

10-5-1990

## Proposition 136 "Taxpayers Right to Vote" - Analysis of Issues and Provisions

Senate Revenue and Taxation Committee

Senate Local Government Committee

Assembly Local Government Committee

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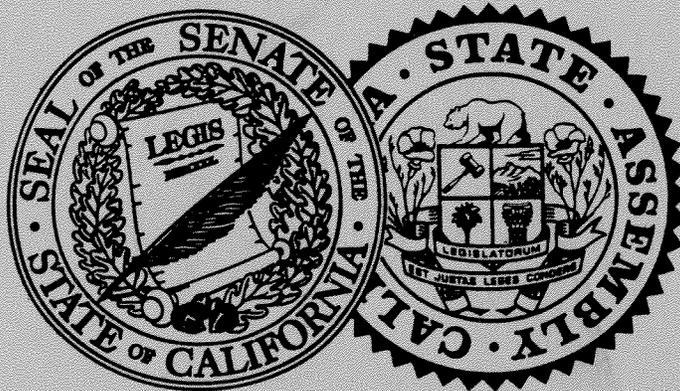
### Recommended Citation

Senate Revenue and Taxation Committee, Senate Local Government Committee, and Assembly Local Government Committee, "Proposition 136 "Taxpayers Right to Vote" - Analysis of Issues and Provisions" (1990). *California Joint Committees*. Paper 86.  
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**PROPOSITION 136**  
**“TAXPAYERS RIGHT TO VOTE:”**  
**ANALYSIS OF ISSUES AND PROVISIONS**

**November 1990 Ballot**



**Senate Revenue and Taxation Committee**  
**Senate Local Government Committee**  
**Assembly Local Government Committee**

**October 5, 1990**

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no. 2

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PROPOSITION 136 -- "TAXPAYERS RIGHT TO VOTE:"

ANALYSIS OF ISSUES AND PROVISIONS

Proposition 13, approved by the people in June 1978, contained provisions which required a two-thirds popular vote for local special taxes, and a two-thirds legislative vote for state tax increases. However, the Farrell decision defined "Special taxes" as taxes which are not general taxes. That decision effectively permitted general taxes (taxes for general purposes) to be imposed by a simple vote of the governing body of the local entity.

In November 1986 the voters approved Proposition 62, which attempted, among other things, to "correct" the Farrell decision. However that proposition was a statutory rather than a constitutional change; therefore its provisions have been interpreted as not affecting charter cities, which are governed by the constitutional "municipal powers" doctrine (which provides that city charter provisions generally have priority over state statutes). Much of Proposition 136 is generally similar to the provisions of Proposition 62. But Proposition 136 is a constitutional amendment rather than a statutory initiative. Therefore it is believed that Proposition 136 will prevail over the municipal powers doctrine.

On August 15, 1990, the Senate and Assembly Revenue and Taxation Committees and the Senate and Assembly Local Government Committees jointly held a hearing on Proposition 136 (along with three other propositions). The transcript of that hearing is available to the public from the Legislative Joint Publications Office, along with an earlier version of this analysis. This analysis benefits from the testimony provided at that hearing. A summary of the salient testimony is attached as Appendix D.

**I. TITLE; FINDINGS & DECLARATIONS; PURPOSE & INTENT**

SECTION 1. Title. This Act shall be known and may be cited as The Taxpayers Right-to-Vote Act of 1990.

SECTION 2. Findings and Declarations. The People of the State of California hereby find and declare as follows:

(a) Taxes should not be imposed on the People of California without their consent.

(b) In order to protect all taxpayers from sudden and unreasonable increases in general taxes which would threaten their economic security, limitations should be placed on general tax increases and the imposition of new general taxes.

(c) In order to protect targeted segments of taxpayers from special taxes imposed upon them alone, limitations should be placed on special tax increases and the imposition of new special taxes by special interests.

(d) No increase in special taxes imposed by counties, special districts, charter cities, or general law cities, and no new special tax imposed by these entities, should take effect without a two-thirds vote of the People.

(e) No increase in special taxes imposed by the State of California, and no new special tax imposed by the State of California, should take effect without a two-thirds vote of the People or a two-thirds vote of both houses of the Legislature.

(f) No increase in general taxes imposed by the State of California, and no new general tax imposed by the State of California, should take effect without a majority vote of the people or a two-thirds vote of both houses of the Legislature.

(g) No increase in general taxes imposed by counties, special districts, charter cities, and general law cities, and no new general tax imposed by these entities, should take effect without a majority vote of the People.

(h) No excessive and unfair special taxes with respect to tangible personal property should be imposed.

(i) In keeping with the spirit of Proposition 13, except as provided in Article XIII A, §§ 1 and 2 of the California Constitution, no new ad valorem taxes on real property or sales or transaction taxes on the sale of real property may be imposed.

SECTION 3. Purpose and Intent. The People of the State of California declare that their purpose and intent in enacting this measure is as follows:

(a) To prevent the imposition of any new State general tax or an increase in any existing State general tax without a majority vote of the People or a two-thirds vote of both houses of the Legislature.

(b) To prevent the imposition of any new State special tax or an increase in any existing State special tax without a two-thirds vote of the People or a two-thirds vote of both houses of the Legislature.

(c) To prevent the imposition of any new local general tax or an increase in any existing local general tax without a majority vote of the People.

(d) To prevent the imposition of any new local special tax or an increase in any existing local special tax without a two-thirds vote of the People.

(e) To protect against the imposition of excessive and unfair special taxes with respect to tangible personal property.

(f) To prohibit the imposition of any new ad valorem taxes on real property or any transaction tax or sales tax on the sale or transfer of real property except as provided in Article XIII A, §§ 1 and 2 of the California Constitution.

## II. VOTING REQUIREMENTS FOR STATE TAXES

Existing Section 3 of Article XIII A of the constitution (enacted by Proposition 13) generally requires a two-thirds legislative vote for state tax increases or new taxes. It also provides that no new ad valorem taxes on real property (i.e., taxes based on the value of real property), and new realty sales or transfer taxes may be imposed.

Proposition 136 repeals the existing provisions of Section 3, and replaces them with a substantially expanded Section 3, which (1) distinguishes between "general" and "special" taxes; (2) provides the specific method whereby the people, by initiative, may impose or increase state taxes; (3) requires that special taxes on personal property

must be based on value, and may not exceed the Article XIII A real property tax rate (1% plus the add-on debt rate).

SECTION 4. Section 3 of Article XIII A of the California Constitution is repealed.

~~Section 3.---From-and-after-the-effective-date-of-this article,-any-changes-in-State-taxes-enacted-for-the purpose-of-increasing-revenues-collected-pursuant-thereto whether-by-increased-rates-or-changes-in-methods-of computation-must-be-imposed-by-an-Act-passed-by-not-less than-two-thirds-of-all-members-of-the-Legislature,-except that-no-new-ad-valorem-taxes-on-real-property,-or-sales-or transaction-taxes-on-the-sales-of-real-property-may-be imposed.~~

SECTION 5. State Government General and Special Tax Limitation. Section 3 is hereby added to Article XIII A of the California Constitution to read as follows:

Section 3. (a) From and after the effective date of this section, any ... increases in State general or special taxes ... whether by increased rates, changes in methods of computation, any other increase in an existing tax, or any new tax must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, ... or as provided in subsection (b).

(b) From and after the effective date of this section, any increases in State taxes whether by increased rates, changes in methods of computation, any other increase in an existing tax, or any new tax also may be enacted by an initiative passed, in the case of a general tax, by not less than a majority vote of the voters voting in an election on the issue or, in the case of a special tax, and notwithstanding Article II, §10(a) of the California Constitution, by not less than a two-thirds vote of the voters voting in an election on the issue, or as provided in subsection (a).

(c) Except as provided in Article XIII A, §§1 and 2 of the California Constitution, no new ad valorem taxes on real property or sales or transactions taxes on the sale of real property may be imposed.

(d) Any special tax with respect to tangible personal property enacted on or after November 6, 1990, must be an ad valorem tax and must comply with the provisions of Article XIII, §2 of the California Constitution.

(e) As used in this section, "general taxes" are taxes, including, but not limited to, income taxes, excise taxes, and surtaxes, levied for the general fund to be utilized for general governmental purpose; "special taxes" are taxes, including, but not limited to, income taxes, excise taxes, surtaxes, and tax increases, levied for a specific purpose or purposes or deposited into a fund or funds other than the general fund. Taxes on motor vehicle fuel shall be considered general taxes for purposes of this section.

**Proposition 136 issues:**

1. Bills containing offsetting tax increases and decreases. The reworded version of subdivision (a) is intended to prevent legislation containing a mixture of tax increases and decreases from being passed by a majority vote. Is this an undue restriction on the power of the legislature to enact packages of tax legislation?

Most significant federal conformity legislation involves offsetting revenue increases and decreases. While it has been generally conceded that our tax laws should be kept closely in conformity with federal laws, this practice will now require a two-thirds vote, even for packages which do not increase total revenue. Does the relatively straightforward annual housekeeping decision to conform our tax laws with federal tax changes merit this super-majority measure?

2. Anti-"wash bill" provision has limited impact. Despite the drafters' apparent intent to prevent adoption of "wash" tax bills (those with offsetting tax increases and decreases) by a majority vote, it is not clear from the wording that the proposition will accomplish its goal. The language can probably still be interpreted as similar to present law-- allowing "revenue neutral" bills comprising both tax increases and decreases. An income tax bill, for example, which reduces taxes on low income taxpayers, and is balanced by a tax rate increase on upper income taxpayers, would probably still be permissible.
3. Anti-"nickel-a-drink" provision. The restriction on special taxes on tangible personal property was specifically designed to

void the alcoholic beverage tax increase contained in Proposition 134. However it will also forever restrict the use of state taxes on tangible personal property, including sales taxes, from being directed toward particular needs, even when approved by the people (except in the event of a disaster or emergency--see Section 7, below). Is this restriction warranted? What is so special about taxes on a unit basis (such as on alcoholic beverages and tobacco products) which requires this extraordinary provision? This provision could prevent the Legislature from adopting an excise tax on certain products (e.g., chemicals, tires) for an environmental clean-up fund.

4. Taxes posing as "fees". The proposition contains no definition of "taxes." Many of Proposition 136's proponents have in the past argued for treatment of motor vehicle taxes as "fees." The same logic may be used to avoid the two-thirds vote requirement in other areas. Perhaps an income tax increase could be billed as a "health care fee" since all taxpayers will surely need health care sometime or other? It may be that the restrictions contained in this proposition will serve as the "necessity" for further rounds of such fiscal "invention" in future years.
5. New taxing authority? There is a conflict between subdivisions (b), (c) and (d). Subdivision (b) allows the people by either a majority or two-thirds vote to enact ANY increases in state taxes, or ANY new taxes. Subdivisions (c) and (d) restrict what taxes the people may enact. Which takes precedence--the authority in (b) or the limitations of (c) and (d)?

Or do subdivisions (b) and (c) only apply to legislatively imposed taxes, since subdivision (a) is less broad in that it provides that any legislatively imposed tax increase MUST be imposed by a two-thirds vote? This would in effect grant the people the right to impose property taxes for state general purposes, for example, or to enact a state realty transfer tax.

By referring to ad valorem property taxes in

limitations), the proposition may contemplate state-wide property taxation for state purposes (such as debt service). It may be that property tax may now be used to back state bond issues. This could involve a vast increase in property tax debt rates for state purposes.

6. Majority vote for corporation tax increases? For local governments all taxes must be either general taxes or special taxes. However this requirement is not present for state taxes. Furthermore, subdivision (e) does not appear to include "tax increases" levied for the general fund within the definition of "general taxes." There thus appears to be a hybrid category of "tax increases" for general purposes which would be considered neither "general taxes" nor "special taxes," which therefore are presumably NOT subject to the legislative two-thirds vote. This would be a substantial broadening of legislative taxing powers.

It may be that increases in the state corporate franchise tax, which is not an income tax, an excise tax or a surtax, would qualify for this "neither fish nor fowl" category of taxes which may be increased by a majority legislative vote.

7. Authority to use gas tax for non-transportation purposes? By including taxes on motor vehicle fuel within the definition of "general taxes" (to be utilized for general governmental purposes), Proposition 136 may effectively repeal Article XIX's restrictions on use of motor vehicle fuel taxes for highway and transportation purposes.
8. Two-thirds vote for tax decreases? Some people believe that revenues are increased when tax rates are lowered. If this is true, might this proposition require tax rate decreases to be passed by a two-thirds vote, since they would result in increased tax revenues?
9. State tax / local tax ambiguity. Although new Section 3 is titled by the initiative as providing a "State Government General and Special Tax Limitation," that title is not part of the Constitution. Thus, subdivisions

(c), (d) and (e) probably apply to taxes levied by all levels of government, not just to state taxes. To the extent that there are conflicts between these provisions and similar provisions in Section 4 (below), it is not clear which would prevail.

