Analysis of ACA 53 and Proposed Jarvis IV Initiative

Assembly Revenue and Taxation Committee

Senate Office of Research

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ANALYSIS OF ACA 53 AND PROPOSED JARVIS IV INITIATIVE

Prepared for the California Legislature

by

David R. Doerr
Chief Consultant
Assembly Revenue and Taxation Committee

and

Martin Helmke
Principal Financial Consultant
Senate Office of Research

June 1984
ANALYSIS OF ACA 53

AND

PROPOSED JARVIS IV INITIATIVE

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This document may be retrieved from the Legislative Counsel Host Computer by the names: "Jarvis IVa" and "Jarvis IVb"
PREFACE

This report has been prepared at the request of Senator David Roberti, President pro Tempore of the Senate, and Assemblyman Thomas M. Hannigan, Chair of the Assembly Revenue and Taxation Committee, to provide the Members of the Legislature and other readers an understanding of the provisions and ramifications of ACA 53 (Johnson) and the proposed Jarvis IV initiative.

ACA 53 is virtually identical to the proposed Jarvis IV initiative which will be on the November 1984 California ballot; so, the explanation and analysis of ACA 53 in this report would be equally valid as an explanation and analysis of that proposition.

The report is limited in certain respects: Because of the ambiguities in the measure, it is impossible to provide definitive conclusions, in all cases, on just what the effect of the measure will be. Also, data do not exist to permit an estimate of the fiscal effect of each of the provisions of the measure.

Further, it is impossible to specify what impact this measure will have on local governments' ability to continue to provide services at acceptable levels to the public. The fiscal impact on local government is not uniform. Some jurisdictions will have a significant reduction in property tax revenues; for others, the impact will be more modest. Further, local governments are so diverse that it is impossible to predict how they will react to a loss of revenue.

The purpose of this report is to provide an explanation of the provisions of the measure and an analysis of what it will do. Where there are problems or ambiguities, we feel that it is incumbent on us to point them out. It is not the purpose of this report to take a position either for or against the measure.

A number of persons have provided information and advice. We would like to acknowledge the help of Ellen Worcester and Julie Loewy of the Assembly Revenue and Taxation Committee. We thank Robert Gustafson of the Board of Equalization, Steven Olsen and Peter Schaafisma of the Legislative Analyst's Office and Richard Simpson, Executive Vice-President of the California Taxpayers Association, for reviewing a draft of this report, and Jan Yockey for her dedication in putting the pieces together. The authors, of course, are responsible for the contents.
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SUMMARY OF ACA 53 AND JARVIS IV INITIATIVE
SUMMARY OF ACA 53 AND JARVIS IV INITIATIVE

ACA 53 (Johnson), which is essentially identical to the proposed Jarvis IV Initiative on the November ballot, is an omnibus proposal which revises many of the provisions of Proposition 13 of June 1978, and establishes new restrictions on the ability of state and local governments to use fees to fund public services.

The following is a brief overview of the proposal; many ramifications are discussed in the body of the analysis.

Rollback to 1975 Values  Proposition 13, as interpreted by the courts, rolled back property values to their 1975 levels and allowed for three annual adjustments of 2% up to 1978. This measure eliminates the three 2% adjustments, and requires refunds to be paid (with 13% interest). Somewhat over half of all property taxpayers -- those with the lowest assessment base -- would have their current property taxes reduced, while most other taxpayers would face increases.

Property taxes will increase for some taxpayers because the rollback of the 2% factor will reduce the assessed values upon which the tax rates for bonded debt are levied. In order to generate the revenue sufficient to meet bond payments, debt rates (those levied in excess of the basic 1% rate) will have to be increased. Thus, taxpayers who do not benefit from the 2% rollback not only won't get the benefit of assessed value reduction but will have to pay more because of the debt rate increase.

Of the property tax relief provided by this provision, most will go to income-producing property. Homeowners account for less than 35% of property tax collections.

Non-Ad Valorem Taxes Included in 1% Limit  Non-ad valorem property taxes are to be included in the 1% property tax limit. As the present property tax is almost universally at 1%, there is no room for these additional rates and they will probably become invalid, despite the fact that some have been approved by a two-thirds vote of the community.

Fees  This proposal contains a number of restrictions on the ability of government to impose fees. Fees may be imposed only for the direct costs of services or benefits provided, or to pay for the direct cost of a regulatory activity. Governments are prohibited from using proceeds of fees to pay for employee pension liabilities.

Local governments must obtain a two-thirds vote of the people to impose a new fee or to increase fees more than the increase in the CPI. This includes fees paid for enterprise activities, such as electricity, water, transit, hospital care, etc.
At the state level, new fees or increases in fees greater than the increase in the CPI must be imposed by a two-thirds vote of the Legislature.

These provisions are ambiguous in many respects and limit government's ability to set fees which cover the actual cost of providing services.

Debt Rates Current law, as clarified by the Carman and Goodman court decisions, provides that voter-approved retirement systems, and payments to meet state water plan contract requirements, may be funded through add-on property tax rates. Also, bonds which were approved by the voters before Proposition 13 but have not yet been issued may be funded through add-on rates.

This proposal narrows the definition of add-on rates to bonded indebtedness. It appears to prohibit add-on rates for voter-approved but as yet unissued bonds, for voter approved retirement systems and for payments for state water project contracts.

Local Taxing Authority Current law provides local governments with limited taxing authority. "Special" taxes can only be levied by a two-thirds vote of the people. Under the Supreme Court's Farrell decision, local governments (cities mainly) have the authority to levy several specific "general" taxes, primarily business license and utility user taxes, by a vote of the council or governing board.

This measure requires any local tax measure to be approved by a two-thirds vote of the people, retroactive to August 15, 1983. However, because of an ambiguity in this proposal, some have suggested that a two-thirds popular vote may not be required for local taxes which are enacted or authorized by a two-thirds legislative vote.

State Taxing Authority Present law requires a two-thirds legislative vote for any measure enacted for the purpose of increasing revenues.

This measure would require a two-thirds legislative vote for any change in any tax which increases the amount of any tax levied upon any taxpayer, retroactive to August 15, 1983.

Because a state tax reduction increases the amount of federal income tax levied on a taxpayer (due to reduced deductions for state taxes), it may be that this language could be interpreted to require most tax reduction measures to be subject to a two-thirds vote.

Special Assessments This proposal provides that assessments may only be used to pay for local capital improvements; may be levied only on land; and must only be levied for the "direct and special benefits to the land" upon which they are levied. It
would thus invalidate some current local assessments for fire and flood protection and other services. An assessment in excess of these limits would be considered a tax, requiring a two-thirds popular or legislative vote, and may be subject to a refund (with 13% interest).

**Property Valuation Standards** Presently, Proposition 13 sets the assessed value of practically all property at the value when acquired or constructed (or the 1975 value) plus 2% per year after the "base year." This measure modifies that standard by substituting "purchase price" and "direct cost of any new construction" for the "market value" standards which property appraisers have historically used.

This measure also contains language relating to the valuation of single-family owner-occupied homes. There is no agreement as to what this provision means. A similar provision would also apply to nonprofit golf courses.

**Intrafamily Transfers** Proposition 13 prohibits reassessments except for new construction and changes in ownership. Presently, interspousal transfers and some transfers to minors are exempt from reassessment when a change of ownership occurs. This measure expands the exemption to include most family members (except cousins, nieces and nephews), and to guardians or trustees of family members. This exemption would apply to all real property, including family businesses and corporations.

**Fiscal Effect** It is impossible to estimate the fiscal effect of this measure with any degree of accuracy. It will depend on how the ambiguous provisions are resolved.

The property tax reduction provisions of this measure will reduce property tax revenues in 1985-86 by an amount in the $1.8 to $2.0 billion range.

**Economic Effect** A number of the State's principal business organizations have indicated that this proposal will have an adverse effect on the state's business climate, due principally to the restrictions on the use of fees for enterprise activities, the curtailment of the use of previously voted but unissued bonds and the restrictions on the payment of state water contract payments out of the property tax.
FISCAL SUMMARY
FISCAL SUMMARY

State:

A. Increase in personal income tax (due to interaction with property tax).

B. Increased cost of school apportionments to make up for loss of property tax revenue of school districts.

Local:

A. REDUCTIONS IN PROPERTY TAX REVENUE

1. One time credit or refund for certain property taxpayers. - $1,325*

2. On-going assessed value reductions for certain taxpayers. - 65

3. Repeal of city and county tax rates for indebtedness overrides (other than for G.O. Bonds). - 60

4. Possible repeal of special district rates for indebtedness for State Water Contracts. - 60

5. Reduction in value from exemption of intrafamily transfers.** - 10 to 175

6. Reduction in value when new construction is made on 1975 base-year property, and abandonment of full cash value appraisals. Unknown loss

7. Reduction in value from abandonment of full-cash-value appraisals of changes of ownership. - 25

8. Reduction in revenue from repeal of non-ad valorem property taxes. - 300

SUBTOTAL - $1,845 to $2,010

Plus an unknown additional amount

*The Board of Equalization is believed to be reestimating this number to the $1.7 billion range. However, we have no confirmation at this writing.

**If retrospective, loss could range from $50 million to $175 million if not retrospective, the range would be $10 to $35 million.
B. INCREASES IN PROPERTY TAX REVENUE

Increase in bond property tax rates (in excess of 1% limit) of virtually all taxpayers to make up for reducing assessed value for some taxpayers. + $215 to $240

C. DECREASES IN FEES DUE TO REDEFINITION

Reduction in existing fees to remove pension benefits and indirect costs - $700 to $800

D. INCREASES IN OTHER UNSPECIFIED TAXES

For government units levying fees only, potential increase in taxes at an unknown rate to cover pension costs and fees in excess of the cost of providing the service. Unknown gain

E. DECREASES IN NEWLY LEVIED TAXES AND FEES

Reduction in revenue from taxes imposed after August 15, 1983, and any change in fees in excess of CPI imposed after August 15, 1983. Unknown loss

F. INCREASED COSTS FOR LOCAL GOVERNMENT

1. Increase in costs to pay for various local elections. Unknown costs

2. Increase in costs of tax administration to implement changes required by this proposal. Unknown costs

GRAND TOTAL - $2,330 to $2,570

Plus an unknown additional amount
DETAILED ANALYSIS
I. INCLUDES NON-AD VALOREM PROPERTY TAXES IN 1% LIMIT

Text of Proposal:

Page 3, Lines 6-12 of ACA 53*, "Article XIII A, Section 1 (a): The maximum amount of any ad valorem tax on real property and any other tax on, or based upon the ownership of, real property shall not exceed 1 percent of the full cash value of such real property. The 1 percent tax shall be collected by the counties and apportioned according to law to the districts within the counties."

*All References are to ACA 53 (Johnson) as introduced. See Appendix for actual text with underscore and strikeout.

A. Current Law

Current law limits the amount of any "ad valorem" tax (a tax based on value) on real property to a maximum of 1% of full cash value (aside from tax rates for voter-approved debt). However, taxes which are levied on real property but which are not based on the value of property are not subject to the 1% limit.

B. Proposal

This proposal would include for the first time non-ad valorem property taxes within the 1% limit by adding "and any other tax on or based upon the ownership of real property." (ACA 53 contains commas surrounding "or based upon the ownership of"; the Jarvis IV proposition on the November ballot does not.)

C. Purpose

Since the passage of Proposition 13, some jurisdictions have levied non-ad valorem taxes on frontage, square footage, and acreage, or based on ownership (a parcel tax). The purpose of this provision is to eliminate this type of taxation.

D. Analysis

1. How the Limitation Works -- Since the ad valorem property tax now "occupies" the entire 1% limit (in practically all cases), there is no room within the limit for any additional taxes, ad valorem or otherwise. Thus non-ad valorem taxes which suddenly become subject to the 1% limit because of this proposal would probably be effectively invalidated by this provision (but see 5. below.)
2. Competition Among Jurisdictions -- The 1% ad valorem tax is levied by the county on a countywide basis, and allocated among jurisdictions based on existing statutes. There is currently a provision which authorizes a jurisdiction to reduce its property tax if it wishes to do so by effectively reducing its portion of the 1% rate. Under the proposal, it would be possible for another jurisdiction to "squeeze in" a non-ad valorem tax to fill the gap; but, it is not clear how this might be administered.

3. Jurisdictions Levying Non-Ad Valorem Taxes -- A recent Cal-Tax study of local taxes indicates that very few non-ad valorem property taxes have been levied by cities and counties, though a number have been levied by special districts. Counties and school districts need a two-thirds vote of the people to enact such a tax, and very few have succeeded in levying them. Cities, under the Farrell decision, are in a better position to levy these taxes since it only requires a vote of the city council. Even so, these taxes are seldom levied.

Atherton and Belvedere have levied such taxes by a vote of the people, and Ross, Hillsborough and El Cerrito have levied them by a city council vote. All of these taxes would be invalidated by the new limitation, even if they received a two-thirds popular vote. A few school districts have levied such taxes by a two-thirds popular vote.

4. Taxes v. Assessments -- The limitation refers specifically to "taxes"; assessments, which are levied to cover the benefit to property served by public facilities, would not fall under the limit. Many special districts and some cities levy non-ad valorem charges on property. It is not known how many of these would be invalided by the limitation, since the proposal also contains a new definition of what constitutes an assessment (see Section II).

5. Ambiguities -- Where the combined ad valorem and non-ad valorem taxes exceed the 1% limit, which would be reduced, the ad valorem or the non-ad valorem tax? Who would decide? How would it be done? And what would be the impact on other jurisdictions presently competing for the 1% tax?
II. SPECIAL ASSESSMENTS

Text of Proposal:

Page 7, Lines 13-20 of ACA 53, "Article XIII A, Section 4.5 (a): As used in this article, the term 'tax' means any levy or charge, however labeled or structured, including, but not limited to, any levy for the purpose of paying pension liabilities, made by the state, any local governmental entity, or any agency or instrumentality of either the state or a local governmental entity which does not constitute a fee, an assessment or a fine, as defined in subdivision (b)."

Page 7, Lines 34-40 and Page 8, Lines 1-7, "Article XIII A, Section 4.5 (b) (2): 'Assessment' means a charge which is levied upon particular real property within a limited area for the payment of the cost of a local capital improvement to land which directly and specially benefits particular real property, and which meets all of the following criteria:

(A) It is levied exclusively on land.
(B) It is based wholly on and limited in amount to direct and special benefits to the land upon which it is levied.
(C) It creates no personal liability for the person whose land is assessed.
(D) It is limited both as to time and locality by the duration and scope of application of the capital improvement."

