Brown's Countdown, Day 73: Governor may seek November ballot initiative on tax plan

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A new Plan B for balancing California's budget emerged Tuesday as Gov. Jerry Brown mulled the possibility of a November ballot initiative to maintain higher tax rates.

The idea, which would bypass Republican lawmakers' opposition to a public vote, would require a signature drive under a tight timetable to put the measure on the ballot.

The Democratic governor continues to negotiate with Republican lawmakers to place tax extensions before voters in June through a two-thirds vote of the Legislature. But talks have sputtered, and state leaders are running out of time to call a June election.

Brown has repeatedly said he would seek bipartisan support for tax extensions. On Monday, however, he told a labor convention that a vote would occur "no matter what anybody says across the street."

Republicans want pension cuts, a cap on future state spending and regulatory changes that help businesses as part of a deal to place taxes on the ballot. Democrats say some ideas are negotiable, but the most extensive changes on pensions and a spending cap are non-starters.

Democrats are also considering whether to place the tax extensions on the ballot with a majority vote of the Legislature. But Brown believes business groups are more likely to support a ballot initiative than any majority-vote maneuver.

Alternatives to Brown's original plan have legal, political and budget hurdles. We examine them:

Why didn't Brown gather signatures for a ballot initiative in the first place?

It typically takes months – and millions of dollars – to gather signatures to qualify a state ballot initiative. Also, heading straight to the ballot via signature spurns the Legislature's authority, not usually a governor's first option.

If Brown pursues this route now, the election would not occur until November, more than four months into the 2011-12 fiscal year. By that time, the state will have lost one-third of the additional sales and vehicle tax revenues it could have raised through a June election. It is also unclear how such an initiative would treat income taxes, since it would be hard to sell a retroactive income tax hike in the 11th month of a tax year.
Is it possible to qualify an initiative for November?

The timetable seems awfully tight. Proponents have to wait several weeks for the attorney general's office to process an initiative proposal. Based on the Election Code, proponents would then have to submit signatures by late May to give election officials time to review petitions. That may leave Brown with a month or less to gather signatures. Petition companies charge top dollar to gather signatures in a short window.

Any other problems with a November initiative?

State leaders would have to figure out whether to balance the budget beforehand. Doing so with cuts would pressure districts to lay off teachers before the next school year and impose other classroom cuts. That makes education groups nervous.

If state leaders don't balance the budget beforehand, the state will be unable to borrow cash from Wall Street without paying exorbitant rates. The state could face difficulties paying bills.

Democrats also would face huge political challenges with a November initiative. It would be difficult to portray the measure as bipartisan, though Democrats are counting on business support to win over moderates.

It would also be difficult to sell the proposal as an extension of taxes rather than a tax increase, given that all three forms of higher tax rates would have ended by November. Support drops significantly when voters perceive it as a tax hike rather than a tax extension.

What about placing the taxes on a June ballot with a majority vote?

The Legislature's attorneys have said this route is possible under narrow conditions, such as inserting a new tax in a state tax law previously approved by voters.

Democrats have considered placing tax extensions on the ballot using majority-vote powers granted by voters last year in Proposition 25. That may open lawmakers up to criticism that they are exploiting Proposition 25, but Democrats would say they are putting the question before voters rather than raising taxes themselves.

This route would run afoul of the legislative counsel's opinion, which said placing taxes on the ballot that way would be an unconstitutional delegation of authority. But under a different legal theory, the Legislature may argue it could delegate such questions to voters because it believes the electorate has ultimate authority. Undoubtedly, this route would face legal challenges from anti-tax groups.

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