### III. VOTING REQUIREMENTS FOR LOCAL TAXES

SECTION 6. Section 4 of Article XIII A of the California Constitution is repealed.

~~Section 4. -- Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on real property within such City, County or special district.~~

SECTION 7. Local Government and District General and Special Tax Limitation. Section 4 is hereby added to Article XIII A of the California Constitution to read as follows:

Section 4. (a) Notwithstanding Article II, §9(a) of the California Constitution, no local government or district, whether or not authorized to levy a property tax, may impose any new general tax or increase any existing general tax on such locality or district unless and until such proposed general tax or increase is submitted to the electorate of the local government or of the district and enacted by a majority vote of the voters voting in an election on the issue.

(b) Notwithstanding Article II, §9(a) of the California Constitution, no local government or district may impose any new special tax or increase any existing special tax on such locality or district unless and until such proposed special tax or increase is submitted to the electorate of the local government or of the district and enacted by a two-thirds vote of the voters voting in an election on the issue. The revenues from any special tax shall be used only for the purpose or service for which it was imposed, and for no other purpose whatsoever.

(c) Except as provided in Article XIII A, §§ 1 and 2 of the California Constitution, no local government or district may impose any new ad valorem taxes on real

property or a transaction tax or sales tax on the sale or transfer of real property within that local government or district.

(d) A tax subject to the vote requirements of subdivisions (a) or (b) of this section shall be proposed by an ordinance or resolution of the legislative body of the local government or of the district. The ordinance or resolution shall include the type of tax and maximum rate, if any, of tax to be levied, the method of collection, the date upon which an election shall be held on the issue, and, if a special tax, the purpose or service for which its imposition is sought.

(e) As used in this section, "local government" means any city, county, city and county, including a chartered city or county or city and county, or any public or municipal corporation; "district" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(f) As used in this section, "general taxes" are taxes levied for the general fund to be utilized for general governmental purposes; "special taxes" are taxes levied for a specific purpose or purposes or deposited into a fund or funds other than the general fund. As used in this section, "voter" is a person who is eligible to vote under the provisions governing the applicable election. All taxes imposed by any entity of local government shall be deemed to be either general taxes or special taxes. Sales and use taxes voted on at a local level for transportation purposes shall be considered general taxes for purposes of this section.

Sections 6 & 7 of the initiative, replacing Section 4 of Article XIII A, place in the State Constitution requirements for levies of new and increased taxes. These requirements expand the requirements imposed since 1978.

#### Existing Requirements

Since the adoption of Proposition 13 in 1978, initiatives, statutes, court decision and legal opinions have combined to limit local government's ability to raise or impose taxes. The following is a brief history of these local limitations:

- Proposition 13. This initiative established the basic tax limitations. It introduced, but did not define, the distinction between "general" tax levies imposed with a majority

vote and "special" tax levies approved with a 2/3 majority vote. A definition was supplied in the Farrell decision.

- City and County of San Francisco v Farrell. When the San Francisco voters approved a gross receipts tax by 55 percent margin, the city controller refused to certify that the funds were available for appropriation. The controller, John Farrell, argued that the tax levy was a special tax, imposed without the 2/3 vote requirement required by Proposition 13. In this case, the Appellate Court defined "special" tax as a tax levied for a specific purpose. Under this definition, the San Francisco tax was not a special tax. Indeed, under the Farrell decision, taxes which were not "special" taxes could be imposed by a local government by a simple vote of the governing body. (Proposition 62, approved by the voters in 1986, codified the Farrell definition, and added the further requirement that "general" taxes may only be imposed by a majority popular vote.)

- Los Angeles Transportation Commission v Richmond. The court considered whether a transit district could levy a transactions and use tax ("local sales tax") without meeting the stricter special tax super-majority vote requirements. The court ruled that the higher vote requirements did not apply because: (a) the transit district had taxing authority existing prior to the enactment of Proposition 13, and (b) even if it did not have this existing authority, Proposition 13 was a property tax measure and did not apply to a district which had no property taxing authority.

The court left open whether the lack of property tax authority was in itself sufficient to exempt a district or agency from the special tax provisions. Questions remain about the vote requirements for general tax levies made by special districts.

- Proposition 62. With this statutory initiative, the voters attempted to codify the distinctions between special and general taxes, as defined in Farrell.

The initiative also required the Legislature to authorize districts to levy special taxes. In the wake of this initiative, the Legislature has authorized the use of special taxes for school districts, library districts and county service areas.

In addition, Proposition 62 did not provide sufficient guidance on the levy of general taxes by special districts. Given the terms of the Richmond decision, important questions remain about the conditions under which the Legislature may authorize a district to levy general taxes with a majority vote.

In a case decided prior to adoption of the initiative (Jarvis v Eu), the appellate court opined that Proposition 62 did not require charter cities to submit general taxes to a vote of their electorate.

- Schopflin v Dole. In this case, the court addressed questions about the election requirements imposed by Proposition 62. Although the case has been decertified and therefore applies only to taxes in Sonoma County, the logic of the case is important. In Schopflin, the court held that the vote requirements in Proposition 62, amounting to a referendum on a tax levy, are a violation of Article 2, Section 9 of the California Constitution. The case raises questions about whether the statutory provisions of Proposition 62, by its own terms in requiring elections on levies, is unconstitutional.
- Cohn v City of Oakland. This case may be viewed as a broadening of the taxing authority permitted under Proposition 13, at least for charter cities. The appeals court recently has upheld the City of Oakland's increase in the realty transfer tax, stating that "increase of the transfer tax in issue was not prohibited by Article XIII A because it was a general tax." Based on this decision, other charter cities -- including San Francisco -- have begun to look at increases in this tax.

### Legislative authorization

Within this context, the Legislature has attempted to authorize new local districts with general taxing authority. In particular:

- SB 142 (Deddeh)--Chapter 786, Statutes of 1987, authorized counties to create transportation districts. The legislation also authorized the district to fund transportation improvements with an additional sales tax levy of up to 1%. The tax could be imposed with a majority vote of the electorate.
- AB 999 (Farr)--Chapter 1257, Statutes of 1987, authorized counties to impose half-cent sales tax increases in small counties, provided that the increase was placed on the ballot by the board of supervisors and approved by a majority of the electorate.
- AB 2505 (Stirling)--Chapter 1258, Statutes of 1987, authorized San Diego to establish a jail financing agency and to levy a half-cent sales tax with approval by a simple majority of the voters.
- AB 1067 (Hauser)--Chapter 1335, Statutes of 1989, authorized the formation of a local jail authority, whose governing board had a majority made up of county supervisors. The legislation authorized the jail's governing board to levy a sales tax increase with a majority voter approval.

The provisions of AB 2505 and AB 1067 were challenged when the trial courts invalidated the bills' simple majority provisions. In these cases, judges found that the legislation made an impermissible attempt to circumvent the 2/3 vote requirements on special taxes. However in the San Diego case (AB 2505), the appellate court reversed the decision on the grounds that Proposition 62's two-thirds vote requirement is an unconstitutional referendum by initiative.

In addition, the Attorney General issued an opinion (number 89-604) stating that the popular vote requirement in AB 999 was tantamount to a referendum on a tax levy. As such, the referendum was in conflict with Section 9 of Article II of the State Constitution, and therefore unconstitutional.

Thus, four years after the adoption of Proposition 62, there is considerable confusion about the application of the initiative's vote requirements. To summarize, the confusion lies in three areas:

- Proposition 62 requirements do not apply equally to all local governments. Given the court's decision in Jarvis v Eu, charter cities are subject to different requirements than other local governments. In addition, because of the decision in Schopflin v Dole, Sonoma County is completely exempt from the Proposition 62 requirements. Thus, the tax requirements imposed by Proposition 62 apply differently depending on which local jurisdiction is imposing the tax.
- Uncertainty about whether a statute can require referenda on tax levies. Section 9 (a), Article II of the State Constitution prohibits referenda on tax levies. The Attorney General believes that this provision prohibits the State from authorizing the levy of a local tax subject to a local vote. Under what circumstances can the Legislature authorize tax levies? Under what circumstances can a local governing board impose a new tax or higher levy?
- Uncertainty about tax levies made by special-purpose districts. When does a special-purpose district function as an "alter ego" of a county board of supervisors? If a district does function as an alter ego, must it always secure a 2/3 vote on tax levies?

Proposition 136 addresses some of this confusion, but does not provide explicit guidance about the special-purpose districts.

### Local Taxing Authority

Article XI of the California Constitution permits a city, by a majority vote of its electors, to adopt a charter for the purpose of enacting ordinances relating to its municipal affairs. As part of this constitutional grant of authority, charter cities have broad powers to levy taxes to support municipal activities (subject to voter approval of special taxes).

In 1982, the Legislature provided to those cities which had not adopted charters, and which operated under general state law, the same taxing powers as charter cities (Chapter

327, Statutes of 1982). Previously these general law cities had been able to levy only business license, transient occupancy and property transfer taxes. Through 1990, counties' taxing authority is limited to the levying of the transient occupancy and property transfer taxes which do not overlap taxes imposed by their cities. Beginning on January 1, 1991, pursuant to SB 2557 (Maddy), Chapter 466, Statutes of 1990, counties may levy utility users' and business license taxes in their unincorporated areas.

- Business license taxes may be levied at a flat rate or based on the number of employees, receipts, sales or quantity of goods produced. No taxes may be levied on business income since the state has reserved the right to tax income.
- Property transfer taxes are levied on the sellers of real property. There is a statutory rate of \$.55 per \$500 of value which is exceeded by some charter cities. Cities and counties share the tax proceeds in incorporated areas.
- Transient occupancy taxes are levied upon those who occupy lodging for less than 30 days. Rates are set locally by cities and by counties in unincorporated areas.
- Utility users taxes may be levied on all or some of public utility services (gas, electricity, telephone, water, cable television)

The following table shows the revenues generated by these taxes in 1987-88 and the proportion they represent of the total amount of general tax revenue available to local agencies for expenditure. In total, these taxes (and other nonproperty taxes) account for approximately 23 percent of general tax revenues. Appendix B contains an inventory of local taxing powers.

Amount of Local General Taxes Collected  
1987-88

| Totals            | (Dollars in Millions) |                |               |                 |
|-------------------|-----------------------|----------------|---------------|-----------------|
|                   | Cities                | Counties       | San Francisco |                 |
| Property          | \$1,487               | \$4,011        | \$340         | \$5,838         |
| Sales             | 2,048                 | 287            | 77            | 2,412           |
| Business License  | 436                   | 0              | 19            | 455             |
| TOT               | 301                   | 37             | 61            | 399             |
| Property transfer | 91                    | 101            | 19            | 211             |
| Utility Users     | 687                   | 0              | 34            | 721             |
| Other             | <u>425</u>            | <u>60</u>      | <u>129</u>    | <u>614</u>      |
| Totals            | <u>\$5,475</u>        | <u>\$4,496</u> | <u>\$679</u>  | <u>\$10,650</u> |

Source: State Controllers' Office

Proposition 136 issues:

1. Issues common to both state and local taxes.  
The provisions of subdivisions (a), (b), (c) and (f) are very similar to those governing state-levied taxes. Many of the same issues raised above apply here as well.
  
2. How are conflicts between Proposition 62 and Proposition 136 to be resolved? The initiative does not repeal statutory provisions of Proposition 62. The initiative, a constitutional amendment, is similar to, but not duplicative of, Proposition 62. By itself, the initiative does not repeal these similar sections, though the Legislature has some power to amend the statutory provisions of Proposition 62. Should voters assume that the Legislature will amend the statutory provisions of Proposition 62 to conform with constitutional provisions of Proposition 136? Should the Legislature assume that the initiative's drafters intended that existing statutes be maintained in their current form? If not, why did the drafters not propose to amend or repeal the statutory provisions as part of Proposition 136?
  
3. Is a referendum required on tax levies?  
Section 9 of Article II has been interpreted to prevent referenda on tax levies. This measure does not repeal that section. Is a successful vote on Proposition 136 sufficient to void the existing prohibition on referenda of tax levies?

In addition, requiring a referendum on levies can interfere with local boards' abilities to balance their budgets because they have less control over the revenue side of their budgets. Does the proposition unduly restrict governing boards' budgetary authority?

4. Special-purpose districts. Proposition 136 does not fully address the tax requirements of special-purpose districts. This initiative is silent on how to identify when a special-purpose district is an "alter ego" of the county board of supervisors.
5. "District" may include state agencies. The definition of "district" may include state agencies. Subdivision (e) provides that "'district' means any agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries." "District" might include a local office of the Board of Equalization, which "imposes" taxes within its designated boundaries. Or it might include the state agency which imposes the "landing tax" on various fish and frogs, which the proposition's sponsors feature in their promotional brochure.

Whether this further limits state taxing authority, or grants additional leeway, remains to be seen. For example, it is not clear what "voters" and "electorate" means for "districts" which are state agencies or divisions thereof. Might it mean the board members directing the "district?"

