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Changing Plans: Flexibility, Accountability, and Oversight of Local Option Sales Tax Implementation in California



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Issue

Local option sales tax (LOST) revenue accounts for a large and growing share of local transportation spending in California and throughout the United States. However, research has yet to explore how these measures fare when implemented. To enhance their popularity at the voting booth, LOSTs almost always include an expenditure plan detailing how revenue will be spent during the lifetime of each measure. Local authorities charged with administering LOST measures are often able to amend these expenditure plans — and, therefore, project lists — during implementation, raising important questions concerning the degree to which local transportation authorities are accountable to the public. While some flexibility is needed to respond to unforeseen circumstances (i.e., lower-than-expected revenue), too much flexibility may allow local officials to implement projects or programs inconsistent with the will of voters. This project explores the tensions and balance between local transportation leaders' accountability to voters and flexibility in administering California's LOST revenues.

Research Findings

Of the 51 California LOST measures that have been enacted since 1976 for transportation funding purposes, at least

84 ordinance and/or expenditure plan amendments have been made, resulting in at least 68 substantive changes to project lists.

Many of the measures require the formation of independent Citizens Oversight Committees, whose roles vary from purely advisory (e.g., review, report, and advise authority boards) to more direct authority (e.g., veto power over proposed expenditure plan amendments).

Most measures allow for project lists and governing rules to undergo amendment during implementation, though the procedures for approving such changes and the circumstances under which such changes may take place vary across measures.

- Twenty-four measures specify the ordinance and/or expenditure list can be amended only by receiving two-thirds approval from a specified governing body, which is almost always the local transportation authority's board of directors.
- Some ordinances require multiple levels of approval before amendments can go into effect. In addition to requiring a two-thirds approval from a specified governing body, 16 of the measures require that amendments also obtain approval through a majority vote of another specified governing body (e.g., county's Board of Supervisors).

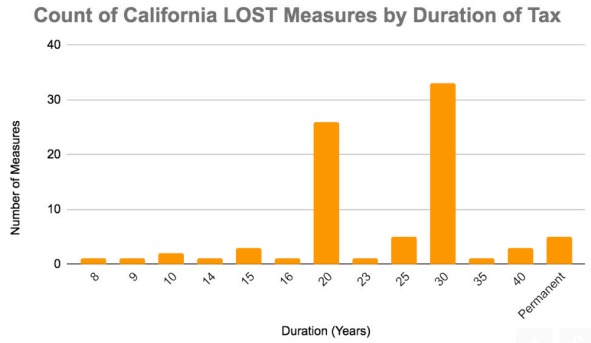


Figure 1: The duration period of all California LOST measures, passed since 1976

- Similarly, 12 measures require approval from “a majority of the incorporated cities representing a majority of the [county’s] population.”

In limited circumstances, LOSTs include provisions whereby affected jurisdictions may appeal expenditure plan amendments proposed by a county’s local transportation authority.

In general, these findings suggest that most measures seem to achieve a relative balance between needed flexibility and public accountability, ensuring that amendments take place infrequently and that such changes tend to preserve the measure’s initial intention.

Environmental-review-related lawsuits will likely continue to be a tried-and-true means of delaying the approval and delivery of LOST measures and the projects they fund. However, local transportation authorities retain significant flexibility during LOST measure implementation, so long as they maintain transparency and comply with specified review and amendment provisions.

Study Approach

The researcher consulted the existing academic and grey literature on LOST implementation in California and throughout the United States. In addition, the project studied the ordinances and expenditure plans released and

updated by local transportation authorities in California counties that are implementing these sales taxes. Through this research, the study ascertained the rules that govern the amendment process for each LOST measure and the history of amendments that have taken place under each adopted LOST measure in California. Finally, the researcher reviewed legal databases to identify landmark litigation related to LOST implementation in California, summarizing related findings and lessons learned.

Conclusions

- Over time, the provisions — and public oversight requirements — that restrict amendments to LOST ordinance and/or expenditure plans appear to have limited LOST amendments. However, local transportation authorities still have the flexibility to respond if unforeseen circumstances arise.
- Opponents of LOSTs and the projects they fund often point to environmental review requirements and CEQA violations to create legal controversy and delay measure adoption and/or project implementation. Local transportation authorities can preempt attempts to delay implementation by carefully structuring measures and project lists to remain in full compliance with all relevant state, federal, and/or local environmental review requirements.
- Several landmark legal cases involving LOSTs provide longstanding implications for jurisdictions and policymakers that continue to implement LOST measures throughout California. For instance, landmark litigation established a precedent that inclusion of a list of projects in a LOST measure’s expenditure plan does not constitute a commitment by the implementing jurisdiction to build those projects, and thus does not require preemptive CEQA review.



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