Page 8, Lines 11-23, "Article XIII A, Section 4.5 (b) (4): The excess of any purported fee imposed over the direct costs of the service or direct benefit conferred or provided to fee payers or the direct costs of the regulatory program for which the fee is charged, shall constitute a tax. The excess of any purported assessment levied over the costs of the capital improvement for which the assessment is levied, shall constitute a tax. If any portion of a purported fee or purported assessment constitutes a tax and such tax has not been validly imposed, any person who paid the fee or assessment shall be entitled to receive from the entity imposing the fee or assessment a refund of that portion constituting a tax, plus 13-percent interest from the date of payment."

A. Current Law

Current law (Article XIII A of the Constitution) contains only one reference to "assessments," in connection with their
authorization to pay for the interest and redemption charges on previously voted indebtedness. The Constitution elsewhere provides for majority protest proceedings with respect to assessments by charter cities and counties.

B. Proposal

This proposal places a definition of "assessments" in Article XIII A:

1. Assessments are limited to the cost of capital improvements to land.
2. The charge must be on land only.
3. The benefit must relate to the specific property.
4. The assessment must not create a personal liability on the owner.

The proposal also provides that any excess revenue over the costs of the capital improvement to land shall be considered a tax, and any such tax which is not validly imposed must be refunded to the payer with 13% interest from the date of payment.

C. Purpose

Since the passage of Proposition 13, there has been a substantial increase (almost tenfold) in the amount of capital improvements to land which are funded through assessments. The presumed intent of this provision is to limit or repeal some of these special assessments.

The second purpose of the provision is to "complete" the definition of "taxes." Taxes are defined as any levy or charge which is not a fee, an assessment or a fine. Since "taxes" are not defined directly, a complete definition of everything which is not a tax is required.

D. Analysis

1. American River Flood Control Decision -- The American River Flood Control District v. Sayre decision provided that ad valorem assessments are proper so long as the benefit of the facility to the property is truly in proportion to value. Ad valorem special assessments on land would probably continue to be valid.

2. Assessments on Land and Improvements -- Many assessments are imposed on "land and improvements." This proposal limits special assessments to land only, excluding improvements. It would appear, therefore, that special assessments based on land and improvements could be invalid, or at least that portion of assessments levied on improvements.
3. Kent South Decision -- The City of San Jose v. Kent South decision provided that special assessments for maintenance of a facility or public improvement are permissible, and are not subject to the Article XIII A 1% tax limit. This proposal limits special assessments to the "payment of the cost of a local capital improvement." It is unclear to what extent, if any, that the new definition of "assessments" differs from current practice and case law. "Cost" is not defined by this measure. Some argue that "cost of a local capital improvement" could include maintenance, and possibly operating costs. Others argue that operation and maintenance expenses should not be considered "cost of a local capital improvement to land" under the proposal. If the latter argument carries, then assessments for maintenance or operation may be invalidated, and districts which now use them, such as the Los Angeles Flood Control District, would be in serious trouble. Most problems and disputes in this area will almost certainly have to be resolved in the courts over a period of years.

4. Direct and Special Benefits -- It is not clear whether the reference in the proposal to "direct and special benefits to the land on which it is levied" would prevent special assessments from being levied for a more general benefit such as a freeway offramp near a shopping center, or other facilities which generally benefit a limited area but which do not provide a direct benefit in a physical sense. It may be argued that although there is no direct connection between the facility and the property benefited, the presence of the facility provides a direct economic benefit.

5. Excess Assessments Considered a Tax -- The proposal provides that to the extent an assessment exceeds the cost of the improvement, then the excess "constitutes a tax." In so providing, the proposal introduces the new notion of a composite levy, a portion of which is an assessment and a portion of which is a tax. (The same is true for "excess" fees.) Any portion of a special assessment which, under the proposal, would be considered a tax would be a "tax on or based upon the ownership of real property" and would thus be subject to the 1% property tax limit (and be thus effectively invalidated).

6. Ambiguity -- It is unclear what kind of capital improvements can be constructed with special assessments. The proposal refers to "a local capital improvement to land." Does this mean that only those capital improvements to land, such as ditches, grading, paving and earthfill water retention facilities, could be funded from special assessments? Or, could capital improvements built on the land be covered by special assessments as well?
III. RESTRICTS INDEBTEDNESS OVERRIDE TO BONDED INDEBTEDNESS
APPROVED BY VOTERS PRIOR TO JULY 1, 1978

Text of Proposal:

Page 3, Lines 20-24 of ACA 53, "Article XIII A, Section 1 (b) (2): For purposes of paragraph (1), 'bonded indebtedness' is limited to indebtedness which was fixed and certain at the time of voter approval and which is evidenced or represented by the issuance of bonds in a specified amount and payable within a specified time."

A. Current Law

Current law [Article XIII A, Section 1 (6)] provides that the 1% property tax limit does not apply to ad valorem property tax rates to pay for the costs of any indebtedness approved by the voters prior to the effective date of Article XIII A.

B. Proposal

This proposal prohibits the levy of an ad valorem property tax rate in excess of the 1% limit to pay for indebtedness other than bonded indebtedness approved by the voters prior to July 1, 1978.

C. Purpose

When Proposition 13 passed in 1978, many thought the provisions for an "override" of the 1% property tax limitation was for bonded debt only. However, a number of localities suggested that the term indebtedness was broader than just "bonded" debt and have levied rates for other obligations. The courts have upheld these additional levies as legal under the limitations of Proposition 13. (See Analysis, Point #2.)

The purpose of this provision is to restrict "add-on" property tax levies to those which fund bonded debt only.

This will "roll back" those indebtedness rates that many people believe to be outside the intent of the original Article XIII A, and will remove the potential for further increases in property taxes for this purpose.

D. Analysis

1. Major Effect of Provision -- Existing property tax rates for indebtedness other than "bonded debt," primarily for the costs of voter-approved retirement systems and for contract payments by water agencies for apportioned capital costs of the
State Water Project, are repealed by this proposal, effective for the 1985-86 fiscal year.

2. Background on Indebtedness Override -- In the aftermath of the passage of Proposition 13 in 1978, 26 cities and one county levied a property tax in excess of the 1% limit for the costs of voter-approved retirement systems. In Carman v. Alvord (1982), these levies were determined to be valid under Proposition 13 as payments for indebtedness.

In 1983, the Legislature (in AB 377) placed a two-year moratorium on the use of Carman-authorized property tax rates above 1982 rate levels. In 1985, the Legislature will have to resolve this, and the related issue of the loss by local governments which levy indebtedness rates for other than "bonded" debt of existing property tax revenue, from their share of the 1% rate.

The cities and counties listed in the table on the following page levy property tax rates for voter-approved pension costs and other non-bonded indebtedness.

3. Impact on State Water Project Payments -- Public agencies contracting for water from the State Water Project are required to pay the costs, with interest, of construction, operations and maintenance of the state water supply facilities.

Many local agencies are using the indebtedness override to obtain property tax revenues to pay all or a portion of their share of the costs of the State Water Project. The court, in Goodman v. County of Riverside (1983), held that payment of obligations under State Water Services contracts are indebtedness within the meaning of Article XIII A. The Metropolitan Water District General Counsel believes this proposal will override the Goodman case and would repeal the authority of those local agencies to use a property tax override to pay for these contractual commitments, as it limits an "indebtedness" override specifically to "bonded" indebtedness.

In 1960, the Metropolitan Water District of Southern California signed contracts for almost one-half of the water from the State Water Project. The district, in fiscal year 1983-84, generated $52 million in property tax revenues above the 1% rate to pay for a part of its contracted commitments. These costs are projected to increase by 24% in 1984-85 and 10% in 1985-86.

To offset the loss of property tax revenues to pay these costs, water agencies under this provision would first turn to increasing water rates. This would involve four problems:

- It may not be possible to increase rates enough to offset this property tax loss, due to the restriction on fee
JURISDICTIONS LEVYING "CARMAN" TAXES,
AMOUNT OF LEVY, AND SELECTED PENSION BENEFITS
(in thousands)

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Paramedic Taxes

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Lease-purchase Taxes

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Library Taxes

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Zoo Tax

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<td>San Diego</td>
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<td>1,306</td>
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TOTAL TAXES $10,889 $55,593 $59,747

NUMBER OF GOVS. 22 33 35

*Estimated Tax rate for pensions combined with rate for general obligation bonds.

**Revenues not yet determined due to reassessment of earthquake-damaged property.

Source: California Taxpayers Association and State Controller's Office.
increases (which would include water rates) in other provisions of this proposal. (See Section XII of this analysis for further discussion.)

- Owners of vacant lots on which no water is used have a standby source of water available which makes their property more valuable. Under this proposal, the owners of such properties may pay a smaller share of the costs of having water service available.

- Shifting from property taxes to increased water rates would have the net effect of taking a substantial amount of money out of the Southern California economy and putting it in the federal treasury because property taxes are deductible by individuals from federal income taxes, while charges for water are not deductible.

- If water rates cannot be increased to fully absorb the property tax loss, the water agencies would face default in their contracts with the State Water Project.

4. Impairment Of Contract -- It may be argued that the portions of this proposal which restrict property tax revenue for contractual obligations violate the federal constitutional prohibition against impairment of contracts and would be void. This issue will have to be resolved by the courts.
IV. EFFECTIVELY Voids Most Previously Approved But Not Yet Issued General Obligation Bonds

Text of Proposal:

Page 3, Lines 20-24 of ACA 53, "Article XIII A, Section 1 (b) (2): For purposes of paragraph (1), 'bonded indebtedness' is limited to indebtedness which was fixed and certain at the time of voter approval and which is evidenced or represented by the issuance of bonds in a specified amount and payable within a specified time."

Page 6, Lines 36-40 and Page 7, Lines 1-10 of ACA 53, "Article XIII A, Section 4: On and after August 15, 1983, any new tax or any change in any tax enacted or authorized by any governmental entity, exclusive of the state, which increases the amount of any tax levied upon any taxpayer, including, but not limited to, the imposition of a new tax, an increase in the rate of a tax, a change in the method of computation of a tax or a change in the taxpayers subject to such tax, may be imposed only by a measure approved by two-thirds of the qualified electors of the governmental entity voting on the measure at a public election, except that, other than the 1-percent tax referred to in subdivision (a) of Section 1, no new or increased ad valorem tax or other tax on or based upon the ownership of real property, or sales or transaction tax on the sale or lease of real property, may be imposed."

A. Current Law

Current law [Article XIII A, Section 1 (b)] provides that the 1% property tax limit does not apply to ad valorem property tax rates to pay for the cost of indebtedness approved by the voters prior to the effective date of Proposition 13. In Metropolitan Water District v. Dorff II, the courts held that a property tax override may be levied to pay for the costs of bonded indebtedness approved by the voters prior to the approval of Article XIII A, but not issued until after the passage of this article.

B. Proposal

This proposal, for all practical purposes, will make it impossible to issue most bonds which were voter-approved prior to the passage of Article XIII A in 1978 but have not yet been issued.

This result is due to the language in the proposed new Section 4 of Article XIII A which prohibits the imposition of any new or increased ad valorem tax on property, except as provided in Section 1 (a) of Article XIII A.
While bonded indebtedness is excluded from the 1% limit by Section 1 (b) of Article XIII A, this section does not expressly authorize a tax for bonded indebtedness. There is no conflict between Section 1 (b) and Section 4, and the provisions of Section 4 would apply to the overall property tax rate that can be levied.

Because of U.S. Constitutional restraints, we are interpreting this prohibition not to apply to already issued bonds which require certain property tax revenues to make the required interest and redemption payments. Property tax rates may have to be increased to pay such costs if the tax base and existing rates are insufficient.

However, we believe this language would effectively prohibit the issuance of most previously approved bonds not yet issued. The language of the proposed amendment would be applicable to such bonds, since they have not yet been issued and there are no vested constitutional rights jeopardized.

Thus, for all practical purposes, while existing voter-approved but unissued bonds are not expressly prohibited, it would appear that they would be effectively void because they could not be marketed as general obligation bonds because they would not have property tax backing. It might be possible to issue some voted but unissued bonds, when the old bonds are retired and the old debt rate could be used for payment of the new bonds.

C. Purpose

The apparent purpose of this provision is to guarantee to property owners that property tax rates will not rise above their 1984-85 level. Perhaps the authors of the measure were concerned with the large volume of general obligation bonds which were authorized after the passage of Proposition 13 but before July 1, 1978, which largely remains unissued.

D. Analysis

1. Amount of Voter-Approved but Unissued General Obligation Bonds -- We do not know the exact magnitude of voter-approved but unissued general obligation bonds that would be affected by this provision. As of July 1983, for special districts alone, there were $3,945 billion in voter-approved but unissued general obligation bonds outstanding (over $3 billion of which were in Orange County alone).

The Metropolitan Water District of Southern California (MWD) has $365 million remaining from the voter-approved $850 million general obligation bond issue of 1966. If MWD wishes to pursue its construction program to meet the water needs of Southern California, it would have to issue revenue bonds, rather than general obligation bonds for these purposes. Such revenue bonds
are not as secure in the eyes of investors and generally are lower rated by the market. MWD is estimating that, if the district goes forward with revenue rather than general obligation bonds, it would cost water users in Southern California $1.8 million annually in higher interest. Furthermore, it may be impossible to issue revenue bonds because of the proposal's new restrictions on fees.

2. Infrastructure Needs -- Recent studies indicate a growing need for new and rehabilitated "infrastructure" (streets, highways, and other public facilities). An Assembly Office of Research study indicates that it will cost some $24 billion in excess of currently available revenues to catch up on infrastructure needs and deferred maintenance over the next 10 years. Loss of the ability to use voter-approved but unissued general obligation bonds will further exacerbate this problem.
V. ESTABLISHES VALUATION OF PROPERTY UPON CHANGE OF OWNERSHIP AS PURCHASE PRICE

Text of Proposal:

Page 4, Lines 2-20 of ACA 53, "Article XIII A, Section 2 (a) (2): The 'appraised value' of real property which, since the most recent prior valuation date, has been purchased, newly constructed, or to which a change in ownership has occurred, shall not exceed the sum of all of the following:

(A) For real property purchased or acquired for consideration after the 1975 assessment, the most recent purchase price, or, for other real property, the assessed value shown on the 1975-76 tax bill (or any value resulting from a subsequent reassessment pursuant to this subdivision).

(B) The direct cost of any new construction on the real property since the sales or valuation date applicable in subparagraph (A).

(C) Any applicable annual adjustments or reductions described in paragraph (1) of subdivision (b).

