

Prop. 16 protects energy utilities' monopoly status, says report

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(PhysOrg.com) -- An independent analysis of Proposition 16 finds that it would protect the monopoly status of investor-owned energy utilities and block the development of publicly-owned electric power companies. The June 8 ballot initiative could also slow the development of renewable energy, says the paper released by the Center for Law, Energy & the Environment.

Prop. 16 would amend the California Constitution to require the support of two-thirds of the voters in a local election before a city government could create or expand public power service. Prop. 16 is sponsored and heavily underwritten by the utility Pacific Gas & Electric Company (PG&E), which has aggressively opposed the creation of public providers of retail energy.

Steven Weissman, co-author of the analysis and associate director of the law school's energy research center, says the report is intended to examine the legal issues the initiative might raise if passed by California voters in the June 8, 2010 election. Proposition 16 "contains many controversial provisions and reflects a level of complexity" that needs close examination, says Weissman.

Supporters of the initiative say it would protect taxpayers from irresponsible government spending, but Weissman says "it's really about protecting the utility's monopoly status."

"Just over 100 years ago, our government granted local officials the right

to form public utilities as a check on potential price gouging by power monopolies,” says Weissman. “Prop 16 throws that check out the window.”

The initiative excludes public power companies from its restrictive two-thirds vote if they provide 100 percent renewable energy to their customers. But Weissman says such a company is not a viable option today.

“Many communities want to expand the use of renewable energy from solar, wind, or biomass,” says Weissman. “A publicly-owned utility can respond to that sentiment by aggressively pursuing renewable power. But Prop. 16 seriously undermines those efforts by making it unlikely that communities could enact the public power option. Couple that with the organized effort under way to suspend AB32, the state’s landmark law to reduce greenhouse gas emissions, and Californians could face a double-whammy against renewable energy.”

According to the report, Proposition 16 would:

- preserve the regulated utilities’ [monopoly](#) businesses and restrict the expansion of local governments into the power business;
- go beyond the traditional restrictions placed on government borrowing to require a two-thirds vote before local officials could spend existing tax or public power revenues to implement new or expanded public power services;
- make it more difficult for local governments to overcome opposition to public power from well-funded special interest groups, due to the supermajority voting requirement;
- prevent local governments from forming publicly-owned electric

utilities that could tap [renewable energy](#) from solar, wind, biomass and other sources;

- thwart new community aggregations, such as the effort now being launched in Marin County, intended to maximize reliance on renewable power; and
- result in lengthy and expensive litigation due to ambiguous language on whether or not a local government is the existing “sole provider” of an area’s electric power.

Although Prop. 16 is entitled “The Taxpayers Right to Vote Act,” the initiative would not have any direct effect on taxes. Under current state law, two-thirds voter approval is required for a government to impose or raise taxes, and Prop. 16 doesn’t change this requirement.

Proposition 16 does offer stability as a constitutional amendment, which protects its provisions from change. Voters unsure about the wisdom of all its provisions might prefer a statutory initiative, or even legislation, instead of modifying the state constitution, according to the report.

More information: Download the white paper on Proposition 16: [www.law.berkeley.edu/files/CLE ... Prop16WhitePaper.pdf](http://www.law.berkeley.edu/files/CLE...Prop16WhitePaper.pdf)

Provided by University of California - Berkeley

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