

SB

130

**<TARGET><BILL>SB 130</BILL><SUBJECT>SB
130</SUBJECT><COMM></COMM></TARGET>**

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 1/16/18

FURTHER: Finance

DATE TURNED

IN TO OFFICE: 2/22/2018

State Affairs Committee considered SENATE BILL NO. 130

SB 130 VOTER APPROVAL FOR NEW TAXES

"An Act relating to a vote of the people before a broad-based individual income tax or statewide sales tax takes effect."

and recommends:

be replaced with CS SB 130 (STA) Same Title New Title

adopt previous CS _____ (_____) Same Title New Title

attached amendment(s)

adopt _____ Letter of Intent

further referral to _____ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
EED	MVA
DEC	DNR
DFG	DPS
GOV	REV
DHS	DOT
AJS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
GOV			✓	1

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Wilson	✓			
	Giessel			✓	
	Gophill		✓		
	Bear			✓	
CHAIR:	MEYER	✓			

Alaska State Legislature



Interim:

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Anchorage, Alaska 99503
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(907) 269-0197 Fax

Session:

State Capitol Building, Room 103
Juneau, Alaska 99801-1182
(907) 465-4945 Phone
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Senator Kevin Meyer Senate District M

SPONSOR STATEMENT

SB 130: Voter Approval for New Taxes

This act would require a vote of the people before a broad-based individual income tax or statewide sales tax takes effect. This bill would amend AS 15.15.030 by adding language which would require the Division of Elections Director to place a question about the tax on the election ballot once the legislature passes a law levying a tax.

"When the legislature by law authorizes the levy of a tax described in AS 43.95.020, the director shall place the question of whether the levy shall be ratified by placing the ballot title and question on the election ballot specified in the Act. The question shall, by the use of a few sentences in a succinct manner, give a true and impartial summary of the Act levying the tax. The question of whether the tax shall be levied shall be assigned a letter of the alphabet on the ballot. Provision shall be made for marking the question "Yes" or "No.""

It has been many years since the State of Alaska has levied an individual income tax on its citizens. There has been much discussion in this era of budget deficits on revenue generation by the implementation of and/or increase in taxes. The intention of this legislation is to explore the idea that before enacting a new tax, be it an individual income or statewide sales tax, it should be ratified by the vote of the people. Voters are being asked to approve budget timelines, spending caps, and per diem spending, it makes sense that we consult the people of Alaska on taxation.

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It has been many years since the State of Alaska has levied an individual income tax on its citizens. There has been much discussion in this era of budget deficits on revenue generation by the implementation of and/or increase in taxes. The intention of this legislation is to explore the idea that before enacting a new tax, be it an individual income or statewide sales tax, it should be ratified by the vote of the people. Voters are being asked to approve budget timelines, spending caps, and per diem spending, it makes sense that we consult the people of Alaska on taxation.

30-LS1088J
Nauman
2/9/18

CS FOR SENATE BILL NO. 130(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS MEYER, Wilson, Hughes

A BILL
FOR AN ACT ENTITLED

1 **"An Act requiring advisory votes on legislative enactment of an individual income tax**
2 **and a statewide sales tax."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 **ADVISORY VOTE ON TAX.** At the first statewide election following the effective
7 date of this Act, the lieutenant governor shall place before the qualified voters of the state two
8 questions advisory to the legislature and the governor. Notwithstanding AS 15.80.005 and
9 other laws relating to the preparation of a ballot proposition, the questions shall appear on the
10 ballot in the following form:

11 **QUESTION**

12 Do you approve of the passage by the Alaska State Legislature of a bill
13 that imposes an individual income tax?

14 Yes [] No []

1
2
3
4

QUESTION

Do you approve of the passage by the Alaska State Legislature of a bill
that imposes a statewide sales tax?

Yes []

No []

SSTA CS for SB 130

SSTA CS for SB 130 Voter Approval of New Taxes Version J makes the following changes:

- The entirety of the bill has been replaced with one section structured as an advisory vote. This new version essentially carries the intent of the original bill by placing the following two questions before the qualified voters of the state:
 - Do you approve of the passage by the Alaska State Legislature of a bill that imposes an individual income tax? Yes or No?
 - Do you approve of the passage by the Alaska State Legislature of a bill that imposes a statewide sales tax? Yes or No?

RATIONALE:

During the Senate State Affairs Committee's hearing on SB 130 on January 30, 2018, it was explained by Emily Nauman from Legislative Legal Services that version A of SB 130 was unconstitutional for a variety of reasons. Essentially there were two avenues open to taking new taxes to a vote of the people and they were 1) A constitutional amendment or 2) An advisory vote.

A constitutional amendment would have all of the force of the Alaska State Constitution. It would be implementable and enforceable. However, it would be a high hurdle to pass such legislation (two-thirds in each body 27 H 14 S) and would enshrine the refutation of taxation in the constitution unless allowed by the vote of the people. An advisory vote would simply be a majority vote from both bodies. However, it would be non-binding, no "teeth" so to speak but simply the input of Alaska's peoples on a policy.

On February 9th Sen. Meyer took over sponsorship of Senate Joint Resolution 7, which is a constitutional amendment to have voter approval of new taxes. The bill was formerly sponsored by the previous chair of this committee. By adopting the CS for SB 130 you will essentially cover the second avenue for putting the question of new, broad based taxes in Alaska before the people and that is an advisory vote on tax.

Senator Coghill
DNP not a tax or advisory
bill → vote.

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P.O. Box 110017
Juneau, Alaska 99811-0017
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elections@alaska.gov



Elections Offices ☎
Absentee-Petition 907-270-2700
Anchorage 907-522-8683
Fairbanks 907-451-2835
Juneau 907-465-3021
Nome 907-443-5285
Mat-Su 907-373-8952

STATE OF ALASKA
Division of Elections
Office of the Lieutenant Governor

February 2, 2018

The Honorable Kevin Meyer, Chair
Senate State Affairs Committee
Alaska State Legislature
State Capitol, Room 205
Juneau, AK 99801

Dear Senator Meyer:

At the January 30, 2018 Senate State Affairs committee hearing on SB 130, the committee asked the cost to the State of conducting a special election for an advisory vote.