6. Existing local realty transfer taxes appear to be repealed. Subdivision (c) provides that

"except as provided in §§1 and 2 of the California Constitution, no local government or district may impose any new ad valorem taxes on real property or a transaction tax or sales tax on the sale or transfer of real property."

As the word "new" seems only to modify "ad valorem taxes on real property," the language appears to require repeal of existing realty

transfer taxes (which presently yield more than \$200 million annually to cities and counties).

(Note that this language, applicable to local taxes, differs from the similar provision contained in §3(c), which does appear to prohibit new realty transfer taxes at the state level.)

7. Intent. The intent and findings sections discuss limitations on the imposition of taxes, while the text discusses limitations on tax levies. Is there a meaningful difference between the intent and the text?

#### IV. DISASTER PROVISIONS

SECTION 8. Disaster and Emergency Relief. Section 7 is hereby added to Article XIII A of the California Constitution to read as follows:

Section 7. The provisions of sections 3(a) and (d) of this article which impose limits on new or existing State taxes may be suspended by a two-thirds vote of the Legislature and the approval of the governor in order to permit funds to be raised for up to two years for disaster relief required by earthquake, fire, flood, or similar natural disaster or for emergencies declared by the Governor. The provisions of sections 4(a) and (b) of this article which impose limits on new or existing local taxes may be suspended by a two-thirds vote of the legislative body of the local government or district, as defined in section 4(e) above, in order to permit funds to be raised for up to two years for disaster relief required by earthquake, fire, flood, or similar natural disaster or for emergencies declared by the governor.

#### Proposition 136 issues:

1. Disaster vs. emergency. Presumably the Governor, in declaring an emergency, is not limited to natural disasters. Also, "emergency" appears to be broader than "disaster" and could embrace unnatural disasters such as recession, plant closings, energy crisis, war, etc.

This view of the language is strengthened by the fact that there is no definition of "emergency" in the measure. Nor is reference made to Section 3 of Article XIII B (as amended by Proposition 111) which provides a restricted definition of "emergency."

2. Two-year limit. The two year limit appears to apply to the two-thirds vote rather than to the disaster. For example, if disaster relief is required for more than two years, a subsequent two-thirds vote would be necessary to again suspend the Section 3 or 4 vote requirements.
3. Does spending for police and fire protection constitute "disaster relief"? A local government may be able to avoid the popular vote requirement for fire, flood or earthquake programs, simply by declaring those programs to be disaster related. "Disaster preparedness" could be argued to be a before-the-fact form of "disaster relief."
4. Tax increases with a majority vote. This section states that Section 3(a), which imposes a two-thirds vote requirement on tax increases, may be suspended in the event of a natural disaster or emergency with a two-thirds vote of the legislature and approval by the Governor. If this section is suspended as part of a bill providing, for example, appropriations for disaster relief (a two-thirds vote bill, anyway, because of the appropriation), then it appears that tax increases could be approved for the next two years with a majority vote as long as the increased revenues were used in some connection with the disaster or emergency.

#### V. LIBERAL CONSTRUCTION

SECTION 9. Liberal Construction. The provisions of this Act shall be liberally construed to effect its purposes.

This is a standard section which effectively asks courts and those responsible for implementing the initiative to give the benefit of the doubt to the drafters of the

initiative. It is in this context that Sections 2 and 3 of the initiative (which describe "Findings and Declarations" and "Purpose and Intent" respectively -- see the text of the proposition, attached) have relevance.

#### VI. EFFECTIVE DATE AND CONFLICTING INITIATIVES

SECTION 10. Effective Date. This Act shall take effect on November 6, 1990.

SECTION 11. Conflicting Law. Pursuant to Article II, §10(b) of the California Constitution, if this measure and another measure appear on the same ballot and conflict, and this measure receives more affirmative votes than such other measure, this measure shall become effective and control in its entirety and said other measure shall be null and void and without effect. If the constitutional amendments contained in this measure conflict with statutory provisions of another measure on the same ballot, the constitutional provisions of this measure shall become effective and control in their entirety and said other measure shall be null and void and without effect irrespective of the margins of approval. This initiative is inconsistent with any other initiative on the same ballot that enacts any tax, that employs a method of computation, or that contains a rate not authorized by this measure, and any such other measure shall be null and void and without effect.

#### Proposition 136 issues:

1. Violates single subject rule? The Constitution provides that an initiative measure may have only one subject. The California Supreme Court has accepted jurisdiction over a suit by the proponents of Propositions 129, 133 and 134, who argue that Proposition 136's effect is both to set the vote requirements for state and local taxes AND to nullify three competing Propositions, and that this constitutes multiple subjects. However, the Supreme Court announced that it would not remove the proposition from the ballot. The fate of this argument therefore still awaits resolution.
2. Amendment or revision of the Constitution? The clear intent of new Sections 3(d) of the Constitution, and Sections 10 and 11 of the proposition is to "poison" the three other

initiatives (Propositions 129, 133 and 135). By being effective the day before the other three initiatives are effective, it attempts to preempt and nullify them.

Article XVIII, Section 1 provides that "the Legislature ... may propose an amendment or revision of the Constitution ...." Section 2 provides that "the Legislature ... may submit at a general election the question whether to call a convention to revise the Constitution...." Section 3 provides that "the electors may amend the Constitution by initiative." [emphasis added] The definitions of "amendment" and "revision" were set forth in the analysis of Proposition 7 on the November 1962 ballot: "amendments" are specific and limited changes in the Constitution, while "revisions" are broad changes in all or a substantial part thereof.

Proposition 136 intends both to change how taxes may be enacted as well as to limit the ability of other initiatives to impose taxes. This latter attempt may be a revision rather than an amendment, and may thus be invalid, since the initiative may not be used to revise the Constitution.

3. Constitutional or statutory status? Note that Section 11 would not become part of the Constitution, so its stature is probably lower than that of constitutional language. It may therefore have no impact on the effectiveness of constitutional provisions.
4. Effective date ambiguity. Article II, Section 10 (a) provides that "an initiative statute or referendum ... takes effect the day after the election unless the measure provides otherwise." As Proposition 136 is neither an initiative statute nor a referendum, it is not altogether clear when it takes effect. Nor is it clear that even an initiative statute may take effect at a time prior to the completion of the election (e.g., the day of the election).
5. Legislative Counsel opinion. The above points are more fully examined in the attached Legislative Counsel opinion (Appendix C.), which concludes that Proposition 136:

"is constitutionally invalid because it violates the single subject rule and also may constitute a revision, and not amendment, of the California Constitution.... Moreover, we think that giving effect to the proposed effective date of the Taxpayers Act, November 6, 1990, the day of the 1990 general election, may operate to impair the right of the voters on that day to propose statutes by initiative and to approve them by a majority vote."

#### VII. SEVERABILITY

SECTION 12. Severability. If any provision of this Act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

This is a boiler-plate severability clause.

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Analysis prepared by:

Martin Helmke & Anne Maitland,  
Senate Revenue & Taxation Committee  
John Decker, Assembly Local Government Committee

**APPENDIX A**

**TEXT OF PROPOSITION 136**

## Proposition 136: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure expressly amends the Constitution by repealing and adding sections thereto; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED LAW

#### THE TAXPAYERS RIGHT-TO-VOTE ACT OF 1990

**SECTION 1. Title.** This Act shall be known and may be cited as The Taxpayers Right-to-Vote Act of 1990.

**SECTION 2. Findings and Declarations.** The People of the State of California hereby find and declare as follows:

(a) Taxes should not be imposed on the People of California without their consent.

(b) In order to protect all taxpayers from sudden and unreasonable increases in general taxes which would threaten their economic security, limitations should be placed on general tax increases and the imposition of new general taxes.

(c) In order to protect targeted segments of taxpayers from special taxes imposed upon them alone, limitations should be placed on special tax increases and the imposition of new special taxes by special interests.

(d) No increase in special taxes imposed by counties, special districts, charter cities, or general law cities, and no new special tax imposed by these entities, should take effect without a two-thirds vote of the People.

(e) No increase in special taxes imposed by the State of California, and no new special tax imposed by the State of California, should take effect without a two-thirds vote of the People or a two-thirds vote of both houses of the Legislature.

(f) No increase in general taxes imposed by the State of California, and no new general tax imposed by the State of California, should take effect without a majority vote of the People or a two-thirds vote of both houses of the Legislature.

(g) No increase in general taxes imposed by counties, special districts, charter cities, and general law cities, and no new general tax imposed by these entities, should take effect without a majority vote of the People.

(h) No excessive and unfair special taxes with respect to tangible personal property should be imposed.

(i) In keeping with the spirit of Proposition 13, except as provided in Article XIII A, §§ 1 and 2 of the California Constitution, no new ad valorem taxes on real property or sales or transaction taxes on the sale of real property may be imposed.

**SECTION 3. Purpose and Intent.** The People of the State of California declare that their purpose and intent in enacting this measure is as follows:

(a) To prevent the imposition of any new State general tax or an increase in any existing State general tax without a majority vote of the People or a two-thirds vote of both houses of the Legislature.

(b) To prevent the imposition of any new State special tax or an increase in any existing State special tax without a two-thirds vote of the People or a two-thirds vote of both houses of the Legislature.

(c) To prevent the imposition of any new local general tax or an increase in any existing local general tax without a majority vote of the People.

(d) To prevent the imposition of any new local special tax or an increase in any existing local special tax without a two-thirds vote of the People.

(e) To protect against the imposition of excessive and unfair special taxes with respect to tangible personal property.

(f) To prohibit the imposition of any new ad valorem taxes on real property or any transaction tax or sales tax on the sale or transfer of real property except as provided in Article XIII A, §§ 1 and 2 of the California Constitution.

**SECTION 4.** Section 3 of Article XIII A of the California Constitution is repealed.

**SECTION 5.** From and after the effective date of this article, any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.

**SECTION 5. State Government General and Special Tax Limitation.** Section 3 is hereby added to Article XIII A of the California Constitution to read as follows:

**SECTION 3.** (a) From and after the effective date of this section, any increases in State general or special taxes whether by increased rates, changes in methods of computation, any other increase in an existing tax, or any new tax must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, or as provided in subsection (b).

(b) From and after the effective date of this section, any increases in State taxes whether by increased rates, changes in methods of computation, any other increase in an existing tax, or any new tax also may be enacted by an initiative passed, in the case of a general tax, by not less than a majority vote of the voters voting in an election on the issue or, in the case of a special tax, and notwithstanding Article II, § 10(a) of the California Constitution, by not less than a two-thirds vote of the voters voting in an election on the issue, or as provided in subsection (a).

(c) Except as provided in Article XIII A, §§ 1 and 2 of the California Constitution, no new ad valorem taxes on real property or sales or transaction taxes on the sale of real property may be imposed.

(d) Any special tax with respect to tangible personal property enacted on or after November 6, 1990, must be an ad valorem tax and must comply with the provisions of Article XIII, § 2 of the California Constitution.

(e) As used in this section, "general taxes" are taxes, including, but not limited to, income taxes, excise taxes, and surtaxes, levied for the general fund to be utilized for general governmental purposes; "special taxes" are taxes, including, but not limited to, income taxes, excise taxes, surtaxes, and tax increases, levied for a specific purpose or purposes or deposited into a fund or funds other than the general fund. Taxes on motor vehicle fuel shall be considered general taxes for purposes of this section.

**SECTION 6.** Section 4 of Article XIII A of the California Constitution is repealed.

**SECTION 4. Cities, Counties and Special Districts.** by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

**SECTION 7. Local Government and District General and Special Tax Limitation.** Section 4 is hereby added to Article XIII A of the California Constitution to read as follows:

**SECTION 4.** (a) Notwithstanding Article II, § 9(a) of the California Constitution, no local government or district, whether or not authorized to levy a property tax, may impose any new general tax or increase any existing general tax on such locality or district unless and until such proposed general tax or increase is submitted to the electorate of the local government or of the district and enacted by a majority vote of the voters voting in an election on the issue.

(b) Notwithstanding Article II, § 9(a) of the California Constitution, no local government or district may impose any new special tax or increase any existing special tax on such locality or district unless and until such proposed special tax or increase is submitted to the electorate of the local government or of the district and enacted by a two-thirds vote of the voters voting in an election on the issue. The revenues from any special tax shall be used only for the purpose or service for which it was imposed, and for no other purpose whatsoever.

(c) Except as provided in Article XIII A, §§ 1 and 2 of the California Constitution, no local government or district may impose any new ad valorem taxes on real property or a transaction tax or sales tax on the sale or transfer of real property within that local government or district.

(d) A tax subject to the vote requirements of subdivisions (a) or (b) of this section shall be proposed by an ordinance or resolution of the legislative body of the local government or of the district. The ordinance or resolution shall include the type of tax and maximum rate, if any, of tax to be levied, the method of collection, the date upon which an election shall be held on the issue, and, if a special tax, the purpose or service for which its imposition is sought.

