

March 7, 2017

Voter Requirements for Local Taxes

L E G I S L A T I V E A N A L Y S T ' S O F F I C E

Presented to:

Assembly Local Government Committee

Hon. Cecilia M. Aguiar-Curry, Chair

Assembly Revenue and Taxation Committee

Hon. Autumn R. Burke, Chair

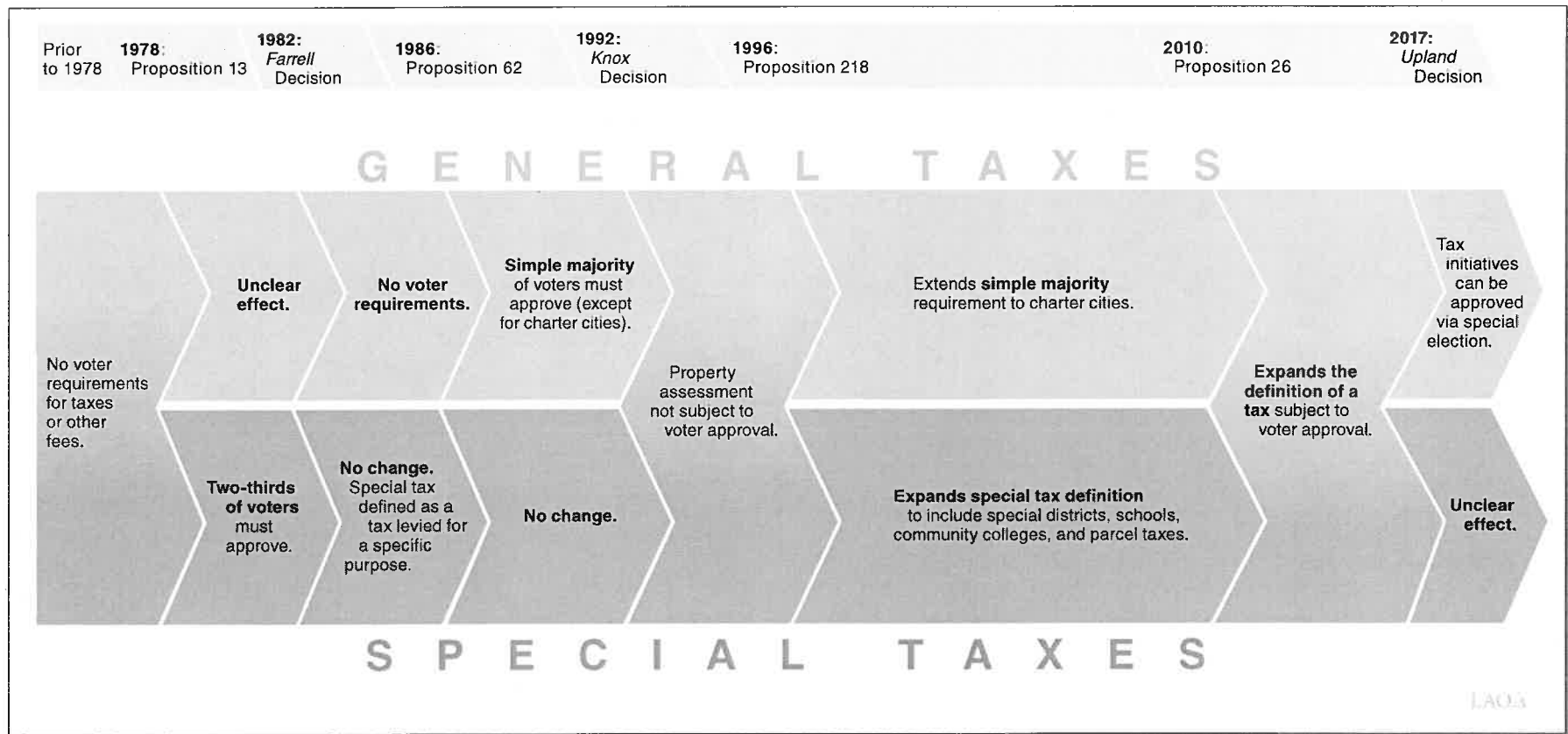
Senate Governance and Finance Committee

Hon. Mike McGuire, Chair



Changes to Voter Requirements for Local Government Taxes

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Upland Decision Background

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Case Focused on Local Marijuana Initiative



The Initiative Included:

- A repeal of the City of Upland's ban on medical marijuana dispensaries.
- Regulations to allow for dispensaries in the city.
- A \$75,000 annual licensing fee for dispensaries.
- A request that the measure be considered at a special election (under Elections Code 9214).



The Fee

- City of Upland determined the fee would exceed the costs of licensing and inspecting dispensaries. Consequently, the fee would constitute a general tax.



The Election

- Because the city considered the fee to be a general tax, the city determined article XIII C, section 2(b) of the State Constitution required the measure be submitted to the voters at the next general election.
- The initiative was defeated November 8, 2016.

California Cannabis Coalition v. City of Upland

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- Petition for Writ of Mandate**
 - Plaintiffs alleged the city violated Elections Code by not submitting the initiative to the voters at a special election. Plaintiffs also argued that article XIII C did not apply because \$75,000 fee was not a tax, nor was the fee imposed by a local government.

- Superior Court Denied Petition**
 - Court found that the fee was a tax and had to be placed on the general election ballot.

- Court of Appeal Reversed**
 - Court held that article XIII C, section 2 only applies to taxes imposed by local governments.

- Supreme Court Affirmed the Court of Appeal Judgement**
 - Found that “local government”—as used in article XIII C, section 2(b)—does not include voter initiatives.
 - Based decision on protecting the initiative power.

Case Implications

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- Supreme Court Decision Focused on Election Timing as Required in Article XIII C, Section 2(b)**
 - Voter proposed taxes can be approved via a special election.

- Both Article XIII C, Section 2(b) and Section 2(d) Reference Local Government Imposed Taxes**
 - Section 2(d) establishes the requirement that special taxes be approved by two thirds of the electorate.

- Decision Did Not Address Article XIII C, Section 2(d)**
 - If “local government” does not include the electorate in section 2(d), local special tax initiatives may not be subject to a two-thirds vote requirement.

Special Taxes Proposed (and Passed) Less Frequently

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2016 Local Measures			
	Measures Proposed	Measures Passed	Passing Rate
General Taxes			
City and County	154	129	84%
Special Taxes			
City and County	62	30	48
Special District and Schools	63	39	62

- Lowering the Vote Threshold for Voter Initiatives Could Increase Passing Rate
- But (City and County) General Tax Measures Already Can Include Non-Binding Advisory Measure