Costs for Conducting a Special Election

As the Division understood the questions, Senator Wilson asked for the cost difference between an advisory vote at a special election and placing the question on a ballot before voters at a regular scheduled election. For the purpose of estimating the cost of conducting a special election, the division looks at the cost of a Primary election. The total cost for the 2016 Primary Election was \$1,136,790. Alaska Statute 15.58.010 requires that if a ballot proposition is to appear on the ballot then a pamphlet must be sent to each household identified from the official registration list. The Division notes that we did not have a ballot measure pamphlet in the 2016 primary election, and the cost to print and mail those is approximately \$125,000.

The cost to conduct an election held at a time other than when the general or primary election is held is approximately \$1,257,453.

2016 Primary Election Costs

Election Worker (EW) Training	30,495
EW & Polling Place Payments	380,433
Election Temps	329,978
Election Expenses	213,326
Primary Voter Pamphlet	4,337
Ballot Transport	14,360
Ballot Printing	163,861
	<hr/>
	\$1,136,790

If a special election to conduct an advisory vote were called to be held with and at the time of the general or primary election, there would be no additional cost to the State.

If you have further questions or need additional information, please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "Josie Bahnke".

Josie Bahnke
Director

Cc: Senate State Affairs Committee Members

TALKING POINTS FOR SB 130 VOTER APPROVAL OF NEW TAXES

The intent for SB 130 is to require a vote of the people before a broad-based individual income tax or statewide sales tax takes effect.

Section 1

AS 15.13.065(c) would be amended to include a tax levied under AS 43.98.020. This section basically makes a vote on taxes subject to the same rules and limitations as ballot propositions when it comes to contributions.

Section 2

Amends AS 15.15.030 to direct the Division of Elections Director to place a question on the election ballot. This is essentially the same kind of language used when requiring an advisory vote.

Section 3

Amends AS 15.80.010(33) to include taxes, there are 45 definitions in this section, the word taxes is added under "questions"

Section 4

Adds a new section to AS 43.98 to include Article 1A which is the language requiring any bill that the legislature passes levying a broad-based individual income tax or statewide general sales tax or both to 1) be ratified by the vote of the

people and 2) specifies the statewide election ballot on which the question on the bill levying the tax is asked “yes” or “no.” Essentially it requires any legislation to include instructions which requires a vote of the people upon passage.

If passed, this bill would put in statute that any legislation levying a broad-based tax be ratified by the vote of the people.

Emily Nauman from Legislative Legal is online. She drafted the bill before you. She also wrote the memo that was part of your bill packet. Essentially the memo outlined why this legislation is unconstitutional.

There are number of ways governments have weighed the opinion of its people on taxes. Many may be familiar with the Anchorage Municipality which uses an advisory vote on any tax increases. Or the proposition process that may alter or do away with a tax. According to a cursory survey by Legislative Research:

- Californians have voted on 10 statewide sales tax-related ballot measures since 1932. Of those 10, four were defeated and six were approved. Most recently, voters approved Proposition 30 which increased the state tax rate by .25 percent, from 7.25 to 7.5 percent until the end of 2016, when it reverted to 7.25 percent.
- When Colorado voters enshrined the Taxpayer’s Bill of Rights (TABOR) into the state constitution in 1992, it had a simple premise: If lawmakers want to raise taxes or issue debt, they should ask voters for permission.
- Washington voters have been asked on 11 separate occasions to adopt a state personal income tax or corporate income tax. Only the first vote, in

1932, was successful, and that measure was subsequently thrown out by the state Supreme Court on a 5-4 decision on September 8, 1933.

- Preliminary Nov. 8 election results show voters in 22 states approved ballot measures that will provide \$201 billion in funding extensions and new revenue for state and local transportation projects. More than two thirds (69 percent) of the 280 transportation funding ballot measures were approved, with results still pending for seven local areas, according to an analysis by ARTBA's "Transportation Investment Advocacy Center™" (ARTBA-TIAC).

The intention of this legislation is to explore the idea that before enacting a new tax, be it an individual income or statewide sales tax, it should be ratified by the vote of the people. Voters are being asked to approve budget timelines, spending caps, and per diem spending, it makes sense that we consult the people of Alaska on taxation.

That concludes my overview Chair Meyer. If you wish, we have an Emily Nauman online from Leg Legal who can walk us through the accompanying memo or address questions you may have.

NFIB

The Voice of Small Business.®

ALASKA

January 29, 2018

The Honorable Kevin Meyer
Room 103
State Capitol Building
Juneau, Alaska 99801-1182

RE: Senate Bill 130 Voter Approval for New Taxes

Dear Senator Meyer:

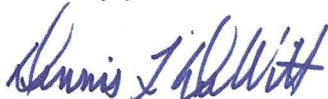
On behalf of the NFIB/Alaska, I wish to respectfully share our support for Senate Bill 130. NFIB, the Voice of Small Business, is the largest small-business advocacy group in Alaska.

Senate Bill 130 would require voter approval of any broad-based individual income tax or statewide general sales tax. Alaskan members have strongly opposed both of these taxes. We believe a vote of the people is a prudent measure to protect Alaskans from unnecessary taxation.

Income taxes fall heavily on productive Alaskans. Taking money from individuals and transferring it to government does not create wealth or improve a slumping economy. A sales tax is regressive and inhibits commerce in our state.

These are critical issues for Alaskans. We believe that Alaskans should have a direct say in this significant change in statewide taxation.