The most recent purchase price for this purpose shall be the amount of any money transferred plus the fair market value of any other consideration transferred."

A. Current Law

Currently, Article XIII A, Section 2 provides that when real property changes ownership, the property is reappraised up to its "full cash value" as determined by provisions of Article XIII and existing statutes. This value is intended to reflect the price which a willing buyer and seller would establish in the marketplace, and is determined by assessors on the basis of sales prices of comparable properties, potential earnings from the property (in the case of business and commercial property), or replacement cost less depreciation.

B. Proposal

This proposal limits the valuation of property "purchased or acquired for consideration" after the 1975 assessment to the lower of (a) "the most recent purchase price," which is defined as "the amount of money transferred plus the fair market value of any other consideration transferred," or (b) the fair market value of the property.
C. **Purpose**

The apparent purpose of this provision is to restrict the assessed valuation to the actual amount of the purchase price, so that the property taxpayer would effectively have control over the property tax by choosing to pay, or not to pay, a particular price for the property. The concept is parallel to the Proposition 13 provision that, except for the 2% inflation adjustment, the property tax remains static.

D. **Analysis**

1. **Purchase Price May Not Equal Market Value** -- There are many cases where the actual purchase price does not accurately reflect the market value. For example, if an individual must sell his home quickly because of a job change or a family illness, the sale price may be substantially lower than the market would determine given the opportunity. Conversely, the purchase price may be higher than market in the case of a property which a buyer particularly wishes to purchase (because it is "the home of one's dreams" or a business site which complements a firm's other operations). In the first case the property tax would be based on a valuation which does not truly reflect "value" in the ordinary economic sense. In the second case tax would be based on value as determined by the assessor, because the proposal does not repeal the rule that the tax roll value shall not exceed market value.

2. **Acquired for Consideration** -- The provision refers to "or acquired for consideration." There are cases where property is acquired for consideration (as in the case of a business reorganization) where there is no purchase price in the usual sense. It is presumed that the assessor would have to estimate the value of any consideration in such a case, which would entail a traditional appraisal of the consideration if part of the consideration is real property. This would not entail an appraisal of the property itself.

3. **Gifts** -- There is no specific provision for determining the "appraised value" of property which is acquired without consideration, such as a gift. In the case of gifts, it appears that there would be no reappraisal, and that the property would retain its previous base value.

4. **Retrospective** -- This provision may be retrospective -- that is, for any property which was purchased after March 1, 1975, at a price less than the amount of the assessor's appraisal, the base value of the property would be reduced to reflect the difference. This valuation would apply in future years, but no refunds would be required for past taxes based on the higher assessment.
VI. REVISES NEW CONSTRUCTION VALUATION PROCEDURES

Text of Proposal:

Page 4, Lines 2-20 of ACA 53, "Article XIII A, Section 2 (a) (2): The 'appraised value' of real property which, since the most recent prior valuation date, has been purchased, newly constructed, or to which a change in ownership has occurred, shall not exceed the sum of all of the following:

"(A) For real property purchased or acquired for consideration after the 1975 assessment, the most recent purchase price, or, for other real property, the assessed value shown on the 1975-76 tax bill (or any value resulting from a subsequent reassessment pursuant to this subdivision).

"(B) The direct cost of any new construction on the real property since the sales or valuation date applicable in subparagraph (A).

"(C) Any applicable annual adjustments or reductions described in paragraph (1) of subdivision (b).

"The most recent purchase price for this purpose shall be the amount of any money transferred plus the fair market value of any other consideration transferred."

A. Current Law

Current law (Article XIII A, Section 2) provides that property must be appraised at its "fair market value" when it is newly constructed. The Legislature, in implementing this constitutional requirement, interpreted this provision to mean that only the portion of the property newly constructed would be valued at fair market value. The balance of the property would retain the Article XIII A base year value, plus the annual inflation adjustment. (For example, if a new room is added to a house, the value added by the new room is added to the Article XIII A base year value of the house. The entire property is not reappraised.)

B. Proposal

This proposal revises new construction valuation procedures as follows:

- Only the direct cost of any new construction, rather than the fair market value of new construction, is to be added to the base year value of the property.
For property with a 1975 base year value, the language of
the proposal, when read literally, requires that the
direct cost of any new construction is to be added to the
1975 assessed value of the property. (In 1975, assessed
value was 25% of fair market value.)

C. Purpose

The apparent purpose of this provision is to further define
new construction and how property will be valued when it is newly
constructed.

This will provide additional property tax relief to certain
taxpayers.

D. Analysis

1. Possible Major Tax Reduction for 1975 Base Year Property
upon Which New Construction Takes Place -- If property upon which
new construction takes place has a 1975 base year value, there
would be a major reduction in the current value for the purposes
of the existing property if the measure is read literally.

The 1975 base year value under current law is the 1975 full
cash value. When there is new construction, the new construction
value is added to the 1975 full cash value, adjusted by the
annual inflation factor.

This proposal requires the direct cost of new construction to
be added to the assessed value on the 1975-76 tax bill. The
assessed value will be only one-fourth or less of the "full cash
value" now on the assessment roll.

Under this provision, the addition of a swimming pool to a
1975 base year property might produce a substantial net tax
reduction. For example:

<table>
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<tr>
<th></th>
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<th>Proposed Law</th>
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<tr>
<td></td>
<td>Before Pool</td>
<td>After Pool</td>
<td>Before Pool</td>
</tr>
<tr>
<td>1975 base year value</td>
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<tr>
<td>1975 assessed value</td>
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<td>Direct cost of swimming pool</td>
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<tr>
<td>Tax -- 1%</td>
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<td>$ 750</td>
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(NOTE: Example does not include 2% inflation factor; however, the
relationships are comparable and point remains the same.)
Some have suggested that this literal interpretation would not hold because the results are so bizarre, and probably not what the authors intend. This issue may have to be decided in the courts.

2. No Definition of Direct Cost -- Under current law, new construction is added to the assessment roll at the value added by the new construction. This proposal instead requires the "direct cost" of the new construction to be added.

The measure contains no definition of "direct cost." (Appraisers generally consider direct costs to be total cost less entrepreneurial profits to the builder or developer.) We do not know what impact this change will have on the value of new construction added to assessment rolls. This will likely require litigation to determine how new construction is to be valued.

It may be that the term "direct cost" is intended to prevent use of the income approach to assessment.

3. Ambiguity -- This proposal requires the direct cost of any new construction to be added to the base year value. The word any is new and not in Article XIII A. Existing law simply refers to property "newly constructed." The Legislature has excluded from the term "newly constructed" such construction as minor rehabilitation, repairs, etc. Does the addition of the word "any" in this proposal signify an expansion of the new construction reappraisal provisions to any new construction, including minor rehabilitation and repairs?
VII. CONTAINS LANGUAGE RELATING TO VALUATION OF OWNER-OCUPIED HOMES

Text of Proposal:

Page 4, Lines 24-30 of ACA 53, "Article XIII A, Section 2 (a) (4): On and after March 1, 1975, for real property taxation purposes, the value standards prescribed by Section 10 of Article XIII and by statutes authorized by Section 9 of Article XIII, shall be deemed to be 'full cash value,' as that term is used in this section, and any tax levied on real property subject to such value standards shall be governed by this article."

A. Current Law

Under current law, owner-occupied homes are valued for property tax purposes at their 1975 base year value, plus the appropriate inflation factor, or their acquisition value (the fair market value when newly constructed or subject to a change of ownership).

Section 9 of Article 13 was added to the Constitution in 1974 to require assessors to assess owner-occupied single-family homes in areas zoned for single-family homes or agricultural use to be valued on a use as a single-family home. This prevented the assessor from saying the site of the home was made valuable as an apartment house site and increasing the assessment on the home to reflect this different use. Under Section 9, homes were periodically reappraised up to the current market value as a single-family home.

B. Proposal

This proposal provides that for owner-occupied single-family homes on land zoned exclusively for single-family homes or agricultural purposes, the full cash value, as restricted by such zoning, is to be full cash value for Article XIII A purposes.

This provision also applies to nonprofit golf courses.

C. Purpose

We are unclear as to the purpose of this provision.

D. Analysis

1. Williamson Act Property Not Included -- This proposal refers to two types of property for which the Constitution
specifically provides special "use value" assessments -- owner-occupied single-family homes and golf courses. However, it excludes others with constitutional use value status, such as Williamson Act (open space and farmland) properties and historical properties.

This implies that Williamson Act property is to be treated differently than single-family homes with respect to "use value" assessments.

2. Ambiguity -- As of this writing, there is no agreement among the various persons who have reviewed this provision as to what exactly it does.
VIII. LIMITS APPLICATION OF 2% INFLATION FACTOR

Text of Proposal:

Page 4, Lines 32-40 and Page 5, Lines 1-11 of ACA 53, "Article XIII A, Section 2 (b): (1) The full cash value may reflect from year to year an 'annual adjustment' for inflation not to exceed 2 percent for any given year, or reduction, as shown in Consumer Price Index of the Bureau of Labor Statistics, United States Department of Labor, under the heading 'All Items,' or any index substituted by the Department of Labor therefor, for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.

"(2) The full cash value shall not include any annual adjustment for the 1976-77, 1977-78, and 1978-79 assessment years. Any assessees whose assessment for any year contained an annual adjustment for the 1976-77, 1977-78, or 1978-79 assessment year shall be entitled to refund of taxes, or a credit against taxes next due if the Legislature so provides, in the dollar amount of the additional taxes paid as a result of that annual adjustment, plus interest at the rate of 13 percent from the date of payment."

A. Current Law

Currently the Constitution provides that for property which has not been newly constructed or which has not changed ownership, the full cash value base may be increased annually by an inflation factor equal to the percentage change in the consumer price index, but not more than 2%. The Constitution also provides that full cash value means the assessor's valuation as shown on the 1975-76 tax bill, "or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." The Board of Equalization, the Legislature and the courts have interpreted these provisions to allow the 2% inflation factor to be applied for the three years between the 1975 base year and 1978 -- the first year of Proposition 13.

B. Proposal

This proposal provides that for the 1976-77, 1977-78 and 1978-79 fiscal years no inflation factor shall be applied to the base year value. This would require that for properties which have a 1975 base year value, the assessed value would have to be reduced by three years' worth of inflation factors, or 6.12% each year from 1975 until the property changes ownership. In addi-
tion, the additional taxes paid in past years due to this "excess" valuation would have to be refunded, with interest at 13% per year, either in the form of a cash refund or, if provided by the Legislature, as a reduction in the tax next due.

The proposal also defines the inflation factor as the index "shown in the Consumer Price Index of the Bureau of Labor Statistics, United States Department of Labor, under the heading 'All Items,' or any index substituted by the Department of Labor therefor" for the "area under taxing jurisdiction."

C. Purpose

The apparent intent of this provision is to "correct" what the authors believe to be an improper interpretation of the current constitutional inflation factor provision.

D. Analysis

1. Amount of Refunds -- The impact of this provision on taxpayers will depend on whether the property has changed ownership or been constructed since 1975. For a property which was purchased before 1975, the full 6.12% rollback would take place for each year between 1978 and the year the property changed ownership, or the 1984-85 fiscal year, whichever is earlier. (The reduction would be 6.12% rather than 6% because of compounding.) For a property which sold or was newly constructed between the 1975 and 1976 lien dates there would be a reduction of 4.04%. And for a property which sold or was constructed between the 1976 and 1977 lien dates there would be a 2% reduction. For property which changed ownership between March 1, 1977 and March 1, 1978, there would be no refund. For property changing ownership after March 1, 1978, the prior owner may be entitled to a refund.

The average refund which would be made under this provision, based on an average priced home, is estimated at about $310, including interest. The ongoing reduction in taxes would be about $35 per year.

2. Impact on 1985-86 Property Taxes -- For those whose property does not have a 1975, 1976 or 1977 base year there would be an increase in current property taxes. This is because the reduction in assessed values, due to the removal of the 2% per year inflation factor, would reduce the amount which the separate tax rates for bonds would generate and those rates would have to be increased. This would increase the tax burden on those whose assessments had not been reduced by the removal of the 2% factor. This tax increase is estimated to be roughly $17 per year for the average-value home.

Somewhat over half of all homeowners would receive assessed value reductions under this provision, while the remainder -- those without earlier base year values -- would have an annual tax increase. The provision would apply to all property, not just homes.
3. Previous Owners -- Under this provision, refunds would be available to previous owners of real property who had 1975 to 1977 base years but who have subsequently sold the property. Assessors may have to search for these owners in order to process refunds. However, in many cases it will be impossible for the assessors to find these individuals without great expense, and the required records may no longer be available. Absent additional legislation, property owners would have to file for refunds.

4. Allocation Among Jurisdictions -- The provision is not fully self-executing, and the Legislature would probably have to provide some implementing mechanism for allocating the cost of the refund among jurisdictions. This is because, except in the case of tax rates for debt, jurisdictions no longer levy their own property tax. A single 1% tax is levied by the county and allocated according to procedures set up by the Legislature. Because this allocation process is complex and the tax allocation factors change annually, it will be an equally complex task to allocate the refund liabilities among jurisdictions.

5. Total Cost -- The total cost of the refund is estimated by the Legislative Analyst to total approximately $1.325 billion, with local governments (cities, counties and special districts) paying $681 million and the state paying $459 million. (Under existing state school funding statutes, the state would make up any property tax loss to school districts, although there is no constitutional requirement to do so.) The remaining $185 million would be paid by property taxpayers in higher debt tax rates in the first year. After the refunds are paid, there would be an ongoing property tax reduction of $41 million to local jurisdictions and $24 million to schools (again paid for by the state).

Since the property tax is deductible against the state and federal income taxes, any refunds of past property taxes would be considered "taxable income" for income tax purposes. Thus, a substantial portion of the refunds required by this proposal would end up in the state and federal treasuries. This could be considered a form of "reverse revenue sharing."

6. Ambiguity -- The U.S. Bureau of Labor Statistics only publishes consumer price indices for San Francisco, Los Angeles-Long Beach and San Diego. The California Department of Industrial Relations publishes a composite of these indices which it calls the California CPI. But the federal government has no such index. Thus, most areas in the state would not have an applicable consumer price index "for the area under taxing jurisdiction."
IX. CREATES EXEMPTION FROM CHANGE OF OWNERSHIP

Text of Proposal:

Page 5, Lines 32-40 and Page 6, Lines 1-4 of ACA 53, "Article XIII A, Section 2 (e): For purposes of subdivision (a), the term 'change in ownership' shall not include any intrafamily transfer of real property between an owner thereof and any other person or persons if the person or persons to whom that property is transferred is or are members of the immediate family of that owner. This section shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree. As used in this subdivision, 'members of the immediate family' of the owner means parents, grandparents, stepparents, uncles, aunts, spouse, stepchildren, siblings, and lineal descendents of the owner, or the guardian or trustee for any of the foregoing persons."

