

Date June 26, 2009

Item No. 7

**LOCAL AGENCY FORMATION COMMISSION**  
AGENDA PACKET CONTENTS LIST \*

- Memo from Nancy C. Miller, Interim Executive Officer
- Resolution Opposing Proposed California Constitutional Amendment
- Letter Re: Request for Title and Summary – Initiative Constitutional  
Amendment, dated May 28, 2009
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Exceeds 20 pages; see file to review  
Available for review at City Hall, Room 244

Completed by: Alisa Furuzawa

Date: June 23, 2009

**\*This list reflects the explanatory documents provided**

# San Francisco Local Agency Formation Commission

City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689  
Tel. 415.554.5184  
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TO: LAFCo Commissioners

FROM: Nancy C. Miller, Interim Executive Officer

DATE: June 26, 2009

SUBJECT: Item 7: Report on PG&E-sponsored State Initiative and Consideration of Resolution of Opposition and Request to Other CCAs and LAFCo's to Oppose. (Discussion and Action Item)

**Background:** On June 1, 2009, an Initiative was submitted to the California Attorney General, Initiative Coordinators Office, to amend the State Constitution. It is clear that the Initiative is sponsored by PG & E because it is directed toward CCAs. The Initiative is aimed at making a CCA program more difficult to implement.

**Initiative Language:** The Initiative is preliminarily titled "The Taxpayers Right to Vote Act." A copy of the Initiative is attached to this report.

Under the Initiative when a local governmental entity seeks to start or expand electric delivery service, or implement a plan to become an aggregate electricity provider, the Initiative would require that before public funds are expended that 2/3rds of the voters in the territory currently served and 2/3rds of the voters in the territory to be served approve the expenditure by voting in an election. Additionally, the Initiative requires 2/3rds of the voters within the local government's jurisdiction and 2/3rds of the voters within the territory to be served to approve any plan to provide community choice aggregation services or to replace the authorized local public utility for electric delivery service to any retail electricity customers.

The Initiative would affect a broad range of governmental entities including municipalities, municipal corporations, municipal utility districts, public utility districts, irrigation districts, cities, counties, cities and counties, districts, special districts, agencies, and joint powers authorities.

Report on PG&E-sponsored State Initiative and Consideration of Resolution of  
Opposition and Request to Other CCAs and LAFCos to Oppose.

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The exception to the general 2/3rds voter approval rule proposed by the Initiative states in full:

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 enactment; 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 of less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean, thermal, or tidal current, or providing electric delivery for the local government's own end use and not for electric delivery service to others.

**Attorney General Process:** The California Attorney General, Initiative Coordinator's Office received the Initiative on June 1, 2009. The next step is for the California Department of Finance and Legislative Analyst's Office to jointly prepare a fiscal impact report. They have 25 business days, or more if needed, to prepare the joint fiscal impact report.

Once the fiscal impact report is received, the Atty. Gen has 15 calendar days to prepare the title and summary which are submitted to the California Secretary of State. Once the title and summary are provided to the Secretary of State, the Initiative proponents can begin circulating the petition to obtain the necessary signatures. Proponents must collect 694,354 to qualify for the ballot.

With the Initiative being received on June 1, 2009, the earliest the official title and summary will be released is July 20, 2009. The measure could qualify for the June (unlikely) or November 2010 (likely) ballot.

**RECOMMENDATION:**

1. Adopt Resolution in Opposition. The Interim Executive Officer recommends that the Commission approve the attached resolution opposing the proposed constitutional amendment and requesting other CCA's, LAFCOs, Cities, Counties and other municipal districts to join SF LAFCo in opposing the proposed constitutional amendment.
2. Provide information at next meeting on a Strategy for Opposition.

1 [Resolution Opposing Proposed California Constitutional Amendment.]