Sincerely yours,



Dennis L. DeWitt
Alaska State Director

Cc: NFIB/AK Leadership Council
Senate State Affairs Committee ✓

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

November 20, 2017

SUBJECT: Statute Requiring Voter Approval of Broad-Based Tax
(Work Order No. 30-LS1088\A)

TO: Senator Kevin Meyer
Attn: Christine Marasigan

FROM: Emily Nauman *Emily*
Legislative Counsel

Consistent on
Advisory
before a

Attached please find a bill requiring voter approval before a broad-based individual income tax or statewide general sales tax takes effect. The bill is unconstitutional.

1. Binding Future Legislature

Requiring, in statute, an affirmative vote of the people before a broad-based tax takes effect would very likely be struck down by a court as akin to entrenching legislation, more commonly referred to as "binding a future legislature." Legislative entrenchment is "widely regarded as inconsistent with the basic principles of democracy."¹ The bill aims to prevent a future legislature from enacting a tax without a vote of the people. In addition, it restricts the effective date a future legislature may give a tax bill.

Colorado X The United States Supreme Court has consistently held that entrenchment of ordinary legislation is unconstitutional. In rejecting the practice of entrenchment, the Court stated, "no one legislature can, by its own act, disarm their successors of any of the powers or rights of sovereignty confided by the people to the legislative body."² The United States Supreme Court has also shown a willingness to prevent a state legislature from binding its successors.³ If you do wish to require a vote of the people before the enactment of a broad-based tax, you have one legal option: a constitutional amendment.

¹ John C. Roberts & Erwin Chemerinsky, *Entrenchment of Ordinary Legislation: A Reply to Professors Posner and Vermeule*, 91 Cal. L. Rev. 1773, 1775 (2003).

² *Ohio Life Ins. & Trust Co. v. Debolt*, 57 U.S. 416, 431 (1853).

³ *Newton v. Commissioners*, 100 U.S. 548, 563 (1879). The Alaska Supreme Court has also held that a legislative body cannot bind itself to take a future legislative action. *Mount Juneau Enterprises, Inc. v. City and Borough of Juneau*, 923 P.2d 768 (Alaska 1996).

2. Voter Approval of Tax

A court could also find the bill is unconstitutional because it infringes on the legislature's power to tax. The Constitution of the State of Alaska specifically preserves the governments taxing power. Article IX, sec. 1 reads:

The power of taxation shall never be surrendered. This power shall not be suspended or contracted away, except as provided in this article.

It has long been recognized that the power of taxation lies squarely within the powers of a state legislature. The United States Supreme Court stated "[taxation] is a high act of sovereignty, to be performed only by the legislature upon considerations of policy, necessity, and the public welfare" and continued that a state legislature "[has] the sole power to authorize [a] tax."⁴ The Alaska Supreme Court has also recognized "taxation is inherently a function of the legislature and can be exercised only under its authority."⁵ That said, it could be argued that because the people can probably legally shape the tax law of the state by initiative, referring a tax question to the voters is contemplated by the constitution.⁶ However, given the importance of the taxing power and its historical assignment of that power to the legislature, I believe it is more likely that a court would find that the curtailment of the legislature's power to enact a tax constitutes a significant impairment to the legislature's power to tax under art. IX, sec. 1, and that therefore the bill is unconstitutional.

3. Inappropriate Use of Initiative or Referendum

It is likely that a law that makes an act effective only if approved by the voters would be held unconstitutional as an improper delegation of legislative authority because such a referendum is not specifically authorized by the state constitution. Section 1 of art. II,

⁴ *Meriwether v. Garrett*, 102 U.S. 472, 515 (1880). See also *State ex rel. S. Bank v. Pilsbury*, 105 U.S. 278, 291 (1881) ("[T]he equality and uniformity required throughout the State were only obtainable by confining the exercise of the power of taxation to the legislature, whose authority was coextensive with the territorial limits of the State."); *City of New Orleans v. Clark*, 95 U.S. 644, 654 (1877) ("Of the expediency of the taxation or the wisdom of the appropriation [the legislature] is the sole judge."); *Lane Cty. v. State of Oregon*, 74 U.S. 71, 77, (1868) ("The extent to which [a tax] shall be exercised, the subjects upon which it shall be exercised, and the mode in which it shall be exercised, are all equally within the discretion of the legislatures to which the States commit the exercise of the power. That discretion is restrained only by the will of the people expressed in the State constitutions or through elections, and by the condition that it must not be so used as to burden or embarrass the operations of the national government.").

⁵ *Dissolution of Mountain View Pub. Util. Dist. No. 1, In re*, 359 P.2d 951, 955 (Alaska 1961).

⁶ The Alaska Supreme Court has not addressed the question of whether an initiative may be used to enact or amend a tax.

Constitution of the State of Alaska provides that the legislative power of the state is vested in the legislature. Laws may be enacted in two ways: by the legislature acting under this power and by the people acting under the power of initiative and referendum established in art. XI.

The Constitution of the State of Alaska provides the method for proposing an initiative or referendum in secs. 1, 2, and 3 of art. XI. Since the constitution reserves the power of initiative and referendum to the people, the legislature may not usurp that power. A court might well hold that the method for exercising the power of initiative and referendum set out in those sections is exclusive and that a statute may not add an additional structure, voter approval of a tax, to those limited types of voter approval of laws. This conclusion is bolstered by the fact that the delegates to the Alaska Constitutional Convention considered and rejected a proposal that would have authorized bills to be referred to the voters. Section 21 of Committee Proposal 5, dated December 14, 1955, stated:

SECTION 21. Any bill failing of passage by the legislature may be submitted to referendum by order of the governor either in its original form or with such amendments which were considered by the legislature, as he may designate. Any bill which, having passed the legislature, is returned thereto by the governor with objections, and, upon reconsideration is not approved by the majorities required by this constitution, may be submitted to referendum by a majority of all the members sitting as one body. Bills thus submitted to referendum shall be voted on at the next succeeding regular election occurring at least sixty days after action is taken to submit them, unless the legislature shall provide for their submission at an earlier date. This section shall not apply to bills containing appropriations, raising or earmarking revenues, nor to local or special bills.