(e) As used in this section, "local government" means any city, county, city and county, including a chartered city or county or city and county, or any public or municipal corporation; "district" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(f) As used in this section, "general taxes" are taxes levied for the general fund to be utilized for general governmental purposes; "special taxes" are taxes levied for a specific purpose or purposes or deposited into a fund or funds other than the general fund. As used in this section, "voter" is a person who is eligible to vote under the provisions governing the applicable election. All taxes imposed by any entity of local government shall be deemed to be either general taxes or special taxes. Sales and use taxes voted on at a local level for transportation purposes shall be considered general taxes for purposes of this section.

**SECTION 8. Disaster and Emergency Relief.** Section 7 is hereby added to Article XIII A of the California Constitution to read as follows:

**SECTION 7.** The provisions of sections 3(a) and (d) of this article which impose limits on new or existing State taxes may be suspended by a two-thirds vote of the Legislature and the approval of the Governor in order to permit funds to be raised for up to two years for disaster relief required by earthquake, fire, flood, or similar natural disaster or for emergencies declared by the Governor. The provisions of sections 4(a) and (b) of this article which impose limits on new or existing local taxes may be suspended by a two-thirds vote of the legislative body of the local government or district, as defined in section 4(e) above, in order to permit funds to be raised for up to two years for disaster relief required by earthquake, fire, flood, or similar natural disaster or for emergencies declared by the Governor.

**SECTION 9. Liberal Construction.** The provisions of this Act shall be liberally construed to effect its purposes.

**SECTION 10. Effective Date.** This Act shall take effect on November 6, 1990.

**SECTION 11. Conflicting Law.** Pursuant to Article II, § 10(b) of the California Constitution, if this measure and another measure appear on the same ballot and conflict, and this measure receives more affirmative votes than such other measure, this measure shall become effective and control in its entirety and said other measure shall be null and void and without effect. If the constitutional amendments contained in this measure conflict with statutory provisions of another measure on the same ballot, the constitutional provisions of this measure shall become effective and control in their entirety and said other measure shall be null and void and without effect irrespective of the margins of approval. This initiative is inconsistent with any other initiative on the same ballot that enacts any tax, that employs a method of computation, or that contains a rate not authorized by this measure, and any such other measure shall be null and void and without effect.

**SECTION 12. Severability.** If any provision of this Act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

**APPENDIX B**

**INVENTORY OF LOCAL TAXING POWERS**

Prepared by Peter Detwiler  
Senate Local Government Committee

## "AN INVENTORY OF LOCAL TAX POWERS"

These two tables report the tax authorities available to California local governments. **TABLE I** lists the tax authorities by type of agency: cities, counties, special districts, and school districts. **TABLE II** lists the same information by the types of programs which may be financed.

When using these tables, please keep in mind:

- Parcel taxes. Special taxes under the Mello-Roos Act and special taxes authorized for special districts are not specifically restricted to certain tax bases. Most local agencies use these special tax powers to levy "per parcel taxes," where a uniform charge is levied against each parcel.

- Ad valorem taxes. Some statutes still seem to allow special districts to levy ad valorem property taxes. Proposition 13 superseded these laws but they still remain on the books. These tables ignore them.

- Incomplete. This effort may be the first attempt to list all local tax authorities. Given the incremental nature of legislating, the tables may not be complete.

"AN INVENTORY OF LOCAL TAX POWERS"

TABLE I: TAX AUTHORITY, BY TYPE OF AGENCY

| <u>AGENCY</u> | <u>TAX</u>                      | <u>AUTHORITY</u>                        | <u>COMMENTS</u>  |
|---------------|---------------------------------|---|--|
| Cities        |                                 |   |  |
| Charter       | Any tax base                    | California Constitution Art. XI, Sec. 5 | A tax to raise revenues for municipal purposes is a "municipal affair" and constitutionally protected from legislative interference, if the tax base has not been preempted by the state or federal governments. |
| General law   | Any tax base                    | Government Code Section 37100.5         | A general law city can levy any tax that a charter city can levy. However, Proposition 62's voting requirements apply to general law cities.   |
| All cities    | Admissions tax                  | California Constitution Art. XI, Sec. 5 | No specific authority; cities tax admission to theaters and sports events.   |
|               | Business license tax            | Government Code Section 37100           |  |
|               | Parking tax                     | Revenue and Taxation Code Section 16000 |  |
|               | Real property transfer          | California Constitution Art. XI, Sec. 5 | No specific authority; cities tax the privilege of renting parking spaces.   |
|               | Sales and use tax               | Revenue and Taxation Code Section 11901 | Limited by California Constitution Art. XIII A, Sec. 4; in litigation.   |
|               | Transient occupancy tax         | Revenue and Taxation Code Section 7200  |  |
|               | Utility user tax                | Revenue and Taxation Code Section 7280  |  |
|               | Ambulance service               | California Constitution Art. XI, Sec. 5 | No specific authority; cities tax the consumption of utilities.  |
|               | Child care facilities           | Government Code Section 53313 (b)       | Special tax under the Mello-Roos Act.  |
|               | Child care insurance            | Government Code Section 53313.5 (d)     | Special tax under the Mello-Roos Act.  |
|               | Child care insurance            | Government Code Section 53313.5 (d)     | Special tax under the Mello-Roos Act; a city can finance insurance costs but not the "other operational costs" of child care facilities.   |
|               | Facilities                      | Government Code Section 53313.5 (g)     | A city can finance any facility with a special tax under the Mello-Roos Act.   |
|               | Fire protection                 | Government Code Section 53313 (b)       | Special tax under the Mello-Roos Act.  |
|               | Fire protection                 | Government Code Section 53978           | Special tax.   |
|               | Flood and storm water services  | Government Code Section 53313 (d)       | Special tax under the Mello-Roos Act.  |
|               | Graffiti removal and prevention | Government Code Section 53313 (d)       | Special tax under the Mello-Roos Act.  |
|               | Graffiti removal and prevention | Revenue and Taxation Code Section 7287  | Special tax on spray paint cans and markers; added by AB 3580 (Katz, 1990).  |
|               | Library facilities              | Government Code Section 53313.5 (c)     | Special tax under the Mello-Roos Act.  |
|               | Library services                | Government Code Section 53313 (c)       | Special tax under the Mello-Roos Act.  |
|               | Library services                | Government Code Section 53717           | Special tax.   |

|          |                                 |  |  |
|----------|---------------------------------|--|--|
|          | Museum and cultural programs    | Government Code Section 53313 (c)        | Special tax under the Mello-Roos Act.  |
|          | Open space facilities           | Government Code Section 53313.5 (a)      | Special tax under the Mello-Roos Act.  |
|          | Paramedic service               | Government Code Section 53313 (b)        | Special tax under the Mello-Roos Act.  |
|          | Park and recreation programs    | Government Code Section 53313 (c)        | Special tax under the Mello-Roos Act.  |
|          | Park facilities                 | Government Code Section 53313.5 (a)      | Special tax under the Mello-Roos Act.  |
|          | Police protection               | Government Code Section 53313 (a)        | Special tax under the Mello-Roos Act.  |
|          |                                 | Government Code Section 53978            | Special tax.   |
|          | Underground utilities           | Government Code Section 53313.5 (e)      | Special tax under the Mello-Roos Act.  |
| Counties | Business license tax            | Revenue and Taxation Code Section 7284   | Added by SB 2557 (Maddy, 1990), effective January 1, 1991.   |
|          | Real property transfer          | Revenue and Taxation Code Section 11901  | Limited by California Constitution Art. XIII A, Sec. 4; in litigation.   |
|          | Sales and use tax               | Revenue and Taxation Code Section 7200   |  |
|          | Transactions and use tax        | Revenue and Taxation Code Section 7285   | General tax with majority voter approval; extended to all counties by AB 3670 (Farr, 1990).  |
|          | Transactions and use tax        | Revenue and Taxation Code Section 7285.5 | A county can set up "an authority for special purposes" and levy a general tax with majority voter approval; extended to all counties by AB 3670 (Farr, 1990). |
|          | Transient occupancy tax         | Revenue and Taxation Code Section 16000  |  |
|          | Utility user tax                | Revenue and Taxation Code Section 7284   | Added by SB 2557 (Maddy, 1990), effective January 1, 1991.   |
|          | Ambulance service               | Government Code Section 53313 (b)        | Special tax under the Mello-Roos Act.  |
|          | Child care facilities           | Government Code Section 53313.5 (d)      | Special tax under the Mello-Roos Act.  |
|          | Child care insurance            | Government Code Section 53313.5 (d)      | Special tax under the Mello-Roos Act; a county can finance insurance costs but not the "other operational costs" of child care facilities.                     |
|          | Facilities                      | Government Code Section 53313.5 (g)      | A county can finance any facility with a Mello-Roos Act special tax.   |
|          | Fire protection                 | Government Code Section 53313 (b)        | Special tax under the Mello-Roos Act.  |
|          |                                 | Government Code Section 53978            | Special tax.   |
|          | Flood and storm water services  | Government Code Section 53313 (d)        | Special tax under the Mello-Roos Act.  |
|          | Graffiti removal and prevention | Revenue and Taxation Code Section 7287   | Special tax on spray paint cans and markers; added by AB 3580 (Katz, 1990).  |
|          | Library facilities              | Government Code Section 53313.5 (c)      | Special tax under the Mello-Roos Act.  |
|          | Library service                 | Government Code Section 53313 (c)        | Special tax under the Mello-Roos Act.  |
|          |                                 | Government Code Section 53717            | Special tax.   |
|          | Mosquito abatement              | Government Code Section 25842.5          | Identical to the tax powers of mosquito abatement districts.   |
|          | Museum and cultural programs    | Government Code Section 53313 (c)        | Special tax under the Mello-Roos Act.  |
|          | Open space facilities           | Government Code Section 53313.5 (a)      | Special tax under the Mello-Roos Act.  |

|                             |                                |                                      |  |
|-----------------------------|--------------------------------|--------------------------------------|--|
|                             | Paramedic service              | Government Code Section 53313 (b)    | Special tax.   |
|                             | Park facilities                | Government Code Section 53313.5 (a)  | Special tax under the Mello-Roos Act.  |
|                             | Park and recreation programs   | Government Code Section 53313 (c)    | Special tax under the Mello-Roos Act.  |
|                             | Police protection              | Government Code Section 53313 (a)    | Special tax under the Mello-Roos Act.  |
|                             |                                | Government Code Section 53978        | Special tax.   |
|                             | Underground utilities          | Government Code Section 53313.5 (e)  | Special tax under the Mello-Roos Act.  |
| All special districts       | Facilities                     | Government Code Section 53313.5 (g)  | Any special district can finance any facility with a special tax under the Mello-Roos Act. |
| Coast Life Support District | Ambulance service              | Sec. 70, Chap. 375, Stats. of 1986   | Special tax.   |
| County service areas        | Any county service             | Government Code Section 25210.6a     | Special tax.   |
|                             | Fire protection                | Government Code Section 25210.59     | Identical to tax powers of fire protection districts.                                      |
| County water districts      | Fire protection                | Water Code Section 31120             | Identical to tax powers of fire protection districts.                                      |
| Fire protection districts   | Ambulance service              | Government Code Section 53313 (b)    | Special tax under the Mello-Roos Act.  |
|                             |                                | Health and Safety Code Section 13913 | Special tax.   |
|                             | Fire protection                | Government Code Section 53313 (b)    | Special tax under the Mello-Roos Act.  |
|                             |                                | Government Code Section 53978        | Special tax.   |
|                             |                                | Health and Safety Code Section 13913 | Special tax.   |
|                             | Paramedic service              | Government Code Section 53313 (b)    | Special tax under the Mello-Roos Act.  |
|                             |                                | Health and Safety Code Section 13913 | Special tax  |
| Flood control districts     | Flood and storm water services | Government Code Section 53313 (c)    | Special tax under the Mello-Roos Act.  |
| Hospital districts          | Hospital services              | Government Code Section 53730.01     | Special tax.   |
| Library districts           | Library facilities             | Government Code Section 53313.5 c)   | Special tax under the Mello-Roos Act.  |
|                             | Library services               | Government Code Section 53313 (c)    | Special tax under the Mello-Roos Act.  |
|                             |                                | Government Code Section 53717        | Special tax.   |
| Mosquito abatement          |                                |                                      |  |