A. Current Law

Current law provides that real property shall be reappraised when a change in ownership occurs. There is no specific exemption from this provision in the case of intrafamily transfers. However, the Legislature, in AB 1488 (1979), provided an exemption for interspousal transfers (Section 63 of the Revenue and Taxation Code). This exemption was justified on the grounds that an interspousal transfer is in effect a transfer between members of the same economic unit. And in 1982 the Legislature, in AB 2781, exempted transfers of dwellings from parents to minor children on the death of the parents.

B. Proposal

The proposal adds a new provision which excludes from the definition of "change in ownership" intrafamily transfers of real property between the owner and a member of the owner's immediate family. The exemption would apply to voluntary transfers and transfers "resulting from a court order or judicial decree." "Members of the immediate family" of the owner is defined as parents, grandparents, stepparents, uncles, aunts, spouse, stepchildren, siblings, and lineal descendents of the owner, or the guardian or trustee for any of these individuals.

C. Purpose

The apparent purpose of this provision is to exempt certain transfers from revaluation.
D. Analysis

1. All Types of Property -- The exemption would apply to all types of real property, not just to the principal place of residence (as in the case of the current provision for minor children). Thus an apartment building or a business (from a small store to a multi-billion dollar closely-held corporation) if transferred to an immediate family member, would escape reassessment under this exemption.

2. Ambiguities -- The provision refers to "lineal descendants." It is probable that this term would include adopted children but there is some ambiguity. The Probate Code uses the term "lineal consanguinity" (rather than "lineal descendants") and includes adopted children within that term.

The provision specifically refers to siblings, uncles and aunts, but does not use a term parallel to the Probate Code's "collateral consanguinity." Thus a transfer to a cousin, niece or nephew would apparently not qualify for the exemption, and a reappraisal would be required (except in the case of a gift which is exempted elsewhere).

The provision exempts a transfer from an owner to the guardian or trustee of an immediate family member. This could open a serious loophole by exempting transfers to trustees when the trusteeship is established for the purpose of avoiding reappraisal. For example, A names B the trustee of his son. A then sells property to B, and dissolves the trusteeship. B might be able to avoid reappraisal through this device.

Would this exemption apply to all transactions since the 1975 lien date, or just those transactions after passage of this proposal? Would all intrafamily transfers which resulted in a reassessment since 1975 have to be rolled back to negate the reassessment?
X. REVISES LEGISLATIVE VOTE REQUIREMENT FOR TAX INCREASES

Text of Proposal:

Page 6, Lines 7-25 of ACA 53, "Article XIII A, Section 3: On and after August 15, 1983, any new tax or any change in any tax enacted or authorized by the Legislature which increases the amount of any tax levied upon any taxpayer, including, but not limited to, the imposition of a new tax, an increase in the rate of a tax, a change in the method of computation of a tax or a change in the taxpayers subject to such tax, may be imposed only 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, other than the 1-percent tax referred to in subdivision (a) of Section 1, no new or increased ad valorem tax on real property, or other tax on or based upon the ownership of real property, or sales or transaction tax on the sale or lease of real property, may be imposed."

A. Current Law

Current Law (Article XIII A of the Constitution) currently provides that any change 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 a two-thirds legislative vote. It also provides that "no new ad valorem taxes on real property" or sales or transaction taxes on the sale of real property may be imposed.

B. Proposal

The proposal goes into a great deal more detail as to what constitutes a tax increase requiring a two-thirds legislative vote, and what sort of taxes may not be levied or increased. First it provides that beginning with August 15, 1983, "Any new tax or any change in any tax enacted or authorized by the Legislature which increases the amount of any tax levied upon any taxpayer" whether by increasing tax rates, changing the method of computation or the taxpayers subject to the tax, or any other means, requires a two-thirds vote.

Then it provides that other than the 1% property tax, no new or increased ad valorem property tax or any other tax "on or based upon the ownership of real property," or sales or transaction tax on the sale or lease of real property, may be imposed.
C. Purpose

The apparent purpose of this provision is to more specifically delineate those taxes which the Legislature may increase or alter only by a two-thirds vote, and to further limit the Legislature's power to levy or authorize real property related taxes.

D. Analysis

1. Definition of Tax -- The proposition defines a tax as any charge or levy which is not a fee, an assessment or a fine. It also provides that a tax is any levy for the payment of pension liabilities. Further, under certain circumstances, a portion of a fee or an assessment may be considered a tax. Taken together, this definition seems to form a new way of looking at taxes, fees and assessments. Currently, a charge is either a tax, a fee or an assessment. This provision apparently would require certain charges and levies to be considered a composite of a tax and a fee, or a tax and an assessment. For example, if fee revenues are partly used to pay pension liabilities, then that portion of the fee must be considered a tax.

2. Taxes Authorized -- The provision requires taxes "authorized by" the state to be approved by a two-thirds legislative vote. The subsequent provision relating to the popular vote requirement for local taxes contains an exclusion for taxes authorized by the state. Some may interpret this to mean that the state may, by a two-thirds vote of the Legislature, authorize local taxes which could be imposed locally without a popular vote. For example, if this interpretation is upheld, the Legislature under this provision could authorize cities and counties to levy an optional sales tax, without a two-thirds vote of the people.

3. Tax Decreases -- The provision would prohibit any change in any tax which increases any tax on any taxpayer. Since the sales tax is deductible for both state and federal income tax purposes, and the state income tax is deductible from federal tax, this measure might be interpreted to require that a decrease in either of these taxes must be approved by a two-thirds legislative vote, as a decrease in either of these taxes would have the effect of increasing state and federal income taxes for some taxpayers.

4. Wash Bills -- Under the current constitutional provision it is possible, by a majority legislative vote, to increase taxes in one area so long as there is at least an equal tax reduction in the same act. For example, the elimination of the property tax on business inventories was accompanied by an increase in the rate of the bank and corporation tax rate, with the net effect that the bill was self-funding. Such an approach by a majority vote would be prohibited under the proposal, since it resulted in a tax increase for at least some taxpayers. Under the proposal, any such wash bill which is enacted after August 15, 1983, which did not pass by a two-thirds vote, would be invalid.
5. Ambiguities -- "Fee" is defined as "any" charge for the purpose of paying the direct cost of services or regulatory programs. It appears that many charges which are now considered taxes may have to be considered fees. For example, highway user taxes are levied for the purpose of paying for the cost of benefits to motorists. These may now be considered fees under the proposition, and could be increased by the cost-of-living index each year without a two-thirds vote of the Legislature. Indeed, a portion of all of the state's General Fund taxes is spent for the cost of services or regulatory programs. Some may argue, therefore, that a good portion of what we now consider "taxes" would be treated as "fees." Finally, it is possible that under this interpretation, levies on property (even the ad valorem property tax which is used to provide direct service to the payee, such as for police and fire protection) may be treated as a fee rather than a tax. If a substantial portion of the 1% property tax were considered a fee and not a tax, this could mean that the remainder of the property tax is well below the 1% limit, and could be substantially increased (up, again, to the 1% limit).
XI. RESTRICTS LOCAL GOVERNMENT TAXING POWER

Text of Proposal:

Page 6, Lines 36-40 and Page 7, Lines 1-10 of ACA 53, "Article XIII A, Section 4: On and after August 15, 1983, any new tax or any change in any tax enacted or authorized by any governmental entity, exclusive of the state, which increases the amount of any tax levied upon any taxpayer, including, but not limited to, the imposition of a new tax, an increase in the rate of a tax, a change in the method of computation of a tax or a change in the taxpayers subject to such tax, may be imposed only by a measure approved by two-thirds of the qualified electors of the governmental entity voting on the measure at a public election, except that, other than the 1-percent tax referred to in subdivision (a) of Section 1, no new or increased ad valorem tax or other tax on or based upon the ownership of real property, or sales or transaction tax on the sale or lease of real property, may be imposed."

A. Current Law

Currently Section 4 of Article XIII A of the Constitution provides that cities, counties and special districts may, by a two-thirds vote of the electors, impose "special taxes" except ad valorem property taxes and taxes on the sale of real property. The courts (in City and County of San Francisco v. Farrell) have determined that a "special tax" is a tax levied for a special purpose and not deposited in the general fund. Under this decision, localities are required to obtain a two-thirds popular vote only for a tax levied for a particular purpose, but may (when authorized by statute or by the Constitution) levy "general" taxes by a majority vote of the governing board. Courts have also held that certain jurisdictions which are not authorized to levy property taxes are not constrained by this two-thirds vote provision (Los Angeles County Transportation Commission v. Richmond).

B. Proposal

This proposal provides that "any new tax or any change in any tax enacted or authorized by any governmental entity, exclusive of the state, which increases the amount of any tax levied upon any taxpayer" requires a two-thirds popular vote. It also provides that, other than the 1% property tax, no new or increased ad valorem property tax or any other tax "on or based upon the ownership of real property," or sales or transaction tax on the sale or lease of real property, may be imposed under any circumstance, including existing taxes approved by two-thirds of the voters.
C. Purpose

The apparent purpose of this provision is to invalidate the Farrell and Richmond decisions by requiring a two-thirds popular vote for any tax enacted or authorized by any local agency. It is also aimed at substantially restricting the range of taxes which may be levied by a local government.

D. Analysis

1. Local Taxing Powers Already Limited -- Under existing law the power of local governments to levy taxes is heavily restricted. First, all local governments (as well as the state government) must operate within the constraints of the Article XIII B appropriations limit (Proposition 4 of 1979). Under this constitutional provision, governments are limited in the growth of appropriations from proceeds of taxes. The limit is calculated from the 1978-79 base year using the lower of (1) growth in CPI plus population, or (2) growth in personal income. This limit restrains the ability of local governments to raise taxes, since revenues from proceeds of taxes in excess of the limit must be refunded to the people.

Second, there are a number of specific restrictions on local taxing power:

- **Property Tax** -- Article XIII A prevents increases in property taxes above the 1% limit except to pay for previously voter-approved debt.

- **Income Tax** -- The Constitution gives the Legislature control over the imposition of income taxes, and the Legislature has prohibited the levying of local income taxes.

- **Sales Tax** -- The Bradley-Burns local sales tax law makes it virtually impossible for local governments to raise sales taxes. Transit districts may levy a 1/2% tax if approved by a vote of the people.

- **Gasoline Tax** -- Since this tax is constitutionally earmarked, it would fall under the present "special tax" language of Article XIII A and require a two-thirds vote of the electorate.

- **Property Transfer Tax** -- Other provisions of Article XIII A prevent increases in property transfer taxes.

- **Liquor Taxes** -- Article XX, Section 22 of the Constitution, gives the Legislature the exclusive right to regulate alcoholic beverages, and the courts have extended this to include taxation. Section 32010 of the Revenue and Taxation Code prevents local liquor taxes.
Cigarette Tax -- Section 30111 of the Revenue and Taxation Code prohibits local cigarette taxes, and the Legislature has provided for a subvention of 3¢ per pack of the state tax as a replacement.

Inheritance, Gift and Death Taxes -- Local governments are clearly precluded from imposing an inheritance, gift or other form of death tax by Proposition 6 of June 1982.

Insurance Company Taxation -- Article XIII, Section 28 of the Constitution, and Section 12102 of the Revenue and Taxation Code prohibit any local taxes on insurance companies.

Vehicle Taxes -- Section 10758 of the Revenue and Taxation Code provides for a state tax on motor vehicles, which is subvened to local governments, and which is in lieu of any local taxes.

Banks and Financial Institutions -- AB 66 of 1979 provides that cities may not impose business license taxes on banks or financial institutions.

The major sources of revenue available to cities under the Farrell decision are business license taxes, utility user taxes, hotel/motel taxes, admissions taxes, parking taxes and parcel taxes. Counties have only very limited taxing authority, and the decision has only minor application to counties. Schools, under current law, are not authorized to impose general taxes.

2. City Tax Increases Under Farrell -- A sizeable number of cities have taken advantage of the opportunity to increase taxes by a vote of the city council. A recent Cal-Tax survey of 150 cities with more than 80% of the state's population has found 138 such tax increases (which have yielded some $300 million over two years): utility user tax -- 32; hotel/motel tax -- 44; business license tax -- 55; and other taxes -- 7. Under this proposal, any of these tax increases which was enacted with less than a two-thirds vote of the electorate after August 15, 1983 would be invalid.

3. Taxes Authorized -- The provision requires taxes "authorized by" the state to be approved by a two-thirds legislative vote. It is unclear whether the subsequent provision relating to the popular vote requirement for local taxes contains an exclusion for local taxes authorized by the state. Some have argued that this provides that the state may, by a two-thirds vote of the Legislature, authorize local taxes which could be imposed locally without a popular vote. For example, the Legislature under this argument might authorize cities and counties to levy an optional sales tax, without a two-thirds vote of the people at the local level.
4. Sales Tax Increases -- Local sales taxes are "piggy-backed" on the state tax. The state agrees to administer local sales taxes only if the local sales tax ordinances provide for automatic conformity with the state sales tax base. Under this proposal, if the state were to, say, eliminate a state sales tax exemption, each city and county may have to hold an election to conform, since eliminating the exemption at the local level would be a tax increase. If all cities and counties were not able to get public approval (by a two-thirds vote) of the exemption change, then either the state would no longer administer the city's or county's tax, or, if that requirement were changed by the Legislature, the sales tax would no longer be uniform from jurisdiction to jurisdiction.

5. Tax Decreases -- The provision would prohibit any change in any tax which increases any tax on any taxpayer. Since the property tax is deductible for both state and federal income tax purposes, this measure might be interpreted to require that a decrease in this tax (which a local government is currently authorized to do in order to remain within its Article XIII B appropriation limit) must be approved by a two-thirds vote of the people, as a property tax cut would have the effect of increasing state and federal income taxes for some taxpayers.
XII. IMPOSES NEW LIMITS ON FEES

Text of Proposal:

Page 7, Lines 13-20 of ACA 53, "Article XIII A, Section 4.5 (a): As used in this article, the term 'tax' means any levy or charge, however labeled or structured, including, but not limited to, any levy for the purpose of paying pension liabilities, made by the state, any local governmental entity, or any agency or instrumentality of either the state or a local governmental entity which does not constitute a fee, an assessment or a fine, as defined in subdivision (b)."