This section on legislative referendum was considered by the delegates as a body on January 11, 1956, recorded at pages 1737, 1777 - 1778, Minutes of the Daily Proceedings, Alaska Constitutional Convention. In explaining the intent of Section 21, Committee Proposal 5, Delegate McCutcheon stated at page 1777 of the Proceedings:

MCCUTCHEON: The terminology is taken directly out of the model constitution. The point is that at the time our Committee was drafting this particular section, or considering it I should say, there was some doubt in my mind, and I think in the minds of others on our Committee, that there may not be an initiative device in the constitution. With the initiative device, this certainly may be stricken in too. You do have initiative protection. This device was placed in the legislative article in the event that there was no initiative. It was a device that was designed to get good legislation out before public opinion to react on, but since there is an initiative device, the public can take any bill that is offered in the legislature and put it as an initiative measure.

Based on Delegate McCutcheon's statement, Delegate Gray moved to delete Section 21, stating at page 1778:

Taking Mr. McCutcheon's suggestion and word, that if this article is unnecessary, if it is already cured by initiative, why I'll make a motion to strike Section 21 because it is superfluous.

Delegate Gray's motion carried, strongly suggesting that the Alaska Constitution does not allow the governor or the legislature to refer legislation to a popular vote for binding effect. Although the question has not been tested by a court in this state, it is my opinion that, except for the areas in which the Constitution expressly authorizes submission of questions to the voters, the legislature itself may not constitutionally avoid its responsibility and circumvent the requirements of art. XI, sec. 2, Constitution of the State of Alaska by requiring the placement of questions on the ballot for a binding decision of the voters.⁷

4. Enactment of Act

Several sections of the state constitution specify that, after passage by the legislature and the signature of the governor (or no action by the governor, or veto override by the legislature), a bill becomes law. The attached bill does not conform to that constitutional timing, since a tax bill would not become law until approved by the voters. Of particular concern is art. II, secs. 14 and 16 - 18.⁸ Although not my primary concern, it is possible a

⁷ In *United States v. No. Commercial Co.*, 6 Alaska 94 (D. Alaska 1918), the territorial legislature provided that an act be submitted to a referendum vote of the people. The court struck the Act down, holding that neither the organic law creating the legislature, nor any other Act of Congress authorized the submission of such an act to the popular vote. In *People ex rel. Thompson v. Barnett*, 176 N.E. 108 (Ill. 1931), the court struck down a statute on similar grounds. The court concluded that the legislature alone has the power, duty, and responsibility to legislate. Notably, a law in Alaska has been submitted to the voters for a binding vote, and, so far as I can tell, that action was never challenged. Ch. 211, SLA 1968, voter registration.

⁸ Article II, sec. 14, reads:

SECTION 14. Passage of Bills. The legislature shall establish the procedure for enactment of bills into law. No bill may become law unless it has passed three readings in each house on three separate days, except that any bill may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it. No bill may become law without an affirmative vote of a majority of the membership of each house. The yeas and nays on final passage shall be entered in the journal.

court would invalidate the bill because it amends the timing of the enactment of legislation as envisioned by the constitution.

5. Practical Consideration

In addition to the constitutional concerns, there is also the practical matter that, if enacted, the statute could be repealed, amended, or waived with a majority vote in each house, likely in the same bill enacting the tax. Thus, not only is the language proposed by the bill unconstitutional, it is also likely ineffective.

6. Enacting Tax

The bill only puts the vote requirement on bills enacting a tax. Would you like to also include tax increases? What about tax repeals?

Article II, secs. 16 - 18 read:

SECTION 16. Action Upon Veto. Upon receipt of a veto message during a regular session of the legislature, the legislature shall meet immediately in joint session and reconsider passage of the vetoed bill or item. Bills to raise revenue and appropriation bills or items, although vetoed, become law by affirmative vote of three-fourths of the membership of the legislature. Other vetoed bills become law by affirmative vote of two-thirds of the membership of the legislature. Bills vetoed after adjournment of the first regular session of the legislature shall be reconsidered by the legislature sitting as one body no later than the fifth day of the next regular or special session of that legislature. Bills vetoed after adjournment of the second regular session shall be reconsidered by the legislature sitting as one body no later than the fifth day of a special session of that legislature, if one is called. The vote on reconsideration of a vetoed bill shall be entered on the journals of both houses.

SECTION 17. Bills Not Signed. A bill becomes law if, while the legislature is in session, the governor neither signs nor vetoes it within fifteen days, Sundays excepted, after its delivery to him. If the legislature is not in session and the governor neither signs nor vetoes a bill within twenty days, Sundays excepted, after its delivery to him, the bill becomes law.

SECTION 18. Effective Date. Laws passed by the legislature become effective ninety days after enactment. The legislature may, by concurrence of two-thirds of the membership of each house, provide for another effective date.

Senator Kevin Meyer
November 20, 2017
Page 6

7. Types of Tax

The bill puts the vote requirement on bills enacting a "broad-based individual income tax" or "statewide general sales tax." Are these types of taxes you intended to target? Would you like to define these terms?

8. Ballot Question

Note that the tax vote is defined as a "question" for purposes of Title 15. This means that every section referring to a "question" in Title 15 will also apply to the tax vote. Please confirm that this complies with your intent, or, if you need more information about the effect of this drafting decision, please let me know.

If I may be of further assistance, please advise.