|                      |                 |                          |  |  |
|----------------------|-----------------|--------------------------|--|--|
|                      | districts       | Mosquito abatement       | Health and Safety Code Section 2303      | Special tax.   |
| Municipal utility    | districts       | Underground utilities    | Government Code Section 53313.5 (e)      | Special tax under the Mello-Roos Act.  |
| Municipal water      | districts       | Fire protection          | Water Code Section 71680                 | Identical to the tax powers of fire protection districts.  |
| Pest abatement       | districts       | Pest abatement           | Health and Safety Code Section 2871.8    | Special tax.   |
| Public utilities     | district        | Fire protection          | Public Utilities Code Section 16463.5    | Identical to the tax powers of fire protection districts.  |
|                      |                 | Underground utilities    | Government Code Section 53313.5 (e)      | Special tax under the Mello-Roos Act.  |
| Recreation & park    | districts       | Open space facilities    | Government Code Section 53313.5 (a)      | Special tax under the Mello-Roos Act.  |
|                      |                 | Park facilities          | government Code Section 53313.5 (a)      | Special tax under the Mello-Roos Act.  |
|                      |                 | Park programs            | Public Resources Code Section 5784.39    | Added by AB 4158 (N. Waters, 1990), effective July 17, 1990.   |
|                      |                 | Fire protection          | Public Resources Code Section 5782.18    | Identical to the tax powers of fire protection districts.  |
|                      |                 | Recreation programs      | Government Code Section 53313 (c)        | Special tax under the Mello-Roos Act.  |
| Redevelopment        | agencies        | Sales and use taxes      | Revenue and Taxation Code Section 7202.6 | A redevelopment agency's sales tax must be offset by a complementary decrease in the underlying city or county's sales tax rate. |
| Regional park & open | space districts | Open space facilities    | Government Code Section 53313.5 (a)      | Special tax under the Mello-Roos Act.  |
|                      |                 | Park facilities          | Government Code Section 53313.5 (a)      | Special tax under the Mello-Roos Act.  |
|                      |                 | Park programs            | Public Resources Code Section 5566       | Special tax.   |
|                      |                 | Recreation programs      | Government Code Section 53313 (c)        | Special tax under the Mello-Roos Act.  |
| Santa Clara County   |                 |                          |  |  |
| Open-Space           | Authority       | Open space acquisition   | Public Resources Code Section 35171      | Special tax.   |
| Bay area counties'   | transportation  |                          |  |  |
|                      | commissions     | Transactions and use tax | Public Utilities Code Section 131000     | Can be adopted by any or all of the nine Bay Area counties.  |

County  
transportation  
commissions or  
authorities      Transactions and use tax Public Utilities Code Section 131100

Local transportation  
authorities      Transactions and use tax Public Utilities Code Section 180000

Fresno County  
Transportation  
Authority      Transactions and use tax Public Utilities Code Section 142000

Los Angeles County  
Transportation  
Commission      Transactions and use tax Public Utilities Code Section 130350

Declared a general tax in LACTC v. Richmond (1982) 31 Cal. 3d 197.

Orange County  
Transportation  
Commission      Transactions and use tax Public Utilities Code Section 130400

Riverside County  
Transportation  
Commission      Transactions and use tax Public Utilities Code Section 240000

San Bernardino  
County  
Transportation  
Commission      Transactions and use tax Public Utilities Code Section 190000

San Diego County  
Regional  
Transportation  
Commission      Transactions and use tax Public Utilities Code Section 132000

Santa Clara County  
Traffic Authority      Transaction and use tax Public Utilities Code Section 140000

Tuolumne County  
Traffic Authority      Transactions and use tax Public Utilities Code Section 150000

Orange County  
 Regional Justice  
 Facility Financing  
 Agency Transactions and use tax Government Code Section 26295  
 Revenue and Taxation Code Section 7252.30

San Diego County  
 Regional Justice  
 Facility Financing  
 Agency Transactions and use tax Government Code Section 26250  
 Revenue and Taxation Code Section 7252.11

San Joaquin County  
 Regional Justice  
 Facility Financing  
 Agency Transactions and use tax Government Code Sections 26290 & 53721.5  
 Revenue and Taxation Code Section 7252.12 Declared to be a general tax.

County regional  
 justice facility  
 financing agencies Transactions and use tax Government Code Section 26299.000 & 53721.6  
 Revenue and Taxation Code Section 7252.15 Declared to be general taxes. Applies only in Humboldt, Los Angeles, River-  
 side, San Bernardino, and Ventura counties. In litigation.

|                  |                       |                                     |   |
|------------------|-----------------------|-------------------------------------|---|
| School districts | Child care facilities | Government Code Section 53313.5 (d) | Special district under the Mello-Roos Act.  |
|                  | Child care insurance  | Government Code Section 53313.5 (d) | Special tax under the Mello-Roos Act; a school district can finance insurance costs but not the "other operational costs" of child care facilities. |
|                  | School facilities     | Government Code Section 53313.5 (b) | Special tax under the Mello-Roos Act.   |
|                  | School programs       | Government Code Section 50079       | "Qualified" special taxes.  |

"AN INVENTORY OF LOCAL TAX POWERS"

TABLE II: TAX AUTHORITY, BY PROGRAM

| <u>PROGRAM</u>                  | <u>AUTHORITY</u>   | <u>COMMENTS</u>   |
|---------------------------------|--|---|
| Ambulance service               | Government Code Section 53313 (b)<br>Health and Safety Code Section 13913<br>Sec. 70, Chap. 375, Stats. of 1986  | Special tax under the Mello-Roos Act.<br>Fire protection districts and other districts which have the same powers.<br>Coast Life Support District's special tax.  |
| Any county service              | Revenue and Taxation Code Section 7285<br>Revenue and Taxation Code Section 7285.5<br>Government Code Section 25210.6a   | Counties can levy sales taxes for general purposes with majority voter approval.<br>Counties can set up authorities to levy sales taxes with majority vote.<br>County service areas' special taxes can fund any service that a county can provide.  |
| Any facility                    | Government Code Section 53313.5 (g)  | Any city, county, or special district can finance any facility with a special tax under the Mello-Roos Act.   |
| Child care facilities           | Government Code Section 53313.5 (d)  | Special tax under the Mello-Roos Act.   |
| Child care insurance            | Government Code Section 53313.5 (d)  | Mello-Roos Act special taxes can finance insurance costs but not the "other operational costs" of child care facilities.  |
| Fire protection                 | Government Code Section 25210.59<br>Government Code Section 53313 (b)<br>Government Code Section 53978<br>Health and Safety Code Section 13913<br>Public Resources Code Section 5566<br>Public Resources Code Section 5782.18<br>Public Utilities Code Section 16463.5<br>Water Code Section 31120<br>Water Code Section 71680 | County service areas' special tax.<br>Special tax under the Mello-Roos Act.<br>Any agency which provides fire protection can use this authority.<br>Fire protection districts and other districts which have the same powers.<br>Regional park and open space districts' special tax.<br>Recreation and park districts' special tax.<br>Public utilities districts' special tax.<br>County water districts' special tax.<br>Municipal water districts' special tax. |
| Flood and storm water services  | Government Code Section 53313 (c)  | Special tax under the Mello-Roos Act.   |
| Graffiti removal and prevention | Revenue and Taxation Code Section 7287   | Special tax on spray paint cans and markers; added by AB 3580 (Katz, 1990).   |

|                              |  |   |
|------------------------------|--|---|
| Hospital services            | Government Code Section 53730.01   | Hospital districts' special tax.  |
| Justice facilities           | Government Code Section 26250<br>Government Code Section 26290<br>Government Code Section 26295<br>Government Code Section 26299.000<br>Government Code Section 53721.5<br>Government Code Section 53721.6<br>Revenue and Taxation Code Section 7252.11<br>Revenue and Taxation Code Section 7252.12<br>Revenue and Taxation Code Section 7252.15<br>Revenue and Taxation Code Section 7252.30 | San Diego County Regional Justice Facility Financing Agency's sales tax.<br>San Joaquin County Regional Justice Facility Financing Agency's sales tax.<br>Orange County Regional Justice Facility Financing Agency's sales tax.<br>County regional justice facility financing agencies' sales taxes.<br>San Joaquin County Regional Justice Facility Financing Agency's sales tax.<br>County regional justice facility financing agencies' sales taxes.<br>San Diego County Regional Justice Facility Financing Agency's sales tax.<br>San Joaquin County Regional Justice Facility Financing Agency's sales tax.<br>County regional justice facility financing agencies' sales taxes.<br>Orange County Regional Justice Facility Financing Agency's sales tax. |
| Library facilities           | Government Code Section 53313.5 (c)  | Special tax under the Mello-Roos Act.   |
| Library services             | Government Code Section 53313 (c)<br>Government Code Section 53717   | Special tax under the Mello-Roos Act.<br>Any agency which provides library services can use this authority.   |
| Mosquito abatement           | Government Code Section 25842.5<br>Health and Safety Code Section 2303   | Counties have the same tax authority as mosquito abatement districts.<br>Mosquito abatement districts' special tax.   |
| Museum and cultural programs | Government Code Section 53313 (c)  | Special tax under the Mello-Roos Act.   |
| Open space facilities        | Government Code Section 53313.5 (a)<br>Public Resources Code Section 35171   | Special tax under the Mello-Roos Act.<br>Santa Clara County Open-Space Authority's special tax.   |
| Paramedic services           | Government Code Section 53313 (b)  | Special tax under the Mello-Roos Act.   |
| Park facilities              | Government Code Section 53313.5 (a)  | Special tax under the Mello-Roos Act.   |
| Park programs                | Public Resources Code Section 5566<br>Public Resources Code Section 5784.39  | Regional park and open space districts' special tax<br>Recreation and park districts' special tax; added by AB 4158 (N. Waters, 1990).  |
| Pest abatement               | Health and Safety Code Section 2871.8  | Pest abatement districts' special tax.  |
| Recreation programs          | Government Code Section 53313 (c)<br>Public Resources Code Section 5566  | Special tax under the Mello-Roos Act.<br>Regional park and open space districts' special tax.   |

|                         |                                       |   |
|-------------------------|---------------------------------------|---|
|                         | Public Resources Code Section 5784.39 | Recreation and park districts' special tax; added by AB 4158 (N. Waters, 1990). |
| School facilities       | Government Code Section 53313.5 (b)   | Special tax under the Mello-Roos Act.   |
| School programs         | Government Code Section 50079         | School districts' "qualified" special tax.                                      |
| Transportation programs | Public Utilities Code Section 130350  | Los Angeles County Transportation Commission's sales tax.                       |
|                         | Public Utilities Code Section 130400  | Orange County Transportation Commission's sales tax.                            |
|                         | Public Utilities Code Section 131000  | Bay area counties' transportation commissions' sales taxes.                     |
|                         | Public Utilities Code Section 131100  | County transportation commissions' sales taxes.                                 |
|                         | Public Utilities Code Section 132000  | San Diego County Regional Transportation Commission's sales tax.                |
|                         | Public Utilities Code Section 140000  | Santa Clara County Traffic Authority's sales tax.                               |
|                         | Public Utilities Code Section 142000  | Fresno County Transportation Authority's sales tax.                             |
|                         | Public Utilities Code Section 150000  | Tuolumne County Traffic Authority's sales tax.                                  |
|                         | Public Utilities Code Section 180000  | Local transportation authorities' sales taxes.                                  |
|                         | Public Utilities Code Section 190000  | San Bernardino County Transportation Commission's sales tax.                    |
|                         | Public Utilities Code Section 240000  | Riverside County Transportation Commission's sales tax.                         |
| Underground utilities   | Government Code Section 53313.5 (e)   | Special tax under the Mello-Roos Act.   |

**APPENDIX C**

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Honorable Lloyd G. Connelly  
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Initiatives: Effect: Conflicts - #446

Dear Mr. Connelly:

You have asked what effect the Alcohol Tax Act of 1990 (hereafter "Alcohol Tax Act") and the Taxpayers Right to Vote Act of 1990 (hereafter "Taxpayers Act") would each have on the other should both initiatives qualify and be adopted by the voters at the November 6, 1990, general election.

The Alcohol Tax Act would impose a \$0.05 surcharge on each unit, as defined, of alcoholic beverages, and would deposit moneys from that surcharge into an "Alcohol Surtax Fund," containing five separate accounts. Each account would be appropriated for specified purposes, including, among others, substance abuse prevention and treatment, law enforcement, shelter, and educational and recreational programs. In addition, the Alcohol Tax Act would add Section 7 to Article XIII A of the California Constitution to provide that the act shall not be subject to Section 3 of that article, which requires that any increase in state taxes for purposes of raising revenue be approved by a two-thirds vote of each house of the Legislature.

The Taxpayers Act would require that the imposition or increase of any tax by a statewide initiative or any local tax be subject to approval by either a simple or two-thirds majority of the voters. The act further provides that its requirements shall be effective on November 6, 1990, the date of the 1990 general election, and additionally provides, as specified, that its provisions shall prevail over or nullify any conflicting initiative adopted at the same election.

In particular, four provisions of the Taxpayers Act bear upon the act's effect, if adopted, on other concurrently adopted initiatives.

