VELEZ, President
California Association of Professional Scientists

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FEES INCLUDE THOSE THAT ADDRESS ADVERSE IMPACTS ON SOCIETY OR THE ENVIRONMENT
CAUSED BY THE FEE-PAYER'S BUSINESS. INITIATIVE CONSTITUTIONAL AMENDMENT.

★ ARGUMENT AGAINST PROPOSITION 26 ★

Should polluters be protected from paying to clean up the damage they do?

Should taxpayers foot the bill instead?

The answer is NO, and that's why voters should reject Proposition 26, the Polluter Protection Act.

Who put Prop. 26 on the ballot? Oil, tobacco, and alcohol companies provided virtually all the funding for this measure, including Chevron, Exxon Mobil, and Phillip Morris.

Their goal: to shift the burden of paying for the damage these companies have done onto the taxpayers.

How does this work? Prop. 26 redefines payments for harm to the environment or public health as tax increases, requiring a 2/3 vote for passage.

Such payments, or pollution fees on public nuisances, would become much harder to enact—leaving taxpayers to foot the bill. California has enough problems without forcing taxpayers to pay for cleaning up after polluting corporations.

Companies that pollute, harm the public health, or create a public nuisance should be required to pay to cover the damage they cause.

But the big oil, tobacco, and alcohol corporations want you, the taxpayer, to pay for cleaning up their messes. That's why these corporations wrote Proposition 26 behind closed doors, with zero public input, and why they put up millions of dollars to get Proposition 26 on the ballot.

Proposition 26 is just another attempt by corporations to protect themselves at the expense of ordinary citizens. The problem isn't taxes "hidden" as fees; it's the oil and tobacco companies hiding their true motives:

- Polluters don't want to pay fees used to clean up hazardous waste.
- Oil companies don't want to pay fees used for cleaning up oil spills and fighting air pollution.
- Tobacco companies don't want to pay fees used for addressing the adverse health effects of tobacco products.

- Alcohol companies don't want to pay fees used for police protection in neighborhoods and programs to prevent underage drinking.

One of the so-called "hidden taxes" identified by the Proposition 26 campaign is a fee that oil companies pay in order to cover the cost of oil spill clean-up, like the one in the Gulf. The oil companies should be responsible for the mess they create, not the taxpayers.

Proposition 26 will harm local public safety and health, by requiring expensive litigation and endless elections in order for local government to provide basic services. Fees on those who do harm should cover such costs as policing public nuisances or repairing damaged roads.

The funds raised by these fees are used by state and local governments for essential programs like fighting air pollution, cleaning up environmental disasters and monitoring hazardous waste. They require corporations such as tobacco companies to pay for the harm they cause.

If Proposition 26 passes, these costs would have to be paid for by the taxpayers.

DON'T PROTECT POLLUTERS. Join California Professional Firefighters, California Federation of Teachers, California League of Conservation Voters, California Nurses Association, Consumer Federation of California, and California Alliance for Retired Americans, and vote NO on 26.

www.stoppolluterprotection.com

JANIS R. HIROHAMA, President
League of Women Voters of California

JANE WARNER, President
American Lung Association in California

BILL MAGAVERN, Director
Sierra Club California

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 26 ★

Proposition 26 fixes a loophole that allows politicians to impose new taxes on businesses and consumers by falsely calling them "fees".

Proposition 26 stops politicians from increasing Hidden Taxes on food, water, cell phones and even emergency services—**BILLIONS OF DOLLARS IN HIGHER COSTS THAT CONSUMERS WILL PAY, NOT BIG CORPORATIONS.**

Politicians and special interests oppose Prop. 26 because they want to take more money from working California families by putting "fees" on everything they can think of. Their interest is simple—more taxpayer money for the politicians to waste, including on lavish public pensions.