ELN:boo
17-573.boo

Attachment

Alaska State Senate



Chairman: Senator Kevin Meyer
Senator John Coghill
Senator Cathy Giessel
Senator David Wilson
Senator Dennis Egan

State Capitol Building
Juneau, Alaska 99801-1182
(907) 465-4945 Phone
Senator.Kevin.Meyer@akleg.gov
Senate.State.Affairs@akleg.gov

SENATE STATE AFFAIRS

Thursday, February 22, 2018
AGENDA NOTES

- I. CALL THE MEETING TO ORDER
 - a. I call the Senate State Affairs meeting to order. Today is Thursday, February 22, 2018, and the time now is __:__. .

- II. MEMBERS PRESENT
 - a. Roll Call: Senator Giessel, Senator Coghill, Senator Wilson, and Senator Egan.
 - b. Committee Staff Christine Marasigan, Senate Records Christopher Dickrell, and LIO moderator Leah Krafft .

- III. TODAY'S AGENDA
 - a. Under Bills Previously Heard:
 - i. HB 44 Ethics and Voting
 - ii. SB 130 Voter Approval of New Taxes

- IV. HB 44 Legislative Ethics: Voting and Conflicts
 - a. Representative Grenn and Staff Ryan Johnston
 - b. Questions
 - c. Public Testimony
 - d. Committee Discussion
 - e. Review Fiscal Notes
 - f. Committee Action: Hold

- V. SB 130 Voter Approval of New Taxes
 - a. CS for SB 130 Version J: Staff can explain changes
 - b. Committee Questions?
 - c. Public Testimony
 - d. Committee Discussion

- e. Review Fiscal Notes
- f. Committee Action: Entertain a motion

VI. ANNOUNCEMENTS/ADJOURN

- a. Do committee members have anything they want to bring up at this time?
- b. Our next meeting will be Tuesday, February 27th. It is my intent to hear the following legislation:
 - i. SCR 17 April 2018 Sexual Assault Awareness Month
 - ii. SB 204 Disabled Vet Plates: Chiropractors Certify
 - iii. SB 192 Voting: Address Confidentiality: Fees
 - iv. SB 207 Transfer Duties From DCCED
- c. Thank you, the time now is ____:____ we are adjourned.

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version: SB 130
Fiscal Note Number: _____
() Publish Date: _____

Identifier: SB130-OOG-DOE-1-26-18
Title: VOTER APPROVAL FOR NEW TAXES
Sponsor: MEYER
Requester: Senate State Affairs

Department: Office of the Governor
Appropriation: Elections
Allocation: Elections
OMB Component Number: 21

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2019 Request	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
OPERATING EXPENDITURES	FY 2019	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2018) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2019) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version/comments:

Not applicable, initial version

Prepared By: <u>Josephine Bahnke, Director</u>	Phone: <u>(907)465-2644</u>
Division: <u>Division of Elections</u>	Date: <u>01/26/2018 10:03 AM</u>
Approved By: <u>Shawn Henderson, Administrative Director</u>	Date: <u>01/26/2018</u>
Agency: <u>Division of Administrative Services, Office of the Governor</u>	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2018 LEGISLATIVE SESSION

BILL NO. SB130

Analysis

This bill would require the division to place the question of whether a tax shall be levied by placing the ballot title and question on the election ballot.

Currently, the division places propositions on a ballot to determine whether a constitutional convention shall be called; a debt shall be contracted; an advisory question shall be approved or rejected; or a municipality shall be incorporated.

This change has no impact on the financial costs associated with the division's conduct of state and federal elections. Nor will any additional staff be required to implement the proposed law. The cost of providing information about a proposition whether a tax shall be levied in the Official Election Pamphlet, as required by AS 15.58, would be absorbed into the operating budget for the Division of Elections.

Christine Marasigan

From: Chuck Burnham
Sent: Tuesday, January 30, 2018 10:00 AM
To: 'Christine.Marasigan@akleg.gov'
Subject: Voter approval of statewide tax measures

Good morning Christine – Per your request, please find below information on a number of measures in other states that required voter approval in order to implement statewide taxation. If you require more information, please don't hesitate to let us know.

California

Californians have voted on 10 statewide sales tax-related ballot measures since 1932. Of those 10, four were defeated and six were approved. Most recently, voters approved Proposition 30 which increased the state tax rate by .25 percent, from 7.25 to 7.5 percent until the end of 2016, when it reverted to 7.25 percent.

[https://ballotpedia.org/Sales tax in California](https://ballotpedia.org/Sales_tax_in_California)

Colorado

When Colorado voters enshrined the Taxpayer's Bill of Rights into the state constitution in 1992, it had a simple premise: If lawmakers want to raise taxes or issue debt, they should ask voters for permission.

<https://www.denverpost.com/2017/08/20/colorado-voters-taxpayer-bill-rights/>

Oregon

In a referendum pitting new taxes against health care coverage, Oregonians voted Tuesday to back the Legislature's plan for keeping 350,000 low-income residents on the Oregon Health Plan.

<http://www.statesmanjournal.com/story/news/politics/2018/01/23/early-returns-show-oregon-voters-support-health-care-tax-measure/1060236001/>

Washington

Washington voters have been asked on 11 separate occasions to adopt a state personal income tax or corporate income tax. Only the first vote, in 1932, was successful, and that measure was subsequently thrown out by the state Supreme Court on a 5-4 decision on September 8, 1933.

<https://www.sos.wa.gov/elections/research/income-tax-ballot-measures.aspx>

Multi-State

Preliminary Nov. 8 election results show voters in 22 states approved ballot measures that will provide \$201 billion in funding extensions and new revenue for state and local transportation projects. More than two thirds (69 percent) of the 280 transportation funding ballot measures were approved, with results still pending for seven local areas, according to an analysis by ARTBA's "Transportation Investment Advocacy Center™" (ARTBA-TIAC).