Page 7, Lines 21-33 of ACA 53, "Article XIII A, Section 4.5 (b): For purposes of this section:

"(1) 'Fee,' which shall not include any amount to pay pension liabilities, means any charge by the state, any local governmental entity, or any agency or instrumentality of either the state or a local governmental entity which is imposed upon persons or property for either of the following purposes:

"(A) To pay for the direct costs of the services provided to, or direct benefits conferred upon, the particular persons or property subject to the charge.

"(B) To pay for the direct costs of a regulatory program under which the person or property subject to the charge is regulated."

Page 8, Lines 11-37 of ACA 53, "Article XIII A, Section 4.5 (b) (4): The excess of any purported fee imposed over the direct costs of the service or direct benefit conferred or provided to fee payers or the direct costs of the regulatory program for which the fee is charged, shall constitute a tax. The excess of any purported assessment levied over the costs of the capital improvement for which the assessment is levied, shall constitute a tax. If any portion of a purported fee or purported assessment constitutes a tax and such tax has not been validly imposed, any person who paid the fee or assessment shall be entitled to receive from the entity imposing the fee or assessment a refund of that portion constituting a tax, plus 13-percent interest from the date of payment.

"(5) On and after August 15, 1983, any new fee or any increase in any fee exceeding the increase, if any, in the cost of living during the preceding 12-month period as shown in the Consumer Price Index of the Bureau of Labor Statistics, United States Department of Labor, under the heading 'All Items,' or any index substituted by the Department of Labor therefor, for the area subject to the fee, may be imposed by any governmental entity other than
the state only by a measure approved by two-thirds of the qualified electors of that governmental entity voting on the measure at a public election, or if enacted or authorized by the Legislature only by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature."

Page 9, Lines 6-15 of ACA 53, "Article XIII A, Section 5: Except for refunds of taxes required by paragraph (2) of subdivision (b) of Section 2, and refunds of any fees, taxes, or assessments collected in violation of paragraph (4) of subdivision (a) of Section 2, Section 3, Section 4 and paragraphs (4) and (5) of subdivision (b) of Section 4.5, no refund for any tax year prior to the tax year beginning July 1, 1985, shall be made as the result of the adoption of the constitutional amendments proposed by the resolution which proposed the addition of this section to this article."  

A. Current Law

Currently State and local governments are authorized to impose fees to pay for the costs of services and benefits provided.

B. Proposal

This proposal imposes new limits on fees, as follows:

- A fee is defined to be a charge by government to pay for the direct costs of services provided to persons or property subject to the charge, to pay for direct benefits conferred upon people or property, or to pay for the direct cost of a regulatory program.

- Any levy or charge made by government which is not a fee, assessment or fine is defined as a tax.

- Fees cannot be used to pay pension liabilities.

- After August 14, 1983, any state or local fee imposed, or increased by more than the change in cost-of-living for the prior 12-month period, must be approved by a two-thirds vote of the Legislature or of the local electorate, respectively.

- The portion of any fee which exceeds the direct cost of the service, benefit or regulatory program, or which includes the costs of pension benefits, shall be considered a tax. Unless the portion of the fee which is considered a tax has been approved by a two-thirds vote of the people (or, for state fees, a two-thirds vote of the Legislature) it is declared to be invalidly imposed. Any
person paying such charge shall be entitled to a refund of the portion invalidly imposed, plus 13% interest from the date of the payment.

C. Purpose

The apparent purpose of the provisions restricting fees is to limit local governments' ability to raise fees in excess of the cost-of-living without the consent of the taxpayers in the jurisdiction imposing the fees.

Additionally, the apparent purpose is to require a two-thirds vote of the Legislature to raise state fees above the increase in cost-of-living, so that it will be almost as difficult to raise fees as it will be to raise taxes.

Finally, the purpose of the provision is to "complete" the definition of "taxes." Taxes are defined as any levy or charge which is not a fee, an assessment or a fine. Since "taxes" are not defined directly, a complete definition of everything which is not a tax is required.

D. Analysis

1. This Proposal Covers All Fees Imposed by Any Government Unit in California -- There are literally thousands of fees imposed by government, and each of them would be subject to the restrictions contained in this proposal. Any new local fee would have to receive a two-thirds voter approval. Any increase in an existing local fee above the increase in cost-of-living for the prior twelve months would also require a two-thirds vote.

The cost increase for any specific government service or benefit conferred may be greater than the increase in the cost-of-living index. The index is a composite of costs of many products and services. Within the index itself, many costs are growing more rapidly than the average.

For example, the cost of the food component of the index may grow faster than the overall index. For school districts which charge students for lunches, if food costs go up so that the cost of a meal increases faster than CPI growth, the district would face the options of using scarce district funds for an election, taking the added cost of food directly from the educational program or reducing the quality of the school lunch.

2. Enterprise Activities of Local Government Are Covered by Fee Provisions -- Charges for the services or benefits of all enterprise activities would be restricted by this proposal, either as fees or as taxes.

The major enterprise activities of local governments include the sale of water; sale of electricity; garbage collection; and operations of airports, ports and harbors, hospitals and transit
facilities. The charges restricted by this proposal provide the operating, maintenance and capital funds for such enterprise activities. For most enterprise activities, the costs of operations are solely funded by the charges made for the service or benefit.

It is quite possible that the increase in costs of operations of some of these enterprise activities may exceed the change in the cost-of-living. In fact, many of these charges, such as electricity rates, are dependent on a variety of factors, some of which are external, over which the government has no control, such as the cost of fuel or electricity purchased from other suppliers. In such situations, unless a two-thirds vote can be obtained, the government providing enterprise electricity service will be able to buy or produce less electricity, which will further reduce its revenue. If consumer demand stays high, the limited amount of electricity will have to be rationed, perhaps through rolling blackouts.

Hospitals run by government and supported by charges, such as the Northern San Diego County Hospital District, may not without a two-thirds vote be able to increase fees sufficiently to cover the increased costs of new lifesaving drugs or medical equipment, even though patients would be willing to pay the increased fees to obtain the needed medical assistance.

Airports in California are run by government and are extensively supported by fees, such as landing fees, rents, leases of building spaces, tie-down fees, etc. Fees have been increased to support airport operations, expansion and modernization. Without a two-thirds vote to raise fees above cost-of-living it will be difficult to generate revenues for future airport expansion and modernization.

For Fiscal Year 1982-83, enterprise special districts collected over $3 billion in fee-related revenue as illustrated in the following table:
FEE-RELATED REVENUES REPORTED BY ENTERPRISE SPECIAL DISTRICT, 1982-83

<table>
<thead>
<tr>
<th>Service</th>
<th>Revenue Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Airport --</td>
<td>Landing, storage, fuel storage concessions</td>
<td>$ 35,195,857</td>
</tr>
<tr>
<td>Electric --</td>
<td>Operating revenues, sale of energy, customer service</td>
<td>439,371,019</td>
</tr>
<tr>
<td>Harbors, Ports -</td>
<td>Marine dockage, harbor slip rentals</td>
<td>57,998,262</td>
</tr>
<tr>
<td>Transit --</td>
<td>Passenger fares, charter revenue, nontransit revenue</td>
<td>362,134,360</td>
</tr>
<tr>
<td>Waste Disposal</td>
<td>Fees and sales</td>
<td>349,116,998</td>
</tr>
<tr>
<td>Water --</td>
<td>Reservoir, irrigation (does not include fire prevention, groundwater replenishment)</td>
<td>952,698,147</td>
</tr>
<tr>
<td>Hospital --</td>
<td>Net patient revenue</td>
<td>1,038,933,480</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>$3,235,448,123</td>
</tr>
</tbody>
</table>

Source: State Controller's Office

In 1981-82, the latest year for which data are available, cities collected $3.5 billion in enterprise revenue:

<table>
<thead>
<tr>
<th>Service</th>
<th>Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity</td>
<td>$1,890,446,994</td>
</tr>
<tr>
<td>Gas</td>
<td>134,823,071</td>
</tr>
<tr>
<td>Airports</td>
<td>278,371,554</td>
</tr>
<tr>
<td>Ports &amp; Harbors</td>
<td>186,030,543</td>
</tr>
<tr>
<td>Hospitals</td>
<td>76,596,718</td>
</tr>
<tr>
<td>Transit</td>
<td>120,212,763</td>
</tr>
<tr>
<td>Water Connection and Service</td>
<td>635,600,563</td>
</tr>
<tr>
<td>Solid Waste Disposal</td>
<td>176,200,185</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$3,498,282,391</td>
</tr>
</tbody>
</table>

Source: State Controller's Office

3. Employee Pension Costs Cannot be Funded by Fees -- This proposal prohibits the costs of employee pension systems from being paid from fee revenues. As a result, fees would no longer cover the full cost of providing a service to people. The consumer of the service covered by a fee could thus be subsidized through a charge covering less than the full cost of the service.
If the pension costs of employees cannot be paid from fees, the general fund of the governmental unit will likely have to pick up these costs. This would take money away from other programs and services provided to residents in order to pay employee pension costs.

An even more serious problem exists for independent special districts which are totally supported by fees. Employee pension costs, which are paid by fees (for example, electricity rates) charged by these districts could not be shifted to other non-fee revenue. How are employee pension costs to be paid by such districts? This poses a serious legal problem of contract impairment and could cause this portion of the proposal to be ruled unconstitutional under these circumstances.

4. Provisions Requiring Refunds of a Portion of Certain Fees Are Ambiguous -- This proposal requires the refund, with 13\% interest, of any portion of a fee which is considered a "tax" and which has not been validly imposed (by a two-thirds vote of the people or Legislature).

The portion of the fee which exceeds the direct cost of the service or benefit conferred is defined to be a tax. The portion of a fee which is used to fund pensions must also be considered a tax and Section 5, which is added to Article XIII A, implies that these refunds are for a period before July 1, 1985.

However, Section 5 does not specify for what period the refunds are to be made. It would appear that this period would have to be from the effective date of the amendment, or from the date the fee is imposed, whichever is later. This ambiguity will probably have to be resolved by the courts.

Will the refunds be applicable to all fees or just new fees which are not validly imposed? If all fees are affected, can local and state government act timely to change all fees on the day after the election?

The third sentence of paragraph (4) reads, "If any portion of a purported fee or purported assessment constitutes a tax and such tax has not been validly imposed, any person who paid the fee or assessment shall be entitled to receive from the entity imposing the fee or assessment a refund of that portion constituting a tax, plus 13-percent interest from the date of payment." This might be interpreted to mean that the portion of all fees that exceeds the direct cost of a service or benefit received or pays employee retirement costs must be changed.

We are not certain what the term "validly imposed" means. Presumably it means the "tax" portion of the fee has been approved by the voters by a two-thirds vote. (We know of no existing fee which has been approved by a two-thirds vote.) On the other hand, if a fee was first imposed prior to the adoption of this amendment, it might be argued that it was "validly imposed."
It will take considerable time to determine how much the fees must be changed, to provide appropriate notices required for public hearings to permit local governments to take action to change fees, and then to implement the changes. For example, it will take some time to retrofit all parking meters and to print new fee schedules for fee-supported activities.

There are a number of other problems associated with the refund provisions. How will taxpayers know they are entitled to refunds? How will they know the amount they can claim? How can they prove they paid fees, such as parking meter fees, where there are no receipts?

5. Impact on Revenue Bonds -- Many revenue bonds have been issued in California to pay for the costs of construction of certain facilities. These revenue bonds are supported from a stream of income from the facilities, which are often supported solely by fees.

According to a recent report by Merrill Lynch, "If the fee-based revenue bond issuers are restricted to fees that can not exceed either their bare-bones rate covenants or the annual CPI increase, debt service coverage could significantly decline and thereby, for many, weaken the credit quality. Rating downgrades by Moody's and Standard & Poor's of revenue bonds that have currently high coverage could be expected to occur."

With respect to new facilities, this proposal contains no provision to permit fee increases above CPI to fund revenue bonds, even if such bonds were to be submitted to the electorate and approved by a vote. As of July 1, 1982, there were $920 million in authorized but unissued revenue bonds for special districts alone.

Again, from the Merrill Lynch report, "In summary, it would appear that the Proposition severely restricts the ability of many revenue bond issuers, particularly in high economic growth areas which are in need of capital improvements, to raise capital with properly secured bond issues."

6. Election Costs and Timing Pose Problems -- For local governmental units which wish to impose a fee or increase a fee by more than the change in the cost-of-living, a two-thirds vote of the people would be required.

The election process is not well suited for quick action on public finance issues or for dealing with a multiplicity of very similar issues. Issues must be placed on the ballot long before the actual election. There may be a long lag between the time the increased fee is needed and the time an election could be scheduled.

County elections are only held in the Spring and Fall of even-numbered years (consolidated with statewide elections).
City, special and school district elections are held at various times. In odd-numbered years, if counties needed to increase a fee by more than the CPI, a special countywide election must be called.

Since all governmental jurisdictions impose a great variety of fees, there could be a great many fee proposals in a single ballot. In such circumstances it could be very confusing to voters, and difficult for the campaigns for and against each particular fee proposal, to adequately inform voters through the media.

The cost of holding an election is high. The proposed fee limitations have the potential of costing local governments substantial sums for holding elections for many of the thousands of fees now imposed. The cost of holding an election for a fee increase may be greater than the increased revenue from the higher fee.

7. What Governmental Costs Can be Included in a Fee -- The proposal is ambiguous as to what governmental costs can be funded from fee revenue. Costs of employee pensions cannot (see Comment #2). Further, only the "direct costs" of services, benefits conferred and regulations can be covered by a fee.

There is no definition of the term of "direct cost" in the proposal. What can and cannot be included in a fee will have to evolve from judicial and legislative interpretation.

It is not clear how the "indirect" costs will be paid. Nor is it clear what will happen when a unit of government is funded solely from revenues from charges, such as enterprise activities.

In a number of communities the excess of fee revenue over the cost of providing the service are channeled into the community's general fund. For example some of the revenue from the City of Palo Alto's electric utility (some $9 million in 1981-82) is used by the city for purposes other than providing electric service. This has been done historically to help keep city property taxes low, and to provide additional local services. Under this proposal it seems that the additional revenue may no longer be collected without approval of two-thirds of the electors.

8. Problems With Fees of Small Amounts and With Small Change -- For certain fees of small amounts and fees collected automatically where small change is not accepted, any local fee increase may require a two-thirds vote of the people. Many low-value fees could not be raised at all without a vote, because allowable CPI growth would produce a fee increase of less than a penny or a nickel.