Here are the facts:

Prop. 26 protects legitimate fees and **WON'T ELIMINATE OR PHASE OUT ANY OF CALIFORNIA'S ENVIRONMENTAL OR CONSUMER PROTECTION LAWS**, including:

- Oil Spill Prevention and Response Act
- Hazardous Substance Control Laws
- California Clean Air Act
- California Water Quality Control Act
- Laws regulating licensing and oversight of Contractors, Attorneys and Doctors

"Proposition 26 doesn't change or undermine a single law protecting our air, ocean, waterways or forests—it simply stops the runaway fees politicians pass to fund ineffective programs."—Ryan Broddrick, former Director, Department of Fish and Game

Here's what Prop. 26 really does:

- **Requires a TWO-THIRDS VOTE OF THE LEGISLATURE FOR PASSING STATEWIDE HIDDEN TAXES** disguised as fees, just like the Constitution requires for regular tax increases.
- **Requires a POPULAR VOTE TO PASS LOCAL HIDDEN TAXES** disguised as fees, just like the Constitution requires for most other local tax increases.

YES on 26—Stop Hidden Taxes. Preserve our Environmental Protection Laws.

www.No25Yes26.com

JOHN DUNLAP, Former Chairman
California Air Resources Board

MANUEL CUNHA, JR., President
Nisei Farmers League

JULIAN CANETE, Chairman
California Hispanic Chamber of Commerce

PROPOSITION 26

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 sections of the California Constitution; 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. Findings and Declarations of Purpose.

The people of the State of California find and declare that:

(a) Since the people overwhelmingly approved Proposition 13 in 1978, the Constitution of the State of California has required that increases in state taxes be adopted by not less than two-thirds of the members elected to each house of the Legislature.

(b) Since the enactment of Proposition 218 in 1996, the Constitution of the State of California has required that increases in local taxes be approved by the voters.

(c) Despite these limitations, California taxes have continued to escalate. Rates for state personal income taxes, state and local sales and use taxes, and a myriad of state and local business taxes are at all-time highs. Californians are taxed at one of the highest levels of any state in the nation.

(d) Recently, the Legislature added another \$12 billion in new taxes to be paid by drivers, shoppers, and anyone who earns an income.

(e) This escalation in taxation does not account for the recent phenomenon whereby the Legislature and local governments have disguised new taxes as “fees” in order to extract even more revenue from California taxpayers without having to abide by these constitutional voting requirements. Fees couched as “regulatory” but which exceed the reasonable costs of actual regulation or are simply imposed to raise revenue for a new program and are not part of any licensing or permitting program are actually taxes and should be subject to the limitations applicable to the imposition of taxes.

(f) In order to ensure the effectiveness of these constitutional limitations, this measure also defines a “tax” for state and local purposes so that neither the Legislature nor local governments can circumvent these restrictions on increasing taxes by simply defining new or expanded taxes as “fees.”

SECTION 2. Section 3 of Article XIII A of the California Constitution is amended to read:

~~SEC. 3. (a) From and after the effective date of this article, any changes in state taxes enacted for the purpose of increasing revenues collected pursuant thereto. Any change in state statute which results in any taxpayer paying a higher tax whether by increased rates or changes in methods of computation must be imposed by an Act-act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.~~

(b) As used in this section, “tax” means any levy, charge, or exaction of any kind imposed by the State, except the following:

(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of conferring the benefit or granting the privilege to the payor.

(2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of providing the service or product to the payor.

(3) A charge imposed for the reasonable regulatory costs to the State incident to issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(4) A charge imposed for entrance to or use of state property, or the purchase, rental, or lease of state property, except charges governed by Section 15 of Article XI.

(5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or the State, as a result of a violation of law.

(c) Any tax adopted after January 1, 2010, but prior to the effective date of this act, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of this act unless the tax is reenacted by the Legislature and signed into law by the Governor in compliance with the requirements of this section.

(d) The State bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.

SECTION 3. Section 1 of Article XIII C of the California Constitution is amended to read:

SECTION 1. Definitions. As used in this article:

(a) "General tax" means any tax imposed for general governmental purposes.

(b) "Local government" means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.

(c) "Special district" means an agency of the State, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.

(d) "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

(e) As used in this article, "tax" means any levy, charge, or exaction of any kind imposed by a local government, except the following:

(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

(2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.

(3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

(5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.

(6) A charge imposed as a condition of property development.

(7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.

The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.

SECTION 4. Conflicting Measures.

In the event that this measure and another measure or measures relating to the legislative or local votes required to enact taxes or fees shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive 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 relating to the legislative or local votes required to enact taxes or fees shall be null and void.

SECTION 5. Severability.

If any provision of this act, or any part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.