<http://newsline.artba.org/2016/11/09/voters-approve-record-number-of-state-and-local-transportation-investment-ballot-measures/>

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Income Tax Ballot Measures

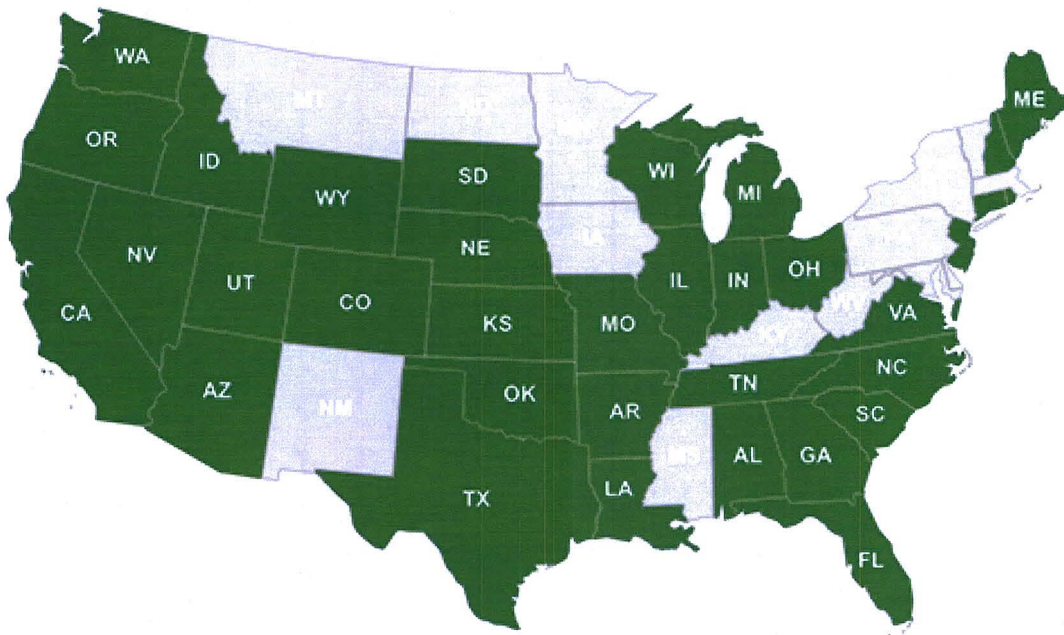
Washington voters have been asked on 11 separate occasions to adopt a state personal income tax or corporate income tax. Only the first vote, in 1932, was successful, and that measure was subsequently thrown out by the state Supreme Court on a 5-4 decision on September 8, 1933.

Year	Title	Description	Yes	No
1932	Initiative to the People 69	An Act relating to and requiring the payment of a graduated tax on the incomes of persons, firms, corporations, associations, joint stock companies and common law trusts, the proceeds therefrom to be placed in the state current school fund and other state funds, as a means of reducing or eliminating the annual tax on general property which now provides revenues for such funds; providing penalties for violation; and making an appropriation from the general fund of the state treasury for paying expenses of administration of the act.	70%	30%
1934	House Joint Resolution 11	A resolution amending section 1 of Article VII of the constitution by providing that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only; providing that there shall be such exemptions from taxation as the legislature may by general law provide; and providing that nothing contained in this section shall be construed to prevent the enactment of a graduated net income tax law.	43%	57%
1936	Senate Joint Resolution 7	A Proposal to repeal section 12, article XI and amend sections 1 and 9, article VII of the constitution by providing: uniform taxation upon the same class of subjects; that the legislature may provide exemptions and graduated net income tax, may vest municipalities with power to make local improvements by special assessment or taxation; cannot require counties or municipalities to tax for county or municipal purposes but may under legislative restriction, vest them with such authority.	22%	78%
1938	Senate Joint Resolution 5	A Proposal to amend Section 1, Article VII of the Constitution of the State of Washington relating to taxation by providing that nothing contained in said section shall be construed to prevent the enactment of a graduated net income tax law.	33%	67%

1942	Constitutional Amendment Article VII, Sec. 2	A Proposal to amend Article VII of the Constitution by adding a new section, section 2, providing that income shall not be construed as property for the purpose of taxation, and empowering the legislature to enact graduated net income taxes, and to provide exemptions, offsets and deductions.	34%	66%
1944	Initiative to the People 158	An act relating to revenue and taxation; providing for the levy and collection of a three per cent tax on gross income; providing for certain exemptions and deductions; providing for the disposition of revenue derived hereunder; prescribing monthly payments of not less than sixty dollars to certain aged, blind, disabled or widowed persons from an Employment and Retirement Mutual Insurance Fund, herein created; prescribing duties of officers and procedure in relation hereto; regulating disposition of payments by beneficiaries; defining terms and prescribing penalties.	30%	70%
1970	House Joint Resolution 42	Shall the state constitution be amended to reduce the maximum allowable rate of taxation against property to 1 percent of true and fair value in the absence of authorized excess levies, and to permit the legislature to tax income at a single rate without regard to this limitation or, after 1975, at a graduated rate if the voters in that year or thereafter approve the removal of the single rate limitation?	32%	68%
1973	House Joint Resolution 37	Shall a graduated net income tax be authorized, excess levies for school operations be prohibited, and some excise taxes limited?	23%	77%
1975	Initiative to the People 314	Shall corporations pay a 12% excise tax measured by income so that special school levies may be reduced or eliminated?	33%	67%
1982	Initiative to the People 435	Shall corporate franchise taxes, measured by net income, replace sales taxes on food and state corporate business and occupation taxes?	34%	66%
2010	Initiative Measure 1098	Initiative Measure No. 1098 concerns establishing a state income tax and reducing other taxes. This measure would tax 'adjusted gross income' above \$200,000 (individuals) and \$400,000 (joint-filers), reduce state property tax levies, reduce certain business and occupation taxes, and direct any increased revenues to education and health.	36%	64%

Voters Approve Record Number of State and Local Transportation Investment Ballot Measures

November 9, 2016 | Economics



Preliminary Nov. 8 election results show voters in 22 states approved ballot measures that will provide \$201 billion in funding extensions and new revenue for state and local transportation projects. More than two thirds (69 percent) of the 280 transportation funding ballot measures were approved, with results still pending for seven local areas, according to an analysis by ARTBA's "Transportation Investment Advocacy Center™" (ARTBA-TIAC).