2 **Resolution Opposing the Proposed California Constitutional Amendment Ballot**  
3 **Initiative Misleadingly Titled the “Taxpayer Right to Vote Act”, and Requesting Other**  
4 **Community Choice Aggregators and Local Agency Formation Commissions Join in**  
5 **Opposition.**  
6

7 WHEREAS, In 1997, the State of California deregulated electricity with the promise of  
8 giving consumers a choice in electricity providers, ending decades of monopolistic electricity  
9 markets which promised lower rates and better service through increased competition; and

10 WHEREAS, The State of California rescinded deregulation resulting in the loss of  
11 consumer choice and the possibility of free-market competition in 2001, and most ratepayers  
12 now receive their electricity from the same monopolistic electricity providers prior to  
13 deregulation; and

14 WHEREAS, The deregulation of electricity led to the energy crisis of 2000-2001,  
15 caused by the investor-owned, profit-driven electricity providers participating in market  
16 manipulation, led by Enron Corporation, which later admitted to fraudulent behavior; and

17 WHEREAS, In 2002, in response to the collapse of deregulation and its failure to  
18 provide electricity consumers with a choice of electricity providers, Assemblywoman Carole  
19 Migden authored and the California Legislature passed AB 117, which enabled communities  
20 to establish Community Choice Aggregation Programs; and

21 WHEREAS, Community Choice Aggregation enables any city or county or combination  
22 thereof to become electricity purchasers for residences and businesses, and require a  
23 renewable energy component in the portfolio of electricity purchased; and

24 WHEREAS, Community Choice Aggregation offers Californians the opportunity to  
25 choose their electricity provider and obtain a cleaner source of their electricity; and

1           WHEREAS, Community Choice Aggregation Programs are regulated by the California  
2 Public Utilities Commission which enforces strict guidelines on cities and counties wishing to  
3 become aggregate buyers of electricity, thereby ensuring public confidence in the program;  
4 and

5           WHEREAS, In 2007, the Board of Supervisors of the City and County of San  
6 Francisco voted to make San Francisco a Community Choice Aggregation and approved a  
7 Draft Implementation Plan for Community Choice Aggregation; and

8           WHEREAS, The Draft Implementation Plan sets the goal of having 51% of the City's  
9 electricity provided by clean and renewable energy resources by the year 2017; and

10           WHEREAS, The San Francisco Public Utilities Commission (SFPUC) is on schedule to  
11 issue, by October 2009, a Request for Proposals to private-sector energy service providers  
12 who can supply clean, renewable energy to the citizens of San Francisco under the SFPUC's  
13 Community Choice Aggregation Program, known as Clean Power SF; and

14           WHEREAS, Clean Power SF is the next, very important step in bringing competition  
15 back to the energy market, as well as expanding green-collar jobs and boosting the private-  
16 sector renewable energy industry; and

17           WHEREAS, PG&E has a history of acting to maintain its monopoly in its service  
18 region, including opposing public power initiatives on the ballot and lobbying officials of  
19 California cities and counties against Community Choice Aggregation, in apparent violation of  
20 the provisions of AB 117; and

21           WHEREAS, On May 28, 2009, a request for title and summary was made to the  
22 California Attorney General for an initiative to amend the California Constitution, preliminarily  
23 and deceptively titled the "Taxpayers Right to Vote Act", which would be placed on the ballot  
24 if sufficient signatures are collected, and a copy of which is attached hereto and incorporated  
25 by this reference; and

1           WHEREAS, The "Taxpayers Right to Vote Act" seeks to retain the monopolies of  
2 investor-owned, profit driven utilities in circumvention of the provisions of AB 117, which  
3 require investor-owned utilities to fully cooperate with Community Choice Aggregators, by  
4 adding unreasonable hurdles for California cities and counties to overcome in order to  
5 become aggregate purchasers of electricity; and

6           WHEREAS, The "Taxpayers Right to Vote Act" would require submitting any  
7 Community Choice Aggregation proposal to the voters for a two-thirds vote of approval, within  
8 the proposed jurisdiction of an aggregator, and would requires a two-thirds vote of approval  
9 by the voters if any type of public finance is used, including bonds, cash, income, assets or  
10 equity to implement a Community Choice Aggregation Program; and

