

July 24, 2018

Members of the Financial Estimate Committee:

I am writing on behalf the Portland Clean Energy Fund (PCEF), a measure on the November 2018 city of Portland ballot, to ask the committee to change the Financial Estimate Statement for Initiative Petition 37 because it contains inaccurate statements that will mislead voters.

IP 37, as written, will likely impact PCEF the implementation of PCEF and may cost the city millions of dollars. Voters should be alerted to the fact that because IP 37 is retroactive, it will have immediate implementation costs as the state and local governments attempt to administer its unwieldy definitions.

Specifically, we ask that the phrase “nor does it require any additional state or local government spending to implement” be deleted and it be replaced with “Because IP 37 is retroactive to September 2017, it requires an indeterminate amount of resources to implement at the state and local level.”

In addition, we believe that the Financial Impact Statement should state, “The number of local and state laws impacted by the retroactive provision of IP 37 is indeterminate, but many state and local laws may be impacted by its passage.”

If those statements and additions are not made, the statement should simply state, “The fiscal impact for state revenue is indeterminate. The fiscal impact for local revenue is indeterminate.”

Background

PCEF is a proposed surcharge on retail corporations that have more than \$1 billion in revenue annually with at least \$500,000 of that in annual revenue in the city of Portland. Funds raised from PCEF will go to fund jobs and job training on clean energy projects in low-income neighborhoods throughout Portland. Because many of the corporations that have more than a billion dollars in annual revenue have some connection to “groceries” as defined in IP 37 (not a traditional definition of that term), we believe that the passage of IP 37 could have a negative impact on the revenue raised for clean energy projects and the economic development they will provide.

Without a doubt, determining the impact of IP 37 on local measures like PCEF will have a significant bureaucratic cost. IP 37 touches thousands of corporations with oddly defined, non-legal terms that may mean new loopholes for specific special interests. Implementing IP 37 will mean rulemaking, likely adding new administrators to determine how to implement its definitions and likely years of litigation over the definitions and scope of the measure. Companies looking for new ways to avoid paying their fair share in taxes will sue to avoid being included by PCEF, and it won't just be the big grocery industries that will challenge. Any industry, from FedEx to State Farm, may have a legitimate claim to avoid paying taxes under IP 37.

We agree that it's appropriate to say "The fiscal impact is indeterminate" because it is very difficult to determine where the tax loopholes in IP 37 would end. However, it is inaccurate and inappropriate to tell voters: "The Initiative does not reduce any existing state or local government tax or fee enacted or amended before September 2017, nor does it require any additional state or local government spending to implement."

As proponents of the Portland Clean Energy Fund, we have exempted groceries from the increase in business licensing fee that is our funding mechanism should our measure pass. However, because IP 37 is so broadly written, we know that its passage would negatively impact the implementation of PCEF. For example, Starbucks is a large, out-of-state corporation that would be subject to the fee increase; if IP 37 passes Starbucks would be exempted from paying the increase because what they sell is a "grocery" as defined in the measure. We find it hard to believe Starbucks would not challenge payment of PCEF if IP 37 passes this fall.

The most thorough Financial Estimate Statement would detail all of the fees, taxes and assessments passed at the state level and every local jurisdiction since September 2017 and say that the fiscal estimate is indeterminate because we don't know whether or not IP 37 impacts those taxes and fees.

Otherwise, the statement should read simply:

"The fiscal impact for state revenue is indeterminate. The fiscal impact for local revenue is indeterminate."

Thank you,

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