California will see the biggest impact. There, voters approved 15 of 26 transportation ballot measures worth \$133 billion, including a 1-cent sales tax in Los Angeles that will provide \$120 billion over 40 years for local road, bridge and transit projects.

The California measures had to muster at least a two-thirds “super majority” vote to pass—10 of the measures that failed received over 50 percent of the vote, but did not reach that threshold. California voters also rejected a statewide measure that would have required any public infrastructure bond over \$2 billion to go on the ballot for voter approval.

Voters in Illinois and New Jersey passed transportation tax “lockbox” measures to prohibit state lawmakers from diverting transportation user fee revenue to non-transportation uses. Maine approved a statewide transportation bond issue for \$100 million and Rhode Island voters approved \$70 million in bonds for port investment.

In Washington state, voters approved a 25-year, \$54 billion revenue package that would support expanding Sound Transit light rail and bus routes. The package included a bond issue and adjustments in property, sales and motor vehicle taxes.

In Missouri, a statewide initiative to increase the state’s cigarette tax to raise an estimated \$100 million annually for transportation investments failed. Voters in Georgia approved local sales tax increases that would raise nearly \$4 billion for road and transit projects in the metropolitan Atlanta area.

Earlier this year, voters approved 76 of 81 transportation funding measures—or 93 percent—of initiatives on primary ballots.

Overall, voters approved 74 percent of transportation ballot initiatives in 2016. This is in line with the 10-year average rate of 74 percent. In the last two presidential elections, voters approved 77 percent (2012) and 76 percent (2008) of transportation funding measures.

The complete report and an interactive map showing the state-by-state results can be found at www.transportationinvestment.org.

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POLITICS > COLORADO POLITICS

Instead of taxes, Colorado gets fees: How lawmakers learned to dodge the Taxpayer's Bill of Rights

For the typical Coloradan, the most tangible consequence of these workarounds has been an explosion in fees

By **BRIAN EASON** | brianeason@denverpost.com | The Denver Post

PUBLISHED: August 20, 2017 at 7:00 am | UPDATED: August 21, 2017 at 5:37 pm



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When Colorado voters enshrined the Taxpayer's Bill of Rights into the state constitution in 1992, it had a simple premise: If lawmakers want to raise taxes or issue debt, they should ask voters for permission.

In practice, lawmakers rarely ask. But that hasn't stopped them from charging Coloradans billions more for government services and borrowing costs anyway.

Designed to impose fiscal discipline on government, the amendment known as TABOR also sets a cap on spending growth each year. But 25 years later, policymakers on both sides of the aisle say Colorado government finance has instead become an increasingly complicated exercise in sidestepping those restraints.

Can't raise taxes without a public vote? Charge a fee, instead. Want to plug a hole in the transportation budget? Borrow against the equity of government buildings.

"It gives voters the impression that we're playing games," said Scott Wasserman, president of the liberal Bell Policy Center. "And they're right — we are playing games."

These workarounds are legal — many have been explicitly authorized by state courts. But they have wide-ranging consequences for Coloradans.

In the TABOR era, state tax rates have gone down, but fees have increased, shifting a higher share of the cost of public services to low- and middle-income residents.

Meanwhile, the state seems to lurch from one funding crisis to the next. Some years, it's deep cuts to schools or infrastructure. This year, it was a narrowly avoided bid to cut \$528 million for hospitals.

Despite growing frustration with its side effects, don't expect TABOR to go away anytime soon. At this point, experts say the landmark constitutional amendment is so woven into the state's political fabric — and so popular with the general public — that unraveling its web of restrictions would be much easier said than done.

But there's a common theme in the face of growing spending needs and deteriorating sources of revenue: the preferred policy solution at the State Capitol is frequently whatever doesn't require approval at the ballot box.

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Tangle of TABOR: Exhibit A

Look no further than last session's Senate Bill 267 to understand the convoluted policies that this creates.

The far-reaching measure exempted a \$264 million hospital provider fee from the TABOR spending cap, raised pot taxes to pay for a business tax credit, doubled Medicaid prescription co-pays and called for \$1.9 billion in borrowing for roads — all without a vote of the public.

To many on the right, these sorts of workarounds are sacrilege — an elaborate subversion of the intent of TABOR.

“What’s always coming up is ‘How do we do this without respecting the taxpayers enough to put it to a public vote?’ That’s all it is,” says Jon Caldara, president of the Independence Institute, a conservative think tank.

The sweeping hospital-provider fee reclassification is the most recent example, but it’s far from the only one. And it’s not just Democrats who employ these workarounds.

- In 2003, the Republican-led legislature authorized \$130 million in a mortgagelike arrangement known as a certificate of participation to pay for a new prison — the sort of project that, if funded by bonds, would have had to go to a vote of the people. The prison, completed in 2010, sits empty today, but taxpayers were left on the hook for \$208 million in payments, with interest.
- In 2004, the legislature under Republican Gov. Bill Owens created the College Opportunity Fund, which effectively exempted the growing cost of public universities from state revenue limits under TABOR. That freed the state to raise tuition, while clearing out room under the cap for general state tax revenue to grow.
- In 2009, Democrats passed FASTER, a series of fee hikes on vehicle registrations. The fees now generate around \$200 million annually for transportation projects.
- In 2010, the Democratic-controlled legislature under Gov. Bill Ritter repealed a series of sales-tax exemptions, now derisively referred to among conservatives as the “dirty dozen.” The result: more than \$100 million in additional revenue annually, without increasing the sales tax rate.

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“All of those are workaround gimmicks,” said John Straayer, a political science professor at Colorado State University who specializes in legislative politics. “I just think in the aggregate, it’s a terrible way to make policy. And TABOR has triggered it.”

