



MOUNTAINS RECREATION & CONSERVATION AUTHORITY

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MEMORANDUM

TO: The Governing Board

FROM:  Joseph T. Edmiston, FAICP, Hon. ASLA, Executive Officer

DATE: October 4, 2017

SUBJECT: **Special Agenda Item IV: Consideration of resolution requesting veto of A.B. 765, the Legislature's attempt to overturn the California Supreme Court's decision upholding the local initiative process in *City of Upland*.**

Background: The complicated history behind the *City of Upland* case and AB 765 need not bother us. Suffice it to say that in the city of Upland the cannabis interests filed an initiative to legalize the stuff and at the same time tax it. The city of Upland said no, while legalization would require only a majority vote, a tax would require 2/3 vote. The Court of Appeal and the California Supreme Court on August 17, 2017 ruled that a local initiative measure imposing a tax, because the initiative came from the people—by petition—and not from the local government, was exempt from the Prop. 218 requirement of 2/3 vote. A local tax imposed by initiative petition could be imposed by majority vote under the Initiative Clause of the California Constitution. The specific mechanism used in Upland was the 15% signature trigger. If 15% of the voters sign a petition the law requires a special election, not waiting two or more years until a regular election.

Effect of A.B. 765: This bill would *repeal* the Elections Code section authorizing a vote on this kind of initiative petition. Because of the legal posture of this case, depending as it does on the 15% rule, the defendants (losing parties) of the Upland case have petitioned the Supreme Court to vacate its ruling based on the Legislature's passing a bill to repeal the Elections Code section involved. This would have the effect of invalidating the Supreme Court ruling by indirection.

Implications for Prop. 218 if A.B. 765 is approved: It is unclear if the author understood the Supreme Court and Prop. 218 implications of this bill. The Special Districts Association supported the bill based on the desire not to have to pay for a local election. Because the *Upland* case relied on the 15% provision, repealing it would have the effect of wiping out the case entirely. Apparently clever folks are behind this repeal.

Importance of the *City of Upland* case: By a 6-1 vote the Supreme Court said that the Constitutional power of initiative by petition of the voters of a local jurisdiction—not brought forward by the local government itself—superseded the 2/3 vote restriction of Prop. 218. The case stands for simple democracy: While the city council or other body can't tax you except by going to a 2/3 electoral vote, the voters themselves, by the initiative petition process, can do so by a democratic majority if 15% of the voters have signed the petition to do so, which is the threshold for a special election.

Interest of the MRCA in this legislation: Twice, in four different jurisdictional areas, the MRCA has gone to the voters to protect open space and provide fire protection. These measures were proposed by MRCA itself. The Legislature should not inhibit the voters themselves from enhancing the open space, fire, and public safety capacity of the MRCA by petition that they themselves and not the MRCA, initiate.

Recommendation: That the Governing Board adopt a resolution urging the Governor to return A.B. 765 to the Assembly without his signature.