First, the Taxpayers Act would add a new Section 3 to Article XIII A of the California Constitution to require that general taxes adopted by initiative be adopted only by a majority of the voters, and that special taxes adopted by initiative be adopted only by two-thirds of the voters. Subdivision (e) of the new Section 3 would, for purposes of the Taxpayers Act, define a general tax as a tax to be "levied for the general fund to be utilized for general governmental purposes" and a special tax as a tax to be "levied for a specific purpose or purposes or deposited into a fund or funds other than the general fund."

Second, subdivision (d) of the new Section 3 to be added to Article XIII A of the California Constitution would require any special tax with respect to tangible personal property enacted on or after November 6, 1990, to be an ad valorem tax and comply with certain existing provisions of the California Constitution relative to taxation of personal property.

Third, Section 10 of the Taxpayers Act specifically provides that "this Act shall take effect on November 6, 1990," the day of the 1990 general election.

Fourth, Section 11 of the Taxpayers Act provides that, if the Taxpayers Act and another measure on the same ballot conflict and the Taxpayers Act receives the greater number of votes, the Taxpayers Act controls "in its entirety" and the "other measure shall be null and void and without effect." Moreover, if the constitutional amendments in the Taxpayers Act conflict with the statutory provisions of another measure on the same ballot, regardless of the vote, the Taxpayers Act again provides that it controls in its entirety, and the "other measure shall be null and void and without effect."

Section 11 of the Taxpayers Act is not a provision that would be added to the California Constitution, but is a "plus" section in the measure. As such, although the matter is far from clear, we think that the section would not be accorded constitutional dignity but would be given at most the effect of an uncodified statute and could perhaps merely be construed to be intent language. That is, this section would not prevail over conflicting constitutional provisions. In this connection, we point out that subdivision (b) of Section 10 of Article II provides that only the conflicting provisions of a measure, as opposed to the entire measure, receiving the highest number of votes prevails. Nevertheless, as discussed below, the characterization of Section 11 of the Taxpayers Act, as either a

constitutional provision or a statute, may have a significant effect upon the analysis of the combined effects of the two measures in question here and it is important that the uncertainty regarding this characterization be kept in mind.

In view of the foregoing, including the uncertainty as to whether Section 11 of the Taxpayers Act would be given the effect of a constitutional provision which is intended to supersede conflicting constitutional provisions, we shall discuss the combined effect of the Alcohol Tax Act and the Taxpayers Act, which in our view is dependent upon four major issues regarding the latter initiative. First, does the broad reach of the Taxpayers Act violate the single subject rule? Second, would the existing constitutional rules or the conflict provisions in Section 11 of the Taxpayers Act require the nullification of the Alcohol Tax Act? Third, would the Taxpayers Act be deemed a "revision" of the California Constitution? Fourth, would the Taxpayers Act, if adopted, be effective and operative from the beginning of the day of the general election, and thereby on its face nullify any concurrently adopted tax initiative not adopted pursuant to the act's specific vote requirements?

#### SINGLE SUBJECT RULE

In view of the possibility that the vote requirements of the Taxpayers Act, if effective from the beginning of Election Day, November 6, 1990, could retroactively and prospectively impact numerous and diverse measures (including the Alcohol Tax Act) and that other provisions of the Taxpayers Act could be construed to affect constitutional rules governing the resolution of substantive conflicts in one or more measures approved at the same election, we shall examine whether the Taxpayers Act is violative of the single subject rule.

Subdivision (d) of Section 8 of Article II of the California Constitution provides, as follows:

"(d) An initiative measure embracing more than one subject may not be submitted to the electors or have any effect."

A similar rule applies to legislative enactments and requires that a statute embrace but one subject, which must be expressed in its title, and, if a statute embraces a subject not expressed in its title, only the part not expressed is void (Sec. 9, Art. IV, Cal. Const.). The same principles relating to the single subject rule apply to both initiatives and legislative enactments (Harbor v. Deukmejian, 43 Cal. 3d 1078, 1098, citing Perry v. Jordan, 34 Cal. 2d 87). There is, however, no requirement that the subject of the initiative measure be

expressed in the title, as prepared by the Attorney General (Harbor v. Deukmejian, supra, p. 1098; subd. (d), Sec. 10, Art. II, Cal. Const.; Secs. 3502 and 3503, Elec. C.).

As applied to initiative measures, the single subject rule has the dual purpose of avoiding logrolling and voter confusion (Harbor v. Deukmejian, supra, at p. 1098). "Logrolling" has been described as the practice of aggregating the votes of those who favor parts of the initiative measure into a majority for the whole, even though it is possible that some or all of its provisions are not supported by a majority of the voters (Brosnahan v. Brown, 32 Cal. 3d 236, 279, dissenting opinion of Bird, C.J.).

In summarizing the holdings of prior cases involving the single subject rule, the California Supreme Court in Harbor stated that a measure complies with the single subject rule if its provisions are either functionally related to one another or are reasonably germane to one another or the objects of the enactment (Harbor v. Deukmejian, supra, at p. 1100).

By way of background, in Evans v. Superior Court, 215 Cal. 58, the California Supreme Court held that a legislative act that adopted the entire Probate Code in one enactment with a title declaring that it was an "act to revise and consolidate the law relating to probate ... to repeal certain provisions of law therein revised and consolidated and therein specified; and to establish a Probate Code" did not violate the single subject rule as applied to legislative enactments (Sec. 9, Art. IV, Cal. Const.; Evans v. Superior Court, supra, at p. 63). The court determined that the subjects referred to in the classification of laws included in the code carried into the title of the act and were germane to, and had a necessary or a natural connection with, probate law and procedure (Evans v. Superior Court, supra, at p. 64).

Among the principles applied by the court in reaching its determination was one which states that provisions governing projects so related and interdependent as to constitute a single scheme may be properly included within a single act, and one which establishes that a provision which conduces to the act, or which is auxiliary to and promotive of its main purpose, or has a necessary and natural connection with such purpose is germane within the rule (Evans v. Superior Court, supra, at pp. 63 and 64).

In more recent cases, the rules laid down in Evans v. Superior Court, supra, have been relied upon to uphold initiative measures challenged on the ground that they embraced more than one subject. Thus, in determining the applicability of those

principles to the initiative measure identified as Proposition 13 on the ballot for the June 6, 1978, direct primary election, the California Supreme Court noted that, while the measure had several collateral effects, the several elements of the measure were reasonably germane to, and functionally related in furtherance of, a common underlying purpose, which, in that case, was real property tax relief, and therefore met both the rule of germaneness and the more restrictive test of functional relationship (see Amador Valley Joint Union High School District v. State Board of Equalization, 22 Cal. 3d 208, at p. 230).<sup>1</sup> However, in so holding, the Amador court did not address the question of whether the single subject rule as applied to an initiative requires that a measure meet both the "reasonably germane" and "functionally related" tests.

Subsequently, the court determined that an initiative measure which enacted the Political Reform Act of 1974 (Proposition 9, June 4, 1974, direct primary election), and which combined provisions regulating various aspects of elections to public office, ballot measure petitions and elections, public officials' conflicts of interest, and activities of lobbyists did not violate the single subject requirement of subdivision (d) of Section 8 of Article II of the California Constitution (Fair Political Practices Com. v. Superior Court, 25 Cal. 3d 33, 37-43). The court rejected the contention that a more restrictive test should be applied in determining compliance with the single subject requirement applicable to initiatives than to the same requirement applicable to legislation and adhered to the reasonably germane test for both initiatives and legislation, finding no reason to hold that the people's reserved power of legislation is more limited than that granted to the Legislature (Fair Political Practices Com. v. Superior Court, supra, at p. 42).

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<sup>1</sup> Shortly before Amador was decided, a single subject challenge was made to another initiative measure. In that case, the Attorney General refused to prepare a title and summary for a proposed initiative on the ground that it violated the single subject rule. The California Supreme Court held that his duty in this regard was ministerial, and that he was not authorized by the California Constitution to refuse preparation of the title and summary without prior judicial authorization (Schmitz v. Younger, 21 Cal. 3d 90. A dissenting opinion by Justice Manuel suggested that the single subject rule should be applied more strictly to initiative measures than to legislative bills, and that the "functionally related" test was the appropriate standard by which to measure compliance of initiatives with the rule (Schmitz v. Younger, supra, at pp. 98-100).

More recently, the court held that the constitutional and statutory provisions of the initiative measure known as the Victims' Bill of Rights (Proposition 8, June 8, 1982, direct primary election), which included regulations applicable to restitution, safe schools, truth-in-evidence, bail, use of prior convictions, diminished capacity and insanity, punishment of habitual criminals, victims' statements, plea bargaining, sentencing, and mentally disordered sex offenders, were reasonably germane to each other and thus satisfied the requirement that initiative measures embrace a single subject (Brosnahan v. Brown, supra, at p. 253).

The court stated that an initiative measure would not violate the single subject requirement if, despite its varied collateral effects, all of its parts are reasonably germane to each other and to the general purpose or object of the initiative (Brosnahan v. Brown, supra, at p. 245).

The several facets of Proposition 8 were deemed to bear a common concern, general object, or general subject promoting the rights of actual or potential crime victims (Brosnahan v. Brown, supra, at p. 247). The court described the initiative measure as a reform aimed at certain features of the criminal justice system to protect and enhance the rights of crime victims, and stated that this goal was the readily discernible common thread which united all of the initiative's provisions in advancing its common purpose (Brosnahan v. Brown, supra). In so doing, the court rejected a contention that the provisions of an initiative measure must be interdependent or interlocking to meet the single subject test (Brosnahan v. Brown, supra, at p. 249). Thus, in summarizing its prior holdings, the Harbor court stated that "this court [in Brosnahan] rejected the claim that the single subject rule requires that a measure meet both the 'reasonably germane' and 'functionally related' tests, and held that either standard would satisfy the constitutional requirement" (Harbor v. Deukmejian, supra, at p. 1099).

Hence, an initiative measure complies with the single subject rule of subdivision (d) of Section 8 of Article II of the California Constitution if its provisions are either functionally related to one another or are reasonably germane to one another or the objects of the enactment (Harbor v. Deukmejian, supra, at p. 1100).

More recently, a court of appeal declared one initiative proposed for the November 8, 1988, general election ballot to be invalid in its entirety as violative of the single subject rule, but, against similar contentions, upheld the validity of a separate initiative measure proposed for the same ballot.

In California Trial Lawyers Assn. v. Eu, 200 Cal. App. 3d 351, the court issued a peremptory writ of mandate directing the Secretary of State and the registrar of voters to refrain from verifying signatures on qualifying petitions, certifying the initiative measure, or placing it on the ballot. The initiative, which would have established a system of no fault insurance for automobile accident injuries and set limits on attorney contingency fees, among other matters, contained a provision at pages 52 and 53 of a 120-page draft that would have protected from future restriction political contributions by insurance industry members, among others, and could have exempted contribution recipients from local conflict-of-interest rules (see California Trial Lawyers Assn. v. Eu, supra, at p. 356 and note 3 at p. 359).

The court held that this provision was neither functionally related to other provisions of the measure nor reasonably germane to the objects of the initiative, which was to "... rein in the constantly increasing premiums charged to California purchasers of liability insurance ..." (Id., at pp. 358 to 361, incl.). Moreover, the court held that subdivision (d) of Section 8 of Article II of the California Constitution precludes the submission to the voters of an initiative measure that violates its single subject limitation (Id., at p. 362). The court therefore issued the peremptory writ prohibiting the placement of the initiative measure on the statewide ballot.<sup>2</sup>

Subsequently, in Insurance Industry Initiative Campaign Committee v. Eu, 203 Cal. App. 3d 961, the same court of appeal denied a petition for a writ of mandate directing the Secretary of State to refrain from placing on the November 8, 1988, general election ballot a competing initiative measure that, among other things, would require a minimum specified percentage reduction in certain rates for good drivers from January 1, 1988, levels, would create the Office of Insurance Consumer Advocate, and would make applicable to insurance companies state statutes prohibiting discrimination, price fixing, and unfair practices.<sup>3</sup>

The court found no transgression of the single subject rule by two separate provisions, one of which removed statutory

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<sup>2</sup> The offending provision was deleted from the initiative, the petitions were recirculated, and the measure qualified, as amended, for the November 8, 1988, general election ballot (see Proposition 104).

<sup>3</sup> This initiative measure qualified for, and appeared on, the November 1988, general election ballot as Proposition 100.

limitations on banking institutions and authorized them to compete in the insurance industry and the other which restricted the regulation of attorneys' fees in insurance-related cases, among others (see Insurance Industry Initiative Campaign Committee v. Eu, supra, at pp. 965-966). The removal of restrictions on banks to sell insurance products was related to the general purpose of the initiative of moderating the cost of insurance to the consumer through increased competition, and the attorneys' fees provision was substantially related to the object of enhancing the access of consumers to competent legal counsel to pursue legitimate insurance claims against insurers who engage in unfair practices, as set forth in an express statement of purpose (Id., at pp. 965 and 967). Since both provisions satisfied the "reasonably germane" portion of the single subject rule, the court denied the petition for the writ.<sup>4</sup>

As previously discussed above, the Taxpayers Act purports to apply, on election day itself and in omnibus fashion, vote requirements to nullify any taxation initiative adopted concurrently but not in conformity with those vote requirements. Thus in the context of the single subject rule, the first problem raised by the Taxpayers Act is whether the act, in providing for the nullification of any initiative imposing a tax and not meeting the act's vote requirements, extends its reach to more than one subject.