“Nickeled and dimed”

For the typical Coloradan, the most tangible consequence of these workarounds has been an explosion in fees.

According to a Pew Charitable Trusts analysis of U.S. Census data, Colorado has the nation’s third-highest reliance on “service charges” — a broad category that includes park fees, student tuition and textbook sales, and patient charges at public hospitals.

Since 1992, lawmakers have raised fees for court users, college students, car owners, parkgoers and others. Meanwhile, state income and sales taxes — with the exception of taxes on pot — have gone down.

Experts say this has led to a philosophical shift in government: The users of a product, whether it’s a park, a university or a road, wind up paying for a higher share of its cost, instead of everyone chipping in for the general public good.

Take higher education. In 2001, the state paid 67 percent of the cost of public higher education, with students chipping in the remaining third. By 2016, that ratio had almost flipped. Students now contribute up to 64 percent of the costs of Colorado’s public universities.

Another consequence: Because fees tend to be flat and taxes tailored to income, \$10 here and \$50 there shift more of the burden onto the poor and middle class and away from the wealthy.

“When we get fees — and FASTER is a great example of this, people get nickeled and dimed,” Wasserman said. “You see that fee on your auto registration, you pay it every year, ... but then you see a headline, or you hear politicians talking about an underfunded transportation system, and you think, ‘Wait, I just paid that massive fee.’”

“Budgetary gymnastics”

To lawmakers on both sides of the aisle, these workarounds often represent the best of their limited options to address the state’s mounting needs.

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Today, Colorado faces \$9 billion in unfunded transportation projects over the next decade. Per capita funding for higher education has fallen to 47th out of the 50 states, according to State Higher Education Executive Officers data — a drop from 35th in 1991, the year before TABOR passed. Medicaid costs have soared as more people have signed up for health insurance. And even as voters limited the growth of government with TABOR, they also passed a separate constitutional measure in 2000, Amendment 23, requiring the state to spend more each year on K-12 schools. Lawmakers have underfunded this by \$830 million to date under yet another workaround, formerly known as the negative factor.

Many conservatives say the lack of funding for roads and schools results from lawmakers not prioritizing them over other things, such as Medicaid.

“Here’s the reality — both sides use budgetary gymnastics when they want to find more money,” said Jesse Mallory, state director of Americans for Prosperity and the former chief of staff of Republican Senate President Kevin Grantham. “And then they offer the public false choices to avoid tough votes” — such as cutting popular programs.

Moderates counter that it’s impossible to have a serious conversation about budget priorities under the current system.

“My contention is we don’t have a revenue or a spending problem, we have a process problem,” said state Rep. Dan Thurlow, R-Grand Junction, who for years has called for TABOR reforms. “And if we would fix our processes, ... then we could have the actual debate of ‘Should we spend more or should we spend less?’ ”

Most tax hikes fail

So why don’t lawmakers simply ask?

For one thing, the track record of tax hikes at the ballot box is dismal.

Since 1992, advocacy groups have put more than a dozen statewide tax increases on the ballot. Only two passed — a citizen-initiated tobacco tax hike in 2004 and the lawmaker-backed tax on marijuana after voters legalized it. But efforts to boost funding to schools, highways and other popular causes have repeatedly been rejected by wide margins.

Given the voters’ predisposition to oppose new taxes, the conventional thinking is that it would cost millions of dollars to mount a successful campaign to pass one.

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This year, lawmakers and business leaders said they were hopeful that if the divided legislature came together behind a sales-tax hike for transportation, it could be sold to voters. But while the effort appeared to have the votes to pass both chambers, it was defeated by a Republican-led committee in the Senate.

To Straayer, the CSU professor, this is simply a sign of the political times.

“(Republicans) are forever worried about being primaried,” Straayer said. “And having them join hands with the Democrats to not only put something on the ballot, but to push it? Good luck.”

State Rep. Bob Rankin, a Republican budget writer who voted against the transportation-tax hike, offered another explanation.

“I personally think it’s time to constrain the growth of government,” Rankin said. “Legislators don’t like voting for taxes, either. We feel like if we’re voting for a (referred ballot) measure, we’re recommending it.”

After this year’s hospital provider fee compromise, the state revenue limit — another provision of TABOR that has spawned its own workarounds — isn’t expected to come into play for years to come. But TABOR will still play a role in fiscal policy.

Colorado still faces an unfunded infrastructure backlog, and school district needs are only expected to grow in the coming years, as statewide property tax cuts are phased in. And if lawmakers won’t ask for more money, that leaves them with only two real options: Cut spending or employ the same sorts of workarounds they have in years past.

“It’s kind of a thing that I think everybody realizes has to occur,” said Henry Sobanet, budget director to Gov. John Hickenlooper.

“Over the years, the tool kit available to legislators has been taken away by constitutional rules. People still expect the same things from our government that they do across the country, and so it takes different steps, or harder steps, to get to the same place.”

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How does TABOR work?

Added to the state constitution in 1992, the Taxpayer's Bill of Rights imposed a slew of financial restraints on state and local governments in Colorado. Under TABOR, lawmakers can't raise taxes or issue debt without voter approval. It also established a spending cap, limiting the growth of government revenue to the increase in population and the Denver-Boulder-Greeley consumer price index. Any tax dollars collected above the cap have to be refunded to taxpayers, but certain fees are exempt from the cap and can grow without limit.

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Brian Eason

Brian Eason

Statehouse reporter Brian Eason joined The Post from the Indianapolis Star, where he covered city hall for the news outlet's watchdog team beginning in 2014. Before that, he was an investigative reporter at The Clarion-Ledger in Jackson, Miss., and covered local government at The Leaf-Chronicle in Clarksville, Tenn. He graduated in 2009 from the University of Missouri with degrees in journalism and political science.

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