

## Proposition 16: The Taxpayers Right to Vote Act

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**Author:**

**Introduced:**

**Amended:**

**Sponsor:** Robert Lee Pence, Californians to Protect Our Right to Vote, Pacific Gas and Electric Company

**Supporters:**

**Opposition:** SMUD, City of Palo Alto, Senate Pro-Tempore Darrell Steinberg, Senators Cedillo, Florez, Kehoe, Leno, Lowenthal, and Oropeza

**Assigned to:** Ron Davis/Christine Archibald

**Current Position:** NYC

**Summary:** Proposition 16, otherwise known as the Taxpayers Right to Vote Act, has qualified for the ballot for the June 8, 2010 primary election.

Current law authorizes the development of Community Choice Aggregation (CCA) programs, which allow local governments to purchase blocks of power to sell to their residents. A CCA program allows local governments to construct municipal electricity generation facilities, allowing cities and counties to compete with private utilities.

This proposition would make findings and declarations, including that:

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

This proposition would add the following provisions to the California Constitution:

#### **Two-Thirds Vote Requirement:**

No local government shall at any time, incur any bonded or other indebtedness or liability in any manner or use any public funds for the construction or acquisition of facilities, works, goods, commodities, products or services to establish or expand electric delivery service, or to implement a plan to become an aggregate electricity provider without the approval of a two-thirds majority of the voters present and voting within the territory to be served.

### **Definitions**

**Local Government**: 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 the above entities.

**Electric Delivery Service**: transmission of electric power directly to retail end-use customers, or distribution of electric power to customers for resale or directly to retail end-use customers, or sale of electric power to retail end-use customers.

**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.

**“A plan to become an aggregate electricity provider”**: a plan by a local government to provide community choice aggregation (CCA) 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.

**Public Funds**: any taxes, funds, cash, income, equity, assets, proceeds of bonds or other financing or borrowing, or rates paid by ratepayers. “Public funds” does not include federal funds.

**Bonded or other indebtedness or liability**: 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.

### **Exceptions:**

The above 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 electricity delivery service for the government’s own end use and not for electric delivery service to others.

**Summary of Amendments:** N/A

**Impact on ACWA Members:** N/A

**Staff Comments:** The proposed constitutional amendment would require a two-thirds majority vote of approval by local voters before a local government (as defined above), using public funds, could:

- 1) Establish a Community Choice Aggregation (CCA) program,
- 2) Implement a plan to become a CCA provider.
- 3) Expand electric service to a new territory or new customers.

Therefore, if Proposition 16 is approved by voters, it will make it more difficult than it currently is for local entities to form either municipal utilities, or community wide electricity districts called Community Choice Aggregators (CCAs). Forming a local municipal utility or a CCA, if this measure is enacted, will require the approval, through election, of 2/3rds of the voters who live in the area of the would-be local municipal utility or CCA.

#### Background on Community Choice Aggregation:

The CCA program was established by the Legislature in 2002 in response to the failure of California's deregulated electricity market, and at the insistence of many local governments, including the City and County of San Francisco. San Francisco adopted a CCA ordinance in 2004, which required the SFPUC to create a CCA program implementation plan to build 360 megawatts of solar, green distributed generation, wind generation, and energy efficiency and demand response to serve San Francisco ratepayers. Specifically, the ordinance combined the power purchasing authority of CCA with a revenue bond authority to expand the power of CCA to finance the new green power infrastructure, worth approximately \$1 Billion. In 2007 the City adopted a detailed CCA Implementation Plan which established a 51% Renewable Portfolio Standard by 2017 for San Francisco. In 2004, the City of Chula Vista conducted a similar CCA program feasibility study and determined that implementation of a CCA program could save the City between \$21M and \$122M on a net present value basis between 2006 and 2023.

As of 2007, over 40 California local governments were in the process of investigating and establishing some sort of CCA program, all of which sought to increase green power levels and in some instances to triple that of the three investor-owned utilities in California.

#### Public Utility Districts:

Formation of public utility districts, such as municipal utility districts and irrigation districts that deliver power to retail end-use customers is a paramount and important tool that enables local governments to provide a quality service of a necessary utility, as well as to protect citizens from high, non-competitive rates and the corporate practices of the behemoth sized investor-owned utilities. Constriction of this tool is unacceptable.

The Sacramento Municipal Utility District (SMUD) has as one of its core values maintaining competitive electricity rates, establishing a rate target of 18 percent below Pacific Gas & Electric Company's published rates on a system average basis. In addition, the Board establishes a rate target of at least 10 percent below PG&E's published rates for each customer class. Core values like this are not as often found in the for-profit sectors.

Proponents of Proposition 16 argue that it would simply hold local governments more accountable for their actions; implying that only if two-thirds of voters approve passage for formation of a public utility district or CCA does that mean voters (customers) desire such a program. As the spokesperson for the Act stated, "Why shouldn't the people who are going to pay the bill have the right to vote on that." The fact is that they already do have the right to vote on it, but it only takes a

majority vote to approve formation of a public utility district. Further, on PG&E's own website, relating to CCA's, it states, "all customers shall be informed of their right to opt-out of CCA service," and have the option to continue to receive their electricity from PG&E, within the first 120 days of the CCA's existence.

Opponents fight back, saying that what this proposition really does is reduce the ability of people to choose between private and public utilities. As SMUD stated, "It [the proposition] really goes to the heart of the right of people to have choices, that's the intent of this measure. It's horrendous." Further, Michael Hiltzik, a columnist for the Los Angeles Times states, "The Taxpayers Right to Vote Act is a dagger aimed directly at a movement to enable municipalities to offer renewable green power to their residents in competition with private utilities."

Even further, in late December 2009 Senate Pro-Tempore Darrell Steinberg, along with seven other senators (Senators Cedillo, Florez, Kehoe, Leno, Lowenthal, Oropeza, and Wolk) sent a strongly worded letter to PG&E Chairman Peter Darbee condemning PG&E's support for this Proposition 16. The senators point out that, in fact, AB 117 (Migden) of 2002 (Chapter 858, Statutes of 2002), which explicitly prohibited privately owned utilities from interfering with CCA's, had broad support, including the support of PG&E. The senators not only labeled the initiative as "misguided public policy," but also called into question the integrity of a company that would undermine the Legislature by recanting support for a program through the initiative process. "To use the initiative process to pursue PG&E's self interests and avoid engaging your partners in the AB 117 agreement, calls into question your company's integrity." The letter ends with a curt reminder to PG&E that it has slipped in its provision of renewable energy and that it is totally "unacceptable for a company that is falling behind in meeting state adopted goals for clean energy to impede the efforts of others who would attain those goals through innovative means."

Proposition 16 would drastically constrict the ability of local government from providing electricity delivery to customers from a non-profit perspective, at competitive rates, and by greener means.

**Recommended Position:** Oppose