Fundamentally, there is no precise method of determining what types of provisions in what initiatives would be voided by way of the Taxpayers Act's vote requirements. In particular, while affected initiatives may impose a tax, those initiatives may also deal with substantive matters apart from taxation. With regard to the Alcohol Tax Act, the act arguably deals with both the imposition of surcharges on alcoholic beverages, and with the establishment of new programs to address the many and costly effects on society of alcohol consumption.

Viewed most favorably for the proponents of the Taxpayers Act, it may be argued that the act's goal is to ensure that taxes, whether statewide or local, are adopted in accordance with what the voters deem to be a proper requisite vote of either the Legislature or the electorate and that the consequences of its language are germane to that goal. In this connection, it could

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<sup>4</sup> The court also stated that, because the initiative process had advanced to a point where preelection review was inappropriate, it would be well within its discretion to deny the petition for the writ on this ground alone, even though it considered the merits of the petition (see Insurance Industry Initiative Campaign Committee v. Eu, supra, note 2 at p. 964).

be argued that the express provisions of the Taxpayers Act are explicitly focused upon the procedural requirements for the adoption of new taxes or increases in existing taxes, and do not directly impinge upon other subjects.

That argument, however, ignores the attempted effect of Section 11 of the Taxpayers Act, which is to make measures on the November ballot that impose new taxes or increase existing taxes and do not meet the vote requirements of the Taxpayers Act void in their entirety, rather than voiding just those provisions that actually imposed taxes or increased existing taxes. In other words, the effect of Section 11 is potentially much broader than just the limited subject of the procedures for increasing taxes.

Thus, while the Taxpayers Act may be analogized to Proposition 13, and, hence, within the single subject rule, as discussed in Amador, supra, in reality, the Taxpayers Act is much broader in scope. In fact, the Taxpayers Act has an almost unlimited reach in that the disparity between the programmatic portions of measures that may be approved by the voters and made void in their entirety covers the entire expanse of human imagination. Viewed in a slightly different fashion, the effect of the Taxpayers Act is the same as a measure that contained a repeal of every measure on the ballot that contained a tax increase not approved by the requisite vote.

Moreover, the Taxpayers Act raises another problem of perhaps even greater significance in the context of the single subject rule. If Section 11 of the Taxpayers Act is given constitutional stature, in addition to dealing with the procedural requirements for the adoption of new taxes or increases in existing taxes, the Taxpayers Act (as discussed in more detail below under "Conflicts") would also affect the general constitutional rule in subdivision (b) of Section 10 of Article II of the California Constitution for determining how to resolve conflicts in different measures adopted at the same election. That change, we think, is totally unrelated to the subject of procedural requirements for the adoption of taxes.

That is, in the context of a measure that deals with the broad subject of procedural requirements for the adoption of taxes, we think any provision therein that proposes to modify the provisions of the California Constitution for resolving conflicts among different measures considered at the same election would be violative of the single subject rule. In that connection, we also think any such provision would necessarily have to be adopted in a separate measure which takes effect prior to the adoption of any measure intended to be affected thereby.

Accordingly, we think that a court would conclude that a measure that attempts to deal with all of the matters discussed above has no central unifying purpose, causes substantial voter confusion, and, therefore, violates the single subject rule. In that event, since the California Constitution provides that an initiative measure embracing more than one subject may not have any effect (subd. (d), Sec. 8, Art. II, Cal. Const.), the entire measure would not have any force or effect, and would not be valid.

#### CONFLICTS

Notwithstanding the conclusion reached above that the Taxpayers Act violates the single subject rule, since a court may determine otherwise, or in the alternative, since a court may decide to sever the offending provision (which is something no California court has ever done), we shall proceed to analyze the effect of each initiative should both be adopted.

At this point, it is necessary to determine whether the Alcohol Tax Act would impose, under the provisions of the Taxpayers Act, either a general or special tax. As revenues from the surcharge imposed by the Alcohol Tax Act would be placed in particular accounts in a special fund, to be expended for specified, limited purposes, we think the Alcohol Tax Act would, under the provisions of the Taxpayers Act, impose a special tax requiring a two-thirds vote for adoption. We will assume for purposes of analyzing the combined effect of the two initiatives should they both be adopted, that the Alcohol Tax Act would be adopted by only a simple majority of the voters, short of the two-thirds majority required by the Taxpayers Act.

The California Constitution provides in two separate articles that if the provisions of two or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail (subd. (b), Sec. 10, Art. II; Sec. 4, Art. XVIII, Cal. Const.). The first reference to the resolution of this potential conflict is made in the context of the initiative and referendum process and the second reference is made in the context of proposed constitutional amendments and constitutional revisions.

The rule providing for the measure receiving the highest affirmative vote to prevail in the event of a conflict, was first added to Section 1 of Article IV of the California Constitution in 1911, at the time that the right to the initiative and referendum was first created in the California Constitution (see former Sec. 1, Art. IV, Cal. Const.). This language remained in Section 1 of Article IV until the November 8, 1966, general election. At that election, this conflict rule was incorporated

into new subdivision (b) of Section 24 of Article IV of the California Constitution. The language change made by the addition of subdivision (b) was classified by the California Constitution Revision Commission as containing only modest changes in phraseology and no change in meaning (Proposed Revision of the California Constitution, February 1966, California Constitution Revision Commission, p. 47). A subsequent amendment and renumbering of subdivision (b) of Section 24 of Article IV, resulted in the language of that former subdivision being set forth in identical text in current subdivision (b) of Section 10 of Article II (June 8, 1976, direct primary election). Thus, there has been no attempt to change the meaning of the language in issue since its original introduction into the California Constitution in 1911.

As to the conflict language contained in Section 4 of Article XVIII, that language was added to that article apparently to clarify that the conflict rule applies to amendments proposed by the Legislature (General Election Ballot Pamphlet, November 3, 1970, p. 27; see also Transcripts of June 4, 1964, meeting of the California Constitution Revision Commission, at pp. 57-66).

The courts have held that the rule set out in subdivision (b) of Section 10 of Article II of the California Constitution should only be invoked if initiative provisions cannot be harmonized, and the courts are required to try to give statutes adopted by the voters "concurrent operation and effect" (Estate of Gibson, 139 Cal. App. 3d 733, 736). Once an irreconcilable conflict has been established, a determination must be made as to whether those provisions to be voided are severable from the remaining portions of the affected initiative (Santa Barbara Sch. Dist. v. Superior Court, 13 Cal. 3d 315, 330).

Apart from the foregoing authority, Section 11 of the Taxpayers Act proposes to resolve any conflicts with other initiatives as follows:

"SECTION 11. Conflicting Law. Pursuant to Article II, Sec. 10(b) of the California Constitution, if this measure and another measure appear on the same ballot and conflict, and this measure receives more affirmative votes than such other measure, this measure shall become effective and control in its entirety and said other measure shall be null and void and without effect. If the constitutional amendments contained in this measure conflict with the statutory provisions of another measure on this ballot, the constitutional provisions of this measure shall become effective

and control in their entirety and said other measure shall be null and void irrespective of the margins of approval. This initiative is inconsistent with any other initiative on the same ballot that enacts any tax, that employs a method of computation, or that contains a rate not authorized by this measure, and any such other measure shall be null and void and without effect."

As previously discussed above, Section 11 of the Taxpayers Act is not a provision that would be added to the California Constitution, but is a "plus" section in the measure. As such, while the matter is far from being clear, we do not think it is a constitutional provision that is controlling over conflicting constitutional provisions, such as subdivision (b) of Section 10 of Article II, which provides that the conflicting provisions of the measure, as opposed to the entire measure, receiving the highest number of votes prevails. Thus, in this case, if the Alcohol Tax Act is approved by the voters with fewer votes than the Taxpayers Act, the provisions of the Alcohol Tax Act, if any, not in conflict with the Taxpayers Act, and severable from the other portions of the measure, would still be given effect (see Santa Barbara Sch. Dist. v. Superior Court, supra, pp. 330-332; see also Taxpayers to Limit Campaign Spending v. Fair Pol. Practices Com., 212 Cal. 3d 991, 1011-1012, respondent's petition for review granted by California Supreme Court, 12/7/89).

As to the severability of remaining sections of the Alcohol Tax Act, the California Supreme Court has established a three-step test applicable to both initiative measures and legislative enactments as follows: First, is the language of the statute mechanically severable? Second, can the severed sections be applied independently? Third, would the severed portions have been adopted by the voters if they had known in advance that portions of the initiative would be nullified (Santa Barbara Sch. Dist. v. Superior Court, supra, 330-332)?

In that regard, we think there is nothing in the Alcohol Tax Act that is severable from the tax provisions. Generally, the Alcohol Tax Act does two things: it provides for the imposition of taxes and the manner in which the revenues from those taxes are to be spent. Using the tests of severability established by the courts, we think that the severing of the portion of the Alcohol Tax Act providing for the expenditure of funds does not make any sense if there are no funds to expend.

With regard to the two initiatives in question, a conflict arguably exists between provisions of the Taxpayers Act adding a new Section 3 to Article XIII A of the California

Constitution, and provisions of the Alcohol Tax Act adding a new Section 7 to Article XIII A. While the new Section 3 of Article XIII A proposed by the Taxpayers Act would impose the majority and two-thirds vote requirements for the adoption by initiative of statewide general and special taxes, respectively, and would prohibit the enactment of special taxes on or after November 6, 1990, with respect to tangible personal property other than ad valorem property taxes, the new Section 7 of Article XIII, as proposed by the Alcohol Tax Act, would provide, without disclaiming the effect of any contrary provisions, that the act shall not be subject to Section 3 of that article. Consequently, read together, the two sections arguably are in conflict.

Upon a determination that the two measures are substantively in conflict, the question of which section would prevail in the case of concurrent adoption would depend upon which initiative received a greater number of votes (subd. (b), Sec. 10, Art. II, Cal. Const.). Thus, should the Taxpayers Act receive a greater number of votes, the exemption provided by Section 7 of the Alcohol Tax Act would be nullified, and the adoption of at least the tax portions of the Alcohol Tax Act would be subject to the two-thirds vote requirement of the Taxpayers Act if the requirements of the Taxpayers Act are given effect as of November 6, 1990 (see discussion of Retroactivity below), and would thereby be void if the requisite number of votes is not achieved.

In addition to the conflict in the two measures with respect to the vote requirement discussed above, the two measures may be in conflict with respect to other provisions. Section 7 of Article XIII A of the California Constitution, as proposed to be added by the Alcohol Tax Act, would provide that the Alcohol Tax Act would not be subject to Section 3 of that article. Subdivision (d) of Section 3 of that article, proposed by the Taxpayers Act, would prohibit the enactment of special taxes on or after November 6, 1990, with respect to tangible personal property other than ad valorem property taxes. While the meaning of the latter provision is somewhat unclear, these two provisions may be in conflict if a court determines that a tax "with respect to tangible personal property" includes an excise tax on the sale of alcoholic beverages as is the surcharge proposed by the Alcohol Tax Act.

Thus, even in the event that the Alcohol Tax Act secures the requisite two-thirds vote, but that vote is less than the votes secured for the Taxpayers Act, a conflict may exist, depending on the construction of the language in the Taxpayers Act as to the type of tax it prohibits, that would cause the tax portions of the Alcohol Tax Act to be held to be void and prohibited by new subdivision (d) of Section 3 of Article XIII A

if the requirements of the Taxpayers Act are given effect as of November 6, 1990 (see discussion of Retroactivity below). On the other hand, if the Alcohol Tax Act receives the requisite two-thirds vote and secures more votes than the Taxpayers Act, then we think Section 7 of Article XIII A of the California Constitution, proposed to be added by the Alcohol Tax Act, would prevail over the new provisions of subdivision (d) of Section 3 of that article, proposed by the Taxpayers Act, and thus the provisions imposing a surcharge on alcoholic beverages proposed by the Alcohol Tax Act would take effect.

Alternatively, the courts may attempt to harmonize the sections by construing the Alcohol Tax Act's exemption from Section 3 of Article XIII A as a specific exception, however inartful, to the Taxpayers Act's voting requirements for the adoption of statewide taxes. Fundamentally, the various provisions of the California Constitution are to be harmonized with each other rather than be construed to conflict (Board of Supervisors of San Diego Co. v. Loneragan, 27 Cal. 3d 855, 866; Penziner v. West American Finance Co., 10 Cal. 2d 160).