Many fees are collected by machines. For example parking meters, fares for transit services, and vending machines owned or leased by government, collect fees automatically. They are often
not equipped to take pennies (or even nickels or dimes). Thus a fee increase would have to be by the next higher denomination of coin the machine could handle, which may be well in excess of the cost-of-living increase. Even if the fee is increased once in a three- or four-year period, this proposal would require a two-thirds vote, as increases in the fee would be measured against the increase in the cost-of-living for the prior twelve months.

9. Any Local Admission Fee to Any Special Event Would Have to be Set by a Two-Thirds Vote -- If a local government charges for a special event, this proposal would appear to require a two-thirds vote of the people to establish the fee because the event is unique and there is no existing fee to increase. Any new fee would require a vote before it could be imposed.

For example, if a fee is to be charged for a special art exhibit, it would have to be approved by a two-thirds vote. This could result in many national exhibits bypassing California due to the uncertainty of funding.

10. The Sales Price of Any Governmental Property Sold Would Probably Have to be Approved by Two-Thirds Vote -- Under this proposal, any charge however labeled or structured by local government is defined as a tax, unless it is a fee, assessment or fine. A fee is a charge for the direct costs of benefits conferred upon persons or property subject to the charge.

Therefore, it would appear that the charge by local government for the title to a parcel of property is either a fee or a tax. In either event, it would appear to require approval by a two-thirds vote, because it is either a new fee or a tax.

It is also likely that the charges for renting or leasing local governmental property would be subject to a two-thirds vote, where the property is being rented or leased for the first time or when the rent is increased by more than the CPI.

Sales or first time leases of state lands would have to be approved by a two-thirds vote of the Legislature. For example, leases of state tidelands would have to be approved by a two-thirds legislative vote.

11. How Are University of California Fees to be Treated? -- The University of California is a constitutionally authorized entity with full powers of government (see Article IX, Section 9). It has the power to set fees independent of the Legislature.

How are its fees to be treated? Is it to be considered a "governmental entity other than the state" for which a two-thirds vote of the people must approve any new fee or any change in any fee in excess of the CPI? Or is it "the state" for which a two-thirds vote of the Legislature is needed to authorize or enact new fees or fee increases in excess of the cost-of-living?
If this provision puts University fees under the control of the Legislature, it will be a major change in the governance of the University. If fees are put under control of the voters statewide, it would, of course, be an even greater change.

12. Some Admission Fees May Exceed Direct Costs -- Some admission fees are set to exceed the direct costs of the event, for a variety of reasons, such as crowd control, support of other related activities, etc.

For example, the admission fee to a high school football game may exceed the direct costs, as football makes money to support other sports which cannot generate much in the way of gate receipts. This proposal would require the refund of the portion of such fees imposed which exceed the direct costs, and would require a two-thirds vote of the people (local fees) or a two-thirds vote of the Legislature (state fees) to raise the portion of an admission charge by any amount that is defined to be a tax (i.e., the amount in excess of cost).

13. May Force Annual Fee Increases -- This proposal provides that fees may be raised by action of the local governing board or council, provided such increases do not exceed the change in cost-of-living for the prior twelve months. If a local board or council waits two or three years to raise a fee, it still can be increased by no more than the CPI for the last twelve months, unless there is a vote.

As a result, local agencies, in their own fiscal interests, may increase fees every year by the allowable cost-of-living in order to keep their "base" current. If local agencies adopt this strategy, many fees will be higher than they would be under existing law where they are not necessarily increased each year.

14. Impact on Cable TV -- Cable television in many cities is operated either as a municipal service or by a private-public partnership. In the latter case, the city collects the fees from the users.

The limitations in fee increases contained in this proposition will limit governments' ability to adjust cable television fees. It is possible that this might be interpreted to require approval of two-thirds of the voters to permit a cable system to add new channels (new programs or additional foreign stations received by satellite transmission) which would require an increase in fees to pay for the additional service.

15. Ambiguities --

a. How will a local agency know if a fee exceeds the cost-of-living if the fee is based on a percentage of gross receipts or other unknown amount at the time it is imposed? In such a case, is the limit imposed on the rate of the fee or the total amount charged to the fee payer?
b. How will the fee provisions of this proposal work when there is competitive bidding for the benefit for which a charge is made? For example, if a charge is made for the benefit of using space in a government building, and the charge is based on the highest bid for the use of the space, what happens if the bids exceed the increase in the cost-of-living?

c. Will the prohibition on pension costs being funded by fees (see Comment #3) extend to private pension costs? For example, if a public agency charges a fee for a service and contracts with a private firm to provide the service, can the retirement costs of the employees of the private firm be paid out of the fee revenue the government awards to the private firm for performing the service?

d. How are intergovernmental charges to be handled? For example, the state charges local governments for the cost of collecting the sales tax; a local government service unit, such as a reproduction or data processing department, bills a local government for costs. The proposal does not appear to exclude such charges, and they would probably be considered fees.

e. Do the limits on fees to the "direct costs" of the service or benefit prohibit the use of the fee to pay the profit of a firm which contracts with government to provide a service which is funded by fees collected by government? If fees can only be used for the direct costs, excluding profit for the contracting firm, it would appear to curtail contracting with private enterprise to provide government service. On the other hand, if profits can be included for private services, profits could be included for public services (as in the case of an enterprise function where "excess" fees are deposited in the General Fund). The proposal makes no distinction between the two.

f. Can the Legislature authorize local government to increase fees above the change in cost-of-living by action of the local board or council? While we do not interpret these provisions to provide for this alternative method of raising fees, the language is ambiguous and could possibly be interpreted in this manner. Others reading this proposal have made this interpretation. If this interpretation is upheld, it would shift a substantial amount of local control to the State Legislature. This issue will probably have to be decided by the courts.
GENERAL OBSERVATIONS
GENERAL OBSERVATIONS

1. Property Tax Limits Are Tightened, Although Some Property Taxpayers Will Face Tax Increases

Under this proposal some property taxpayers will pay less in property tax while others will pay more. In expanding the purview of Article XIII A to all taxes on or based upon the ownership of property, this proposal broadens the applicability of the present 1% ad valorem property tax limit to include any non-ad valorem taxes (such as frontage and square-footage taxes); and it restricts the use of special add-on rates for debt by restrictively defining "indebtedness", and by prohibiting existing, but as yet unissued, bonds from being funded from add-on rates. However, this proposal would increase property taxes in the case of recent-base-year properties, where the tax reductions and refunds for early-base-year properties would force the present debt rates to be increased.

There are several ambiguous provisions in the proposal, which may have the effect of increasing property taxes, or fees based on property (see Analysis, Sections V and X).

2. Benefits Are Distributed Unequally to Various Groups

The major beneficiaries of the property tax relief provided by this proposal would be owners of property of substantial value where there has been no change of ownership or new construction since 1975.

All property owners with a 1978 assessment based on a 1975, 1976 or 1977 base-year value will receive a refund, with interest. But almost half of all homeowners and many recently formed businesses will have a current net property tax increase due to tax rate increases needed to make whole funds for bond interest and redemption.

The determination of the full impact of the measure upon homeowners will have to await legislative and court interpretation of ambiguous language.

For renters there would be no direct property tax relief provided by this measure. Any indirect impact would vary according to economic conditions and the base year of the property.

3. More Restrictions Are Placed on Fiscal Operations of State and Local Government

Presently there are many constitutional provisions which restrict the fiscal powers of state and local government. For example, long-term debt must be approved by the voters. Most state appropriations and tax increases must be approved by a two-thirds vote of the Legislature. The property tax under
Proposition 13 is already curtailed. And state and local appropriations are limited by the provisions of the Article XIII B appropriation limit. Furthermore, local governments' ability to increase taxes is limited by various statutes, except in prescribed areas.

This proposal would place several additional layers of fiscal restriction on state and local government. It would further limit the 1% property tax ceiling. It would restrict the issuance of debt. It would prohibit the use of fees to pay for pension liabilities. It would limit the growth of fees, and the imposition of new fees. It would further reduce government's ability to increase or decrease taxes, and it proscribes certain uses of assessments.

The provisions of this proposal which reduce the assessed valuations of real property could seriously impact redevelopment agencies. This would be particularly true if the new construction, purchase price and intrafamily transfer provisions are determined to be retrospective to June 1978. Redevelopment agencies are funded by the increased property tax attributable to assessed value increases since the inception of the agency. If these provisions are retrospective, many redevelopment agencies could experience substantial assessment decreases. This could imperil the "tax increment," from which debt payments are made.

4. Use of the Two-Thirds Vote Requirement is Expanded

Traditionally the two-thirds vote requirement, either legislative or by the electorate, has been reserved for extraordinarily important occasions. For example, state tax increases and appropriations from the state General Fund require a two-thirds vote of both houses of the Legislature. And bond acts, which obligate future generations of Californians to pay for major capital projects, require approval of two-thirds of the voters. Imposition of special local taxes would also require a two-thirds vote.

While a two-thirds vote may be appropriate for extraordinary circumstances, its use for what would normally be considered ordinary governmental decisionmaking is arguably excessively awkward and burdensome. While proponents argue that the two-thirds vote requirement prevents a majority from trampling the rights of the minority, conversely the requirement gives a minority virtual veto power over the majority -- each negative vote cancels two positive votes.

This provision expands the two-thirds vote requirement to the area of fees by requiring that any new fee, or any increase in a fee by more than the general rate of inflation, would require a two-thirds vote. It also broadens the range of state and local taxes which may be increased only by a two-thirds vote. Finally, a two-thirds vote may be required to decrease taxes under this proposal.
5. Economic Effects

Many people believe that the new restrictions which the proposal places on the sale of bonds, payment for pension liabilities, imposition of fees and assessments for services, capital construction and maintenance, and the levy of taxes to provide governmental services, may effectively erect barriers to growth and new enterprise in California. They believe that the ability of government to provide new infrastructure -- roads, schools, power and water service, etc. -- will be impaired. Further they fear that it will be very difficult or impossible to maintain our existing infrastructure and to pay for existing services, and that California will not provide a welcome environment for location of new facilities and job opportunities.

To the extent that this measure restricts economic growth, there would be concomitant secondary effects which would exacerbate these restrictions. The well-known "multiplier effect" of increased economic activity would be reversed. If there is a reduction in construction activity, for example, there would be a corresponding reduction in related economic sectors, from the more direct impacts on building material industries to the more remote, but nevertheless inevitable, impacts on the financial and service sectors, and upon the consumer goods industries. While it is impossible precisely to quantify these secondary multiplier effects, there is no doubt that they would greatly magnify any direct economic reductions.

6. More Governmental and Fiscal Authority Would be Shifted From Local Government to Sacramento -- and the Courts

Possibly the most significant aspect of Proposition 13 was to shift enormous fiscal authority to the Legislature. This has been so for two reasons: First, other than for voted debt, there is a single 1% property tax levied in each county which is allocated pursuant to state law. This provision of Proposition 13 has essentially granted the Legislature the direct power to determine the level of service which local governments may provide.

Second, the massive property tax reduction occasioned by Proposition 13 made it necessary that the state "bail-out" local governments. Each year since the passage of Proposition 13, these bail-out funds have been subject to legislative control.

Finally, the drafting ambiguities contained in Proposition 13 have been the subject of seemingly endless court action, which has further reduced local governments' sense of certainty and self-determination.

This proposal would place even greater authority over local fiscal affairs in the hands of the Legislature. Because of the magnitude of the potential revenue loss to local governments,
they may again appeal to the state for "bail-out." And funding restrictions at the local level will cause persons who would otherwise go to the local level with their problems to come to the state, which may or may not have resources to deal with the problem. It also may allow the state to authorize local tax increases (and possibly fee increases), and would necessitate a whole new array of implementing legislation over which local governments would have practically no control.

In addition, there are many ambiguous provisions which the courts would have to resolve. If the experience with Proposition 13 is any gauge, this legislative and court process could well extend into the next decade.
TEXT OF ACA 53
Assembly Constitutional Amendment No. 53 A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Sections 1, 2, 3, and 6 of, by adding Section 4.5 to, and by repealing and adding Sections 4 and 5 of, Article XIIIA thereof, relating to taxation.

AUTHOR: Assembly Member Johnson

LEGISLATIVE COUNSEL'S DIGEST

ACA 53, as introduced, Johnson. Taxation.
Existing provisions of Article XIIIA of the Constitution do each of the following:
(1) Establish a 1% of 'full cash value' limitation on ad valorem real property taxes, but exclude from that limitation ad valorem taxes or special assessments to pay interest and redemption charges on indebtedness approved by the voters prior to the effective date of specific provisions of the article.
(2) Define 'full cash value' to mean the county assessor's valuation of real property as shown on the 1975-76 tax bill under 'full cash value' or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment.
(3) Provide for annual adjustments in full cash value for inflation.
(4) Limit statutory enactment of changes in state taxes for the purpose of increasing revenues, whether by increased rates or changes in methods of computation, to legislation which is enacted by a 2/3 vote of the members of each house.
(5) Permit local governments to impose special taxes, except as specified, by a 2/3 vote of the electors of the particular local government.
(6) Specify the effective date and operative effect of the article's provisions.

This measure would do the following:
(1) Specify that July 1, 1978, is the effective date for the approval of indebtedness which is not subject to the 1% limitation. Limit the approved indebtedness which is not subject to the 1% limitation to bonded indebtedness, as specified.
(2) Limit the terms 'full cash value' and 'appraised value' in a specified manner.
(3) Specify the consumer price index to be used to determine inflation, prohibit inflationary adjustments for the 1976-77, 1977-78, and 1978-79 assessment years, and require refunds or credits to taxpayers who have been subject to inflationary increases for those years.
(4) Provide that the 2/3-vote requirement for state legislation changing state taxes applies to any changes enacted in any state tax which increases the amount of any tax levied upon any taxpayer.
(5) Revise the provisions authorizing the imposition of special taxes by local governments to conform to changes proposed in (2) above. Make the 2/3-
vote requirement applicable to any change in any local tax which increases
the amount of any tax levied upon any taxpayer.

(6) Delete the provisions providing for the article's effective date and
operative effect and substitute therefor a definition of the term 'tax' for
purposes of the article which excludes a fee, an assessment, or a fine, as
defined.

(7) Require voter approval for certain fees imposed by entities of
government other than the state and require refunds of certain 'excess' fees
or taxes previously paid.

local program: no.