11           WHEREAS, The "Taxpayers Right to Vote Act" would effectively preclude any entity  
12 from becoming an electricity aggregator as well as virtually prohibiting any existing Municipal  
13 utility, all of whom operate on a non-profit, public interest basis, from entering into any new  
14 competitive market in California; and now, therefore, be it

15           RESOLVED, That the San Francisco Local Agency Formation Commission fully  
16 supports maintaining the consumer's right to choose energy from clean, renewable sources  
17 that the Community Choice Aggregation law provides for; and be it

18           FURTHER RESOLVED, That the San Francisco Local Agency Formation Commission  
19 strongly opposes the "Taxpayers Right to Vote Act' as being against the interest of  
20 California's electricity ratepayers, against the public interest, and a potential setback for  
21 renewable energy production; and be it

22           FURTHER RESOLVED, That the San Francisco Local Agency Formation Commission  
23 strongly urges the Attorney General, if the initiative qualifies for the ballot, to assign a title to  
24 the initiative which accurately reflects the spirit and intent to restrict competition from non-  
25 profit, publicly owned utilities by virtually assuring an investor owned utility monopoly on  
California's energy markets; and be it

1 FURTHER RESOLVED, That the San Francisco Local Agency Formation Commission  
2 strongly urges other Community Choice Aggregation Programs, cities, counties, special  
3 districts and Local Agency Formation Commissions to adopt similar resolutions opposing the  
4 misleadingly titled "Taxpayer Right to Vote Act"; and be it

5 FURTHER RESOLVED, That the Clerk of the San Francisco Local Agency Formation  
6 Commission is hereby directed to forward a fully conformed copy of this resolution to the  
7 Attorney General of the State of California, the California Secretary of State, the Director of  
8 the San Joaquin Valley Joint Powers Authority, the Director of Marin Clean Energy, the  
9 President of the Municipal Utilities Association the Sacramento Municipal Utility District, the  
10 League of California Cities and the County Supervisors Association of California for  
11 dissemination to its members, and the Executive Director of the California Association of  
12 Local Agency Formation Commissions for dissemination to its members.

13 On a motion by \_\_\_\_\_, seconded by \_\_\_\_\_, the foregoing  
14 Resolution was passed and adopted by the SAN FRANCISCO LOCAL AGENCY  
15 FORMATION COMMISSION, State of California, this 26th day of June, 2009, by the following  
16 vote, to wit

17 AYES:

18 NOES:

19 ABSTAIN:

20 ABSENT:

21  
22  
23 \_\_\_\_\_  
24 Ross Mirkarimi, Chairperson  
25 SAN FRANCISCO LOCAL AGENCY  
FORMATION COMMISSION





May 28, 2009

09-0015

VIA PERSONAL DELIVERY

The Honorable Edmund G. Brown, Jr.  
Attorney General  
1300 I Street  
Sacramento, CA 95814

**RECEIVED**

JUN 01 2009

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

Attention: Krystal Paris, Initiative Coordinator

Re: Request for Title and Summary- Initiative Constitutional Amendment

Dear Mr. Brown:

Pursuant to Article II, Section 10(d) of the California Constitution and Section 9002 of the Elections Code, I hereby request that a title and summary be prepared for the attached initiative entitled "The Taxpayers Right to Vote Act" as provided by law. Included with this submission is the required proponent affidavit signed by myself as proponent of this measure pursuant to section 9608 of the California Elections Code. My address as a registered voter is provided and 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, Mueller & Naylor, LLP, 1415 L Street, Suite 1200, Sacramento, CA 95814, (916) 446-6752, Attention: Steve Lucas (telephone: 415/389-6800).

Thank you for your assistance.

Sincerely,

Robert Lee Pence, Proponent

Enclosure: Proposed Initiative

## Section 1. FINDINGS AND DECLARATIONS

09 - 0015

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 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.