Moreover, principles of statutory construction, generally applicable to constitutions (Hyatt v. Allen, 54 Cal. 353, 356; Hammond v. McDonald, 49 Cal. App. 2d 671, 681), also indicate that the exemption provided by the Alcohol Tax Act may be construed as a specific exemption, rather than a conflicting rival provision. In particular, it is an axiom of statutory construction that a particular or specific provision will take precedence over a conflicting general provision (Sec. 1859, C.C.P.; Agricultural Labor Relations Bd. v. Superior Court, 16 Cal. 3d 392, 420; Fleming v. Kent, 129 Cal. App. 3d 887, 891). Therefore, as in the case of two apparently conflicting statutory provisions, one specific and one general, the two proposed constitutional provisions in question could be respectively interpreted as a specific exception and a general rule. That interpretation may be further supported by virtue of the fact that the Taxpayers Act is intended to operate retroactively as of the day of the election, November 6, 1990, while the Alcohol Tax Act would commence to operate as of the day after the election, November 7, 1990. Thus, on November 6, 1990, the new Section 3 of Article XIII A proposed by the Taxpayers Act would commence to operate, and the next day, new Section 7 of Article XIII A proposed by the Alcohol Tax Act, would make the new Section 3 inapplicable only with respect to the provisions of the Alcohol Tax Act.

As discussed earlier, the courts will endeavor to harmonize and give effect to both measures (Taxpayers to Limit Campaign Spending v. Fair Pol. Practices Com., supra). Thus, if both measures are approved by the voters and the Alcohol Tax Act

receives more votes, or, in the alternative, if both measures are approved by the voters and the Taxpayers Act receives more votes, but the court determines that the two measures are not substantively in conflict, because the measures may be harmonized by treating the addition of Section 7 to Article XIII A as an exception to Section 3 of Article XIII A, as added by the Taxpayers Act, then in either event, the Alcohol Tax Act would be given effect. In that case, the Taxpayers Act generally would be effective as to any other measure that did not receive more votes and measures proposed in the future.

#### AMENDMENT vs. REVISION

In addition to the policy reasons mentioned by the courts to support withholding an initiative measure from the ballot that violates the single subject rule (see, Brosnahan v. Eu, 31 Cal. 3d 1, 6-8, concurring and dissenting opinion of Mosk, J.), there also exists the additional consideration of the constitutional limitation on the power of the electors to work a revision of the California Constitution by initiative. That is, the California Constitution permits the initiative power to be exercised only for the purpose of amending the Constitution (Sec. 3, Art. XVIII, Cal. Const.). A proposed initiative measure which, because of the impact of its provisions, works a revision of the Constitution, is subject to being withheld from the ballot by court order (see McFadden v. Jordan, 32 Cal. 2d 330).

Section 1 of Article XVIII of the California Constitution permits the Legislature, by rollcall vote entered in the journal, two-thirds of the membership in each house concurring, to propose an amendment or revision of the Constitution. In contrast, Section 3 of Article XVIII of the California Constitution omits the term "revision" and provides that electors may only "amend" the Constitution by initiative.

The definitions of "amendment" and "revision," as used in Article XVIII of the California Constitution, are set forth in the analysis of Proposition 7 on the November 6, 1962, general election ballot. According to that analysis, "amendments" are specific and limited changes in the Constitution, while "revisions" are broad changes in all or a substantial part thereof (Prop. 7 on the November 6, 1962, ballot). Not only are these two words distinct by definition, but the distinction has become a matter of practical importance; because, historically, the Constitution has prescribed a different procedure for the implementation of each.

The Constitution is an instrument of a "permanent and abiding nature" (McFadden v. Jordan, supra, at p. 333), and the provisions for its "revision" have always reflected the will of

the people in maintaining the underlying principles and permanent nature of the document. Prior to 1962, proposals for constitutional "revisions" could only be presented to the voters by a constitutional convention convened by the Legislature for that purpose (see Sec. 2, Art. XVIII, Cal. Const.). In contrast, "amendments" could be effected by an initiative from the people or a proposal by the Legislature.

At the November 6, 1962, general election, Section 1 of Article XVIII was amended to authorize the Legislature to propose and submit to the people a "revision" of all or part of the California Constitution in the same manner as "amendments" to the Constitution. However, the initiative power of the people was not expanded when the Legislature's power to propose changes in the Constitution was increased in 1962.

At the 1970 general election, when Section 3 of Article XVIII of the California Constitution was added, reference to "amending" the Constitution by initiative was included "to assure the Article mentions all methods for changing the Constitution" (Proposed Revision of the California Constitution, California Constitution Revision Commission 1966-1971, Comment, 110). Again, the initiative power was not expanded to include "revisions," but remains in principle as it did when first added to the Constitution in 1911.

As previously discussed above, the stature of Section 11 of the Taxpayers Act, as a constitutional or statutory provision, is far from being clear. While we think Section 11 of the Taxpayers Act would be viewed as something akin to a statute, Section 11 of the Taxpayers Act nevertheless would propose to resolve any conflicts with other initiatives and legislatively proposed constitutional amendments in such a way as to, in effect, exempt, in part, the Taxpayers Act from the constitutional rule providing for the measure receiving the highest affirmative vote to prevail only with respect to the substantive conflicting provisions of the measure (subd. (b), Sec. 10, Art. II; Sec. 4, Art. XVIII, Cal. Const.).

In view of the possibility that Section 11 of the Taxpayers Act may be characterized as a constitutional provision and in view of the potential impact those provisions may have on various parts of the California Constitution, we think the courts may view Section 11 of the Taxpayers Act, together with the other provisions of the Taxpayers Act relating to procedural requirements and limitations for the imposition of taxes, as constituting a significant qualitative revision of the California Constitution, and not merely an amendment.

### RETROACTIVITY

With regard to the effective date of the Taxpayers Act, subdivision (a) of Section 10 of Article II of the California Constitution provides that an initiative approved by the voters "takes effect the day after the election unless the measure provides otherwise." While invariably the date provided otherwise is later, we see no constitutional prohibition to the general proposition that initiatives may be made retroactive in the sense of operating on facts that occur before the date of adoption, so long as vested rights are not impaired (see Hopkins v. Anderson, 218 Cal. 62, 67; Kenney v. Wolff, 102 Cal. App. 2d 132).

The initiative is the power of the electors to propose statutes and amendments to the California Constitution and to adopt or reject them (subd. (a), Sec. 8, Art. II; Sec. 3, Art. XVIII, Cal. Const.). This power is the exercise by the people of a power reserved to them and is not the exercise of a power granted to them (Blotter v. Farrell, 42 Cal. 2d 804, 809). As discussed above, if an initiative measure is approved by a majority of votes thereon, it takes effect the day after the election unless the measure provides otherwise (subd. (c), Sec. 8, and subd. (a), Sec. 10, Art. II, Cal. Const.; Sec. 4, Art. XVIII, Cal. Const.).

Thus, on November 6, 1990, the voters would have the constitutional power to approve by a majority of votes thereon a statutory initiative to impose taxes as proposed by the Alcohol Tax Act. However, the Taxpayer Act would require that the imposition of any special tax by a statewide initiative be subject to approval by a two-thirds majority of the voters. By having the Taxpayers Act be operative as to the validity of measures to be considered by the voters on November 6, 1990, we think the Taxpayers Act may operate to impair the right of the voters on November 6, 1990, to propose statutes by initiative and to approve them by a majority vote.

### SUMMARY

We are of the opinion that the Taxpayers Act is constitutionally invalid because it violates the single subject rule and also may constitute a revision, and not amendment, of the California Constitution.

Moreover, we think that giving effect to the proposed effective date of the Taxpayers Act, November 6, 1990, the day of the 1990 general election, may operate to impair the right of the voters on that day to propose statutes by initiative and to approve them by a majority vote.

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If, however, the Taxpayers Act is determined to be valid, at least in part, and is made retroactive to apply to measures adopted at the November 6, 1990, election and, both the Taxpayers Act and the Alcohol Tax Act are approved by the voters, and the Alcohol Tax Act receives more votes than the Taxpayers Act, we think the Alcohol Tax Act would prevail. Finally, if the Taxpayers Act receives more votes than the Alcohol Tax Act, we think there is a basis for a court to find that the two measures are not substantively in conflict and that the Taxpayers Act does not apply to the Alcohol Tax Act.

Very truly yours,

Bion M. Gregory  
Legislative Counsel

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DAW:sjm

**APPENDIX D**

**SUMMARY OF AUGUST 15 HEARING TESTIMONY  
RELATING TO PROPOSITION 136**

Prepared by Leslie A. McFadden  
Senate Local Government Committee

## Proposition 136 -- Taxpayers Right to Vote

Peter Schaafsma from the Legislative Analyst's Office summarized the key provisions of Proposition 136 for Committee members. He stated that the measure does the following:

- Places a definition of general taxes and special taxes into the California Constitution on voter approval requirements for both state and local taxes,
- Requires special taxes on personal property be imposed on a value basis (rather than a per-unit basis) and limits the tax rate to one percent,
- Requires all new or increased state taxes be imposed by a two-thirds vote,
- Requires special taxes enacted by initiative to receive a two-thirds vote,
- Requires general tax increases to receive a majority vote, including the tax increases of charter law cities, and
- Suspends the voting requirements to raise money for disaster relief.

Schaafsma noted that the measure's language on how conflicts between itself and other measures on the ballot are resolved differs from current provisions in the Constitution. Proposition 136 states that it invalidates all provisions of a conflicting constitutional measure if it receives fewer votes, rather than only the conflicting provisions of another measure. Also, a conflicting statutory measure would be completely invalid regardless of the number of votes cast. Proposition 136 also asserts that it conflicts with any measure that enacts any tax or imposes a rate it does not authorize.

Prospective only. Assemblyman Bob Frazee queried whether the proposed measure has any retroactive provisions which would affect any locally adopted taxes, such as San Diego County's two sales tax measures. Schaafsma replied that Proposition 136 would not effect San Diego's tax measures because it applies to measures passed on or after November 6, 1990.

Imposed vs. levied? Assemblyman Sam Farr pondered whether there is a meaningful difference between Proposition 136's definition of general taxes and the definition already in statute from Proposition 62. Proposition 136 defines general taxes as taxes "levied for the general fund to be utilized for general governmental purposes" whereas current law defines general taxes as "taxes imposed for general governmental purposes. Schaafsma replied that he saw no meaningful

difference, but thought the drafters of Proposition 136 might want to comment. **Dave Doerr** from the California Taxpayers' Association added later that the terms to him are interchangeable.

In response to questions from Committee members, **Lonnie Mathis** from the Department of Finance replied that the Department had not taken a position on Proposition 136 or any of the other initiatives being discussed at the hearing and had nothing to add.

**Encourages general taxation or more fees?** **Larry McCarthy** from the California Taxpayers' Association noted that Cal-Tax strongly supports Proposition 136. He commented in general about the manipulation of public finance through the initiative process from earmarking and other budget constraints. But he said that Proposition 136 is different because it encourages general taxation without strings and gives elected officials greater capacity to decide where tax dollars should be allocated.

**Assemblyman Steve Peace** responded that Proposition 136 may put more power in the hands of the Legislature. He said it reinforces the power and opportunity of the Legislature to act responsibly to raise taxes if necessary, rather than "handing off the responsibility some place else."

But **Assemblyman Farr** disagreed. He said the only easy revenue source left for local governments to carry on services will be fees. To him, "we're going to just meter everything that government does in California."

**Greater local flexibility?** **Dave Doerr** from Cal-Tax made the point that Proposition 136 gives local governments more flexibility in two ways. First, Cal-Tax reads Proposition 13 to prohibit taxes by initiative, whereas Proposition 136 permits voters to raise taxes by initiative. But he acknowledged that this issue is now before the Supreme Court. He also noted that under Proposition 136, local governments can raise a tax they are authorized to provide without a vote when there is an emergency the Governor declares.

**Fred Main** from the California Chamber of Commerce echoed the Chamber's support for Proposition 136 and added that there is historical precedent for the measure's two-thirds vote requirement. It is not a new and different concept.

**Jim Harrington** from the League of California Cities strongly disagreed with Doerr's assessment. To Harrington, what Proposition 136 does is "take us [cities] backward a great deal." While there has been some debate over whether Proposition 62 applies to the 84 charter law cities, Proposition 136 clearly applies to them. He thinks the practical effect of the

measure will be to shift the burden of taxation from resident voters to businesses. To him, voters will not vote to tax themselves, but they will vote to tax business and nonresidents.

He also described how the decisionmaking process on budget matters will become more cumbersome if Proposition 136 passes. Even if elected officials can agree on some revenue measures to balance the budget and even if the amount is only a slight increase, they must await the outcome of a future election.

**Lenny Goldberg** from the California Tax Reform Association also spoke against Proposition 136. He said cities will no longer be able to balance their budgets with utility user taxes, hotel taxes, or business license taxes without a vote of the people. To him, the initiative overall takes away "any little bit of flexibility left" for cities, counties, and special districts.