Resolved by the Assembly, the Senate concurring, That the Legislature of
the state of California at its 1983-84 Regular Session commencing on the sixth
day of December, 1982, two-thirds of the members elected to each of the two
houses of the Legislature voting therefore, hereby proposes to the people of
the State of California that the Constitution of the State be amended as
follows:

First That Section 1 of Article XIIIA thereof is amended to read:
SECTION 1. (a) The maximum amount of any ad valorem tax on real property
and any other tax on, or based upon, the ownership of real property shall
not exceed one percent (1%) of the full cash value of such real
property. The one percent (1%) tax shall be collected by
the counties and apportioned according to law to the districts within the
counties.

(b) (1) The limitation provided for in subdivision (a) shall not apply
to ad valorem taxes or special assessments to pay the interest and redemption
charges on any bonded indebtedness approved by the voters prior to the
time this section becomes effective July 1, 1978. There shall be no other
exception to the limitation in subdivision (a).

(2) For purposes of paragraph (1), 'bonded indebtedness' is limited to
indebtedness which was fixed and certain at the time of voter approval and
which is evidenced or represented by the issuance of bonds in a specified
amount and payable within a specified time.

Second That Section 2 of Article XIIIA thereof is amended to read:
SEC. 2. (a) The full cash value term 'full cash value' as used in this
article means the county assessor's valuation of real property as shown on
the 1975-76 tax bill under 'full cash value' or, thereafter, the appraised
value of real property when purchased, newly constructed, or a change in
ownership has occurred after the 1975 assessment. All real
property not already assessed up to the 1975-76 full cash value may be
reassessed to reflect that valuation. For purposes of this section, the
subdivision:
(1) The term 'newly constructed' shall not include real property which
is reconstructed after a disaster, as declared by the Governor, where the fair
market value of such real property, as reconstructed, is comparable
to its fair market value prior to the disaster.

(2) The 'appraised value' of real property which, since the most recent
prior valuation date, has been purchased, newly constructed, or to which a
change in ownership has occurred, shall not exceed the sum of all of the
following:
(A) For real property purchased or acquired for consideration after the
1975 assessment, the most recent purchase price, or, for other real property,
the assessed value shown on the 1975-76 tax bill (or any value resulting from
a subsequent reassessment pursuant to this subdivision).
(B) The direct cost of any new construction on the real property since the sales or valuation date applicable in subparagraph (A).

(C) Any applicable annual adjustments or reductions described in paragraph (1) of subdivision (b).

The most recent purchase price for this purpose shall be the amount of any money transferred plus the fair market value of any other consideration transferred.

(3) When there is a change in ownership as to less than the entire fee interest in directly held real property, only that lesser interest shall be reappraised.

(4) On and after March 1, 1975, for real property taxation purposes, the value standards prescribed by Section 10 of Article XIII and by statutes authorized by Section 9 of Article XIII, shall be deemed to be 'full cash value,' as that term is used in this section, and any tax levied on real property subject to such value standards shall be governed by this article.

(b) (1) The full cash value base may reflect from year to year the inflationary rate an 'annual adjustment' for inflation not to exceed 2 percent for any given year, or reduction, as shown in the consumer price index or comparable data Consumer Price Index of the Bureau of Labor Statistics, United States Department of Labor, under the heading 'All Items,' or any index substituted by the Department of Labor therefor, for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.

(2) The full cash value shall not include any annual adjustment for the 1976-1977, 1977-1978, and 1978-1979 assessment years. Any assessees whose assessment for any year contained an annual adjustment for the 1976-1977, 1977-1978, or 1978-1979 assessment year shall be entitled to refund of taxes, or a credit against taxes next due if the Legislature so provides, in the dollar amount of the additional taxes paid as a result of that annual adjustment, plus interest at the rate of 13 percent from the date of payment.

(c) For purposes of subdivision (a), the Legislature may provide that the term 'newly constructed' shall not include the construction or addition of any active solar energy system.

(d) For purposes of this section, the term 'change in ownership' shall not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a public entity, or governmental action which has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility, and function, or if it conforms to state regulations defined by the Legislature governing the relocation of persons displaced by governmental actions. The provisions of this subdivision shall be applied to any property acquired after March 1, 1975, but shall affect only those assessments of that property which occur after the provisions of this subdivision take effect.

(e) For purposes of subdivision (a), the term 'change in ownership' shall not include any intrafamily transfer of real property between an owner thereof and any other person or persons if the person or persons to whom that property is transferred is or are members of the immediate family of that owner. This section shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree. As used in this subdivision, 'members of the immediate family' of the owner means parents, grandparents, stepparents, uncles, aunts, spouse, stepchildren, siblings, and
lineal descendants of the owner, or the guardian or trustee for any of the foregoing persons.

Third That Section 3 of Article XIIIA thereof is amended to read:
SEC. 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: On and after August 15, 1983, any new tax or any change in any tax enacted or authorized by the Legislature which increases the amount of any tax levied upon any taxpayer, including, but not limited to, the imposition of a new tax, an increase in the rate of a tax, a change in the method of computation of a tax or a change in the taxpayers subject to such tax, may be imposed only 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, other than the 1-percent tax referred to in subdivision (a) of Section 1, no new or increased ad valorem taxes tax on real property, or other tax on or based upon the ownership of real property, or sales or transaction taxes tax on the sale or lease of real property, may be imposed.

Fourth That Section 4 of Article XIIIA thereof is repealed.
SEC. 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.

Fifth That Section 4 is added to Article XIIIA thereof, to read:
SEC. 4. On and after August 15, 1983, any new tax or any change in any tax enacted or authorized by any governmental entity, exclusive of the state, which increases the amount of any tax levied upon any taxpayer, including, but not limited to, the imposition of a new tax, an increase in the rate of a tax, a change in the method of computation of a tax or a change in the taxpayers subject to such tax, may be imposed only by a measure approved by two-thirds of the qualified electors of the governmental entity voting on the measure at a public election, except that, other than the 1-percent tax referred to in subdivision (a) of Section 1, no new or increased ad valorem tax or other tax on or based upon the ownership of real property, or sales or transaction tax on the sale or lease of real property, may be imposed.

Sixth That Section 4.5 is added to Article XIIIA thereof, to read:
SEC. 4.5. (As used in this article, the term 'tax' means any levy or charge, however labeled or structured, including, but not limited to, any levy for the purpose of paying pension liabilities, made by the state, any local governmental entity, or any agency or instrumentality of either the state or a local governmental entity which does not constitute a fee, an assessment or a fine, as defined in subdivision (b).

(b) For purposes of this section:
(1) 'Fee,' which shall not include any amount to pay pension liabilities, means any charge by the state, any local governmental entity, or any agency or instrumentality of either the state or a local governmental entity which is imposed upon persons or property for either of the following purposes:
(A) To pay for the direct costs of the services provided to, or direct benefits conferred upon, the particular persons or property subject to the charge.
(B) To pay for the direct costs of a regulatory program under which the person or property subject to the charge is regulated.
(2) 'Assessment' means a charge which is levied upon particular real property within a limited area for the payment of the cost of a local capital
improvement to land which directly and specially benefits particular real property, and which meets all of the following criteria:
   (A) It is levied exclusively on land.
   (B) It is based wholly on and limited in amount to direct and special benefits to the land upon which it is levied.
   (C) It creates no personal liability for the person whose land is assessed.
   (D) It is limited both as to time and locality by the duration and scope of application of the capital improvement.

(3) 'Fine' means an amount paid to a governmental entity as a pecuniary punishment for engaging in unlawful activity.

(4) The excess of any purported fee imposed over the direct costs of the service or direct benefit conferred or provided to fee payers or the direct costs of the regulatory program for which the fee is charged, shall constitute a tax. The excess of any purported assessment levied over the costs of the capital improvement for which the assessment is levied, shall constitute a tax. If any portion of a purported fee or purported assessment constitutes a tax and such tax has not been validly imposed, any person who paid the fee or assessment shall be entitled to receive from the entity imposing the fee or assessment a refund of that portion constituting a tax, plus 13-percent interest from the date of payment.

(5) On and after August 15, 1983, any new fee or any increase in any fee exceeding the increase, if any, in the cost of living during the preceding 12-month period as shown in the Consumer Price Index of the Bureau of Labor Statistics, United States Department of Labor, under the heading 'All Items,' or any index substituted by the Department of Labor therefor, for the area subject to the fee, may be imposed by any governmental entity other than the state only by a measure approved by two-thirds of the qualified electors of that governmental entity voting on the measure at a public election, or if enacted or authorized by the Legislature only by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature.

Seventh That Section 5 of Article XIIIA thereof is repealed.

SEC. 5. This article shall take effect for the tax year beginning on July 1 following the passage of this Amendment, except Section 3 which shall become effective upon the passage of this Article.

Eighth That Section 5 is added to Article XIIIA thereof, to read:

SEC. 5. Except for refunds of taxes required by paragraph (2) of subdivision (b) of Section 2, and refunds of any fees, taxes, or assessments collected in violation of paragraph (4) of subdivision (a) of Section 2, Section 3, Section 4 and paragraphs (4) and (5) of subdivision (b) of Section 4.5, no refund for any tax year prior to the tax year beginning July 1, 1985, shall be made as the result of the adoption of the constitutional amendments proposed by the resolution which proposed the addition of this section to this article.

Ninth That Section 6 of Article XIIIA thereof is amended to read:

SEC. 6. If any section, subdivision, paragraph, part, clause, or phrase hereof of this article, or any amendment or any revision of this article, is for any reason held to be invalid or unconstitutional, the remaining sections, subdivisions, paragraphs, parts, clauses, or phrases shall not be affected but shall remain in full force and effect.
TEXT OF JARVIS IV INITIATIVE
TAXATION. INITIATIVE CONSTITUTIONAL AMENDMENT. Amends Article XIII A, enacted as Proposition 13 in 1978, adding restrictions on real property taxation, enactment of new tax measures, and charging fees. Prohibits imposition of new taxes based upon real property ownership, sale, or lease. Prohibits increasing other taxes except upon two-thirds vote of Legislature for state taxes and two-thirds vote of electorate for local governments. Restricts imposition of fees exceeding direct costs of services provided. Provides specified refunds including taxes attributable to assessed value inflation adjustments in assessment years 1976-1977 through 1978-1979. Makes other changes. Operative date for specified provisions is August 15, 1983. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: There will be both one time and ongoing fiscal effects. One time fiscal effects: (1) A potential cost of approximately $1.29 billion to pay property tax refunds. These would be paid by the state ($508 million), local property taxpayers through higher levies for debt service (up to $158 million), and local governments ($624 million). (2) The state will gain about $75 million over a two year period in increased state income tax revenues because the property tax refunds and interest will be taxable income. Ongoing fiscal effects: (1) Annual revenue losses of at least $41 million to local governments and $25 million to school districts resulting from the provisions regarding inflationary adjustments to assessed valuations. The revenue losses to schools would be offset by comparable increased state funding. (2) Unknown but probably major ongoing gains in state income tax revenues. (3) Unknown annual multimillion dollar costs and revenue losses to state and local governments due to tax rate limitations; assessments practices changes; voting requirements for tax legislation; and the definitions of taxes, fees, and assessments contained in the measure.

THE AMENDMENT

SECTION 1. Subdivision (a) of Section 1 of Article XIII A of the California Constitution is amended to read:

(a) The maximum amount of any ad valorem real property and any other tax or fee based upon the ownership of any real property shall not exceed one percent (1%) of the full cash value of such real property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

SECTION 2. Subdivision (b) of Section 1 of Article XIII A of the California Constitution is amended to read:

(1) For purposes of paragraph (1) of subdivision (a) of Section 1 of Article XIII A of the California Constitution and by the issuance of any bonds issued pursuant to Section 2(a) of Article XIII A of the California Constitution, the term "full cash value", as used in this article, means the county assessor's valuation of a property as shown on the 1975-1976 reassessment roll or, at the appraised value of real property when purchased, newly constructed, or to which a change in ownership has occurred, shall not exceed the sum of the following:

(A) For real property purchased or acquired for consideration after the 1975 assessment, the most recent purchase price, or for other real property, the assessed value shown on the 1975-1976 reassessment roll or any value resulting from a subsequent assessment pursuant to Section 2(a).

(B) The direct cost of any new construction on the real property since the sale or valuation date applicable in (A).

(C) Any applicable annual adjustments or reductions described in Section 2(b)(1).

The most recent purchase price for this purpose shall be the amount of any money transferred plus the fair market value of any other consideration transferred.

(3) When there is a change in ownership it is later than the first time interest in directly held real property, only that lesser interest shall be reappraised.

(4) On and after March 1, 1978, any revenue increase from the imposition of any property taxation purpose, the value standards prescribed by Section 4 of Article XIII A of the Constitution and by statute as amended by Section 9 of Article XIII A of the California Constitution, shall be deemed to be "full cash value", as that term is used in this Section and any tax levied on real property subject to such value standards shall be prohibited by any state or local government.

SECTION 4. Subdivision (b) of Article XIII A of the California Constitution is amended to read:

(b) (1) The full cash value may reflect from year to year an "annual adjustment" for inflation not to exceed 2% per year for any given property, except for any sale conducted within 12 months of the prior Annual Reclassification Date. Statistics, United States Department of Labor, under the heading "All Items," or any index substituted by the Department of Labor thereafter, for the area under taxing jurisdiction, or may be reduced to reflect substantial destruction, decrease in value or other factors causing a decrease in value.


(3) Any assessment for the year containing any annual adjustment for the 1976-1977, 1977-1978, or 1978-1979 assessment year shall be refunded to taxes, or a credit against taxes due if legislature so provides, in the dollar amount of the additional taxes paid as a result of that annual adjustment, plus interest at the rate of 13 percent from the date of payment.

SECTION 5. Subdivision (a) is amended to add Section 2 of Article XIII A of the California Constitution, to read:

(a) For purposes of subdivision (a) the term "change in ownership" shall not include any intrafamily transfer of real property between an owner thereof and any other person or persons if the person or persons to whom the property is transferred is an are members of the immediate family of that owner. This section shall apply to any voluntary transfers and transfers resulting from a court order or judicial decree. As used in this subdivision, "members of the immediate family" of the owner means parents, grandparents, step-parents, uncles, aunts, spouse, stepparents, siblings, and in-law descendents of the owner, or the guardian or trustee for any of the foregoing persons.

SECTION 3. Section 3 of Article XIII A of the California Constitution is amended to read:

Sec. 3. On and after August 15, 1983, any new tax or any change in any tax enacted or authorized by the Legislature which increases the amount of any tax levied upon any taxpayer, including but not limited to the imposition of a new tax, an increase in the rate of a tax, a change in the method of computation of a tax or a change in the taxpayer subject to such tax, may be imposed only 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, other than the one percent (1%) tax referred to in Section 1(a), no new or increased ad valorem tax on real property or other tax or fee based upon the ownership of real property, or sales or use of real property, tax on the value of the use of real property, may be imposed.

SECTION 7. Section 4 of Article XIII A of the California Constitution is repealed.

SECTION 8. Section 4 is added to Article XIII A of the California Constitution, to read:

Sec. 4. On and after August 15, 1983, any new tax or any change in any tax enacted or authorized by any governmental entity, exclusive of the state, which increases the amount of any tax levied upon any taxpayer, including but not limited to the imposition of a new tax, an increase in the rate of a tax, a change in the method of computation of a tax or a change in the taxpayer subject to such tax, may be imposed only by a measure approved by two-thirds of the qualified electors of the governmental entity voting on the measure at a public election, except that, other than the one percent (1%) tax referred to in Section 1(a), no new or increased ad valorem tax or other tax or fee based upon the ownership of real property, or sales or transaction tax on the sale or lease of real property, may be imposed.

SECTION 6. Section 4 is added to Article XIII A of the California Constitution, to read:

Sec. 4. (a) As used in this article, the term "tax" means any levy or charge, however labeled or structured, including but not limited to any levy for the purpose of paying pension liabilities, made by the state, any local governmental entity, or any administrative agency or local governmental entity which does not constitute a fine, an assessment or a tax, as defined in subdivision (b).

(b) For purposes of this section:

(1) "Fine," shall not include any amount to pay pension liabilities, means any charge by the state, any local governmental entity, or any agency or instrumentality of either the state or a local governmental entity which is imposed upon persons or property for either of the following purposes:

(A) To pay for the direct costs of the services provided to or direct benefits conferred upon the particular persons or property subject to the charge.

(B) To pay for the direct costs of a regulatory program under which the person or property subject to the charge is regulated.

(2) "Assessment" means a charge which is levied upon particular real property within a limited area for the payment of the cost of a local capital improvement to land which directly and specially benefits said particular real property, and which meets all of the following criteria:

(A) It is levied exclusively on land.

(B) It is based wholly on and limited in amount to direct and special benefits to the land upon which it is levied.

(C) It creates no personal liability for the person whose land is assessed.

(D) It is limited both as to time and locality by the duration and scope of application of the capital improvement.

(3) "Fine," as used in subdivision (b), is a penalty or fine and not a punishment for engaging in unlawful activity.

(4) If the excess of any particular fine imposed over the direct costs of the service or direct benefit conferred or provided to the payers or the direct costs of the regulatory program for which the fine is assessed, shall constitute a tax, then any portion of a purported fine or purported assessment constitutes a tax and such tax has not been validly imposed, any person who paid the fine or assessment shall be entitled to receive from the entity imposing the fine or assessment a refund of that portion constituting a tax, plus 15 percent interest from the date of payment.

(5) On and after August 15, 1983, any new fine or any increase in any fine exceeding the increase if any in the cost of living during the preceding twelve month period as shown in the Consumer Price Index of the Bureau of Labor Statistics, United States Department of Labor, under the heading "All Items," or any index substituted by the Departent of Labor thereafter, for the area subject to the fine, may be imposed by any governmental entity other than the state only by a measure approved by two-thirds of the qualified electors of that governmental entity voting on the measure as a public election, or if enacted or authorized by the Legislature to be charged, shall constitute a tax.
BACKGROUND ON PROPERTY TAX

Source: From 1984 Revenue and Taxation Reference Book, Assembly Revenue and Taxation Committee, January 1984
### HIGHLIGHTS

- **Tax Base:** Real property (land, improvements and fixtures) and tangible personal property (equipment, office furniture, etc).
- **Tax Rate:** 1% rate; additional rates allowed for pre-1978 voter approved indebtedness.
- **Revenue:**
  - 1982-83 $8.007 billion
  - 1983-84 (est.) $8.592 billion
  (Estimates do not include exemptions).
- **Major Exemptions:** Government-owned property; nonprofit religious, educational, charitable and cemetery properties; business inventories; household furnishings and personal effects; first $7,000 of an owner-occupied home; motor vehicles; portion of property owned by certain veterans.
- **Administration:** Board of Equalization and county assessors.

### TAX BASE

Real property (land and permanently attached improvements, including mineral rights) and personal (movable) property are subject to the property tax.

Almost all property is assessed locally, by county assessors. Utility and railroad property, including private railroad cars, and intercounty pipe lines, flumes, canals, ditches, and aqueducts are assessed by the State Board of Equalization.

The local assessment roll is divided into two parts, secured and unsecured. The secured roll consists of all property, the payment of tax on which is "secured" by a lien on real property owned by the taxpayer in that county. Thus, all real property owned in fee is on the secured roll. Personal property can also appear on this roll if its owner owns real property in the county. All state-assessed property is also entered on the local secured roll.
The unsecured roll consists of personal property and nonfee real property interests (possessory interests) of taxpayers who do not own real property in the county on which a lien can be imposed which the assessor believes will secure eventual payment of the tax should it become delinquent. Property on the unsecured roll is composed primarily of personal property, machinery and equipment owned by business entities which lease the real property they occupy. Airplanes and boats are also on the unsecured roll.

TAX RATE

Article XIII-A of the State Constitution (Proposition 13, approved by the voters in June of 1978) limits the real property tax rate to 1% of value (see below), plus rates imposed to fund indebtedness approved by the voters prior to July 1, 1978. The California Supreme Court has ruled that property tax rates imposed to fund employee pension systems approved by the voters prior to July 1, 1978 are valid under Proposition 13 (Carman v. Alvord).

In 1983, the Legislature imposed a moratorium on property tax rates for indebtedness other than bonds. In 1983-84 and 1984-85, such rates cannot exceed 1982-83 rates (except for Inglewood and Fresno).

No additional property tax rates may be imposed, with or without voter approval, unless a constitutional amendment is approved by the voters of the state.

PROPERTY VALUE

- Locally assessed real property is appraised at the 1975-76 "full cash value", called the base year value, and is adjusted each year after 1975 by the change in the Consumer Price Index (CPI), not to exceed an increase of 2%.

This property is reappraised to current full value upon either (1) a change in ownership, or (2) new construction, as of the date of such transaction or completion of construction (only the newly constructed portion of the property is reappraised). Thereafter, it continues to be increased annually by the change in the CPI not to exceed two percent.

Property which declines below its base year value is reassessed to reflect the lower value.

- Locally assessed personal property is appraised the same as real property was prior to Proposition 13, i.e., at full cash value each year. The rate applied to the roll is the same as the secured roll property tax rate (1% plus indebtedness).
State-assessed property is appraised at full cash value each year; the rate imposed is the local rate of the jurisdiction in which the property is located.

SUPPLEMENTAL ASSESSMENT ROLL

Procedure. Effective July 1, 1983, real property which changes ownership or is newly constructed is revalued at the time the change in ownership occurs or the new construction is completed. The current year property tax rate will be applied to the reassessment, and the taxes will then be adjusted by a proration factor to reflect the portion of the remaining tax year for which taxes are due.

Under prior law, value changes due to changes in ownership and new construction were added to the assessment roll on March 1 following the change of ownership or completion of new construction. As a result, the change in property tax liability was not reflected until the fiscal year following the March 1 lien date.

For fiscal years 1983-84 and 1984-85 the increased revenue from the property tax accelerations will accrue entirely to K-12 education; in 1985-86 and thereafter, the revenue will be distributed according to the existing property tax allocation formula.

The increase in revenue generated by the supplemental assessment roll is estimated to be $234 million in 1983-84 and $408 million in 1984-85.

Property not subject to Article XIII A's assessment limitations (state-assessed property, open space contracts, etc.) is not subject to this acceleration provision.

Purpose. The purpose of the property tax acceleration provision is to ensure that real property is assessed immediately upon a change in ownership or completion of new construction, rather than escaping taxation for a period of from four to sixteen months.

For example, under prior law, property which changed ownership on February 20 was assessed at full market value on March 1 for the fiscal year beginning on July 1, but property which changed ownership on March 20 escaped the higher assessment until the following March 1, and thus escaped a higher assessment for 15 months.

Table 1 illustrates this assessment lay, by month:
ASSESSMENT RATIO

The assessment ratio is the established percentage of the market value of property used for determining assessed value. Through fiscal year 1980-81 it was 25%. Therefore property on which the full value was $60,000 had an assessed value of $15,000. The property tax rate applied to the assessed value was 4% plus indebtedness, for an effective rate of 1% of full value plus indebtedness.

In 1981-82, the assessment ratio was changed to 100% so that assessed value now equals full value. The tax rate is 1% plus indebtedness, so that the effective rate continues to be 1% of full value plus indebtedness.

REVENUE

The property tax is expected to raise $8.592 billion for schools and local agencies in 1983-84. These revenues, plus business inventory and homeowner exemption subventions from the state to local governments, are expected to be distributed, based on 1982-83 distributions, as shown in Table 2.

### Table 1

Assessment Practice Prior to Enactment of Supplemental Roll

<table>
<thead>
<tr>
<th>Month of change in ownership or completion of new construction</th>
<th>Number of full months property avoided higher assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>March</td>
<td>15</td>
</tr>
<tr>
<td>April</td>
<td>14</td>
</tr>
<tr>
<td>May</td>
<td>13</td>
</tr>
<tr>
<td>June</td>
<td>12</td>
</tr>
<tr>
<td>July</td>
<td>11</td>
</tr>
<tr>
<td>August</td>
<td>10</td>
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<tr>
<td>September</td>
<td>9</td>
</tr>
<tr>
<td>October</td>
<td>8</td>
</tr>
<tr>
<td>November</td>
<td>7</td>
</tr>
<tr>
<td>December</td>
<td>6</td>
</tr>
<tr>
<td>January</td>
<td>5</td>
</tr>
<tr>
<td>February</td>
<td>4</td>
</tr>
</tbody>
</table>

Source: California Taxpayers Association.
Table 2
Distribution of Property Tax Revenue, 1983-84 1/

<table>
<thead>
<tr>
<th>Local Agency</th>
<th>Estimated Percentage of Total Property Tax Revenue</th>
<th>Estimated Revenue (in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Counties</td>
<td>33.6%</td>
<td>$2886.9</td>
</tr>
<tr>
<td>K-12</td>
<td>31.1</td>
<td>2672.1</td>
</tr>
<tr>
<td>Cities</td>
<td>13.2</td>
<td>1134.1</td>
</tr>
<tr>
<td>Special Districts</td>
<td>12.1</td>
<td>1039.6</td>
</tr>
<tr>
<td>Community Colleges</td>
<td>4.7</td>
<td>403.8</td>
</tr>
<tr>
<td>Redevelopment Agencies</td>
<td>3.7</td>
<td>317.9</td>
</tr>
<tr>
<td>County Supt. of Schools</td>
<td>1.6</td>
<td>137.4</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>100.0%</strong></td>
<td><strong>$8591.8</strong></td>
</tr>
</tbody>
</table>

1/ Excludes subventions; includes debt levies.

Source: Board of Equalization and Assembly Revenue and Taxation Committee.

EXEMPTIONS

Below are listed the major exemptions to the property tax:

- Government-owned property generally;
- A portion of property owned by certain veterans;
- Nonprofit educational, religious, charitable and cemetery properties;
- The first $7,000 full value of an owner-occupied home

- Business inventories

- Household furnishings and personal effects;

- Standing timber*

- Motor vehicles*

*These are subject to other taxes in lieu of the property tax.

Certain properties, including open space land, agricultural land under a Williamson Act contract, and nonprofit golf courses are subject to special assessment rules which result in lower property tax rates.
DEFINITIONS

For purposes of Article XIII A, the Legislature has clarified the following terms:

Change in ownership: This term does not include interspousal transfers, creation of joint tenancies or leases of under 35 years, and transfer of property from a partnership to a corporation where the percentage of ownership shares does not change.

New construction: Alterations or improvements which are not changes in use of the property or major rehabilitation are not new construction. Only the portion of the property newly constructed is reassessed. Additionally, Proposition 7 of November, 1980 amended Article XIII A to exclude the addition of active solar energy systems from new construction.

PROPERTY TAX RELIEF PROGRAMS

The state supports many property tax relief programs through subventions, income tax credits and cash payments made directly to taxpayers. Local agencies are reimbursed by the state through subventions for their revenue losses caused by the business inventory and homeowner exemptions, Williamson Act open space contracts and the Senior Citizens Property Tax Postponement Program.

Other property tax relief programs -- Renters' Credit, Senior Citizens Property Tax Assistance and Senior Citizens Renters' Tax Relief -- consist of income tax credits and cash payments to the taxpayer.

Table 3 below illustrates the cost to the state of the various property tax relief programs:

<table>
<thead>
<tr>
<th>Table 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983-84 Property Tax Relief Programs</td>
</tr>
<tr>
<td>(in millions)</td>
</tr>
<tr>
<td>Business Inventory Exemption</td>
</tr>
<tr>
<td>Renters' Credit</td>
</tr>
<tr>
<td>Homeowners' Exemption</td>
</tr>
<tr>
<td>Senior Citizens Renters' Tax Relief</td>
</tr>
<tr>
<td>Williamson Act Open Space Contracts</td>
</tr>
<tr>
<td>Senior Citizens Property Tax Assistance</td>
</tr>
<tr>
<td>Senior Citizens Property Tax Postponement</td>
</tr>
<tr>
<td>TOTAL</td>
</tr>
</tbody>
</table>

Source: Legislative Analyst.
ADMINISTRATION

The State Board of Equalization is charged with promulgating standards for assessment practices and assessing certain utility properties. (With the enactment of Proposition 13, the Board's ability to force increases in a county's values to bring them into line with state standards--the equalization function--appears to have been overridden.)

The county assessor values all other property. The county tax collector collects the property taxes, and the county auditor determines the appropriate allocation of revenues to local entities within each county.

Taxable property which has not changed ownership or undergone new construction is assessed annually as of 12:01 a.m., March 1 (called the lien date, because the taxes due become a lien on the assessed property); the assessment determines the taxes owed for the fiscal year beginning on the following July 1.

Values may be appealed to county equalization bodies between July 1 and September 15 of the fiscal year for which the taxes are due.

Secured roll taxes are paid to county tax collectors in two installments; delinquent dates are December 10 and April 10. Unsecured roll taxes are paid annually and become delinquent after August 31.

CODE

State Constitution, Article XIII and XIXA.

Revenue and Taxation Code, Sections 1-6000.

Also various provisions in Education, Government and other codes.