

Introduced by Senator McClintock

January 30, 2007

Senate Constitutional Amendment No. 5—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 8 of Article IV thereof, by amending Section 3 of Article XIII A thereof, by amending Sections 1 and 2 and the heading of, and by adding Section 4 to, Article XIII C thereof, and by amending Section 3 of Article XIII D thereof, relating to government finance.

LEGISLATIVE COUNSEL'S DIGEST

SCA 5, as introduced, McClintock. State and local government finance: voter-approval.

The California Constitution defines, for purposes of local taxation, a “general tax” as a tax imposed for general governmental purposes and a “special tax” as a tax imposed for specific purposes.

This measure would establish, for purposes of both state and local taxation, a constitutional definition of a “tax” as any monetary exaction imposed by a governmental entity, as defined, but would exclude from this definition monetary exactions that meet certain criteria. This measure would also recast the definition of a “special tax” as a tax whose revenues are required by law to be expended for a specific purpose or purposes.

The California Constitution conditions the imposition of a change in state taxes enacted for the purpose of increasing revenues upon the approval of $\frac{2}{3}$ of the membership of each house of the Legislature. The California Constitution conditions the imposition, extension, or increase of a general tax by a city or county upon the approval of a majority of the voters of the city or county voting on the tax. The California

Constitution also conditions the imposition, extension, or increase of a special tax by a local government, as defined, upon the approval of a $\frac{2}{3}$ majority of the voters of the local government voting on the tax, except in the case of certain taxes imposed by certain school entities.

This measure would, on and after January 1, 2007, condition the imposition by the state or a local government of a new tax, or a change in a tax, that increases the amount of any tax levied upon any taxpayer upon the approval of $\frac{2}{3}$ of the membership of the governmental entity's governing body, as specified, and upon voter approval, as specified, except in the case of certain taxes imposed by certain school entities. This measure would also require a governmental entity, as defined, to comply with these conditions retroactively for the imposition of a tax on or after January 1, 2007, and before the effective date of the measure, unless the tax was imposed to repay bonded indebtedness that was incurred during that period, as provided. This measure would also authorize individual or class actions to challenge a monetary exaction, and would require a governmental entity to bear the burden of proof in such an action, as provided.

This measure would make conforming changes to related provisions.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

1 *Resolved by the Senate, the Assembly concurring,* That the
 2 Legislature of the State of California at its 2007–08 Regular
 3 Session commencing on the fourth day of December 2006,
 4 two-thirds of the membership of each house concurring, hereby
 5 proposes to the people of the State of California, that the
 6 Constitution of the State be amended as follows:

7 First—That Section 8 of Article IV thereof is amended to read:

8 SEC. 8. (a) At regular sessions no bill other than the budget
 9 bill may be heard or acted on by committee or either house until
 10 the 31st day after the bill is introduced unless the house dispenses
 11 with this requirement by rollcall vote entered in the journal, three
 12 fourths of the membership concurring.

13 (b) The Legislature may make no law except by statute and may
 14 enact no statute except by bill. No bill may be passed unless it is
 15 read by title on 3 days in each house except that the house may
 16 dispense with this requirement by rollcall vote entered in the
 17 journal, two thirds of the membership concurring. No bill may be
 18 passed until the bill with amendments has been printed and

1 distributed to the members. No bill may be passed unless, by
2 rollcall vote entered in the journal, a majority of the membership
3 of each house concurs.

4 (c) (1) Except as provided in paragraphs (2) and (3) of this
5 subdivision, a statute enacted at a regular session shall go into
6 effect on January 1 next following a 90-day period from the date
7 of enactment of the statute and a statute enacted at a special session
8 shall go into effect on the 91st day after adjournment of the special
9 session at which the bill was passed.

10 (2) A statute, other than a statute establishing or changing
11 boundaries of any legislative, congressional, or other election
12 district, enacted by a bill passed by the Legislature on or before
13 the date the Legislature adjourns for a joint recess to reconvene in
14 the second calendar year of the biennium of the legislative session,
15 and in the possession of the Governor after that date, shall go into
16 effect on January 1 next following the enactment date of the statute
17 unless, before January 1, a copy of a referendum petition affecting
18 the statute is submitted to the Attorney General pursuant to
19 subdivision (d) of Section 10 of Article II, in which event the
20 statute shall go into effect on the 91st day after the enactment date
21 unless the petition has been presented to the Secretary of State
22 pursuant to subdivision (b) of Section 9 of Article II.

23 (3) Statutes calling elections, statutes providing for ~~tax levies~~
24 ~~or~~ appropriations for the usual current expenses of the State, ~~and~~
25 urgency statutes *and, except as otherwise required by Article XIII*
26 *C, statutes providing for tax levies* shall go into effect immediately
27 upon their enactment.

28 (d) Urgency statutes are those necessary for immediate
29 preservation of the public peace, health, or safety. A statement of
30 facts constituting the necessity shall be set forth in one section of
31 the bill. In each house the section and the bill shall be passed
32 separately, each by rollcall vote entered in the journal, two thirds
33 of the membership concurring. An urgency statute may not create
34 or abolish any office or change the salary, term, or duties of any
35 office, or grant any franchise or special privilege, or create any
36 vested right or interest.

37 Second—That Section 3 of Article XIII A thereof is amended
38 to read:

39 Section 3. ~~From On and after the effective date of this article~~
40 ~~June 7, 1978, any changes in state taxes enacted for the purpose~~

1 of increasing revenues collected pursuant thereto whether by
 2 increased rates or changes in methods of computation must be
 3 imposed by an Act passed by not less than two-thirds of all
 4 members elected to each of the two houses of the Legislature,
 5 except that no new *the State shall not impose, extend, or increase*
 6 *either of the following:*

- 7 (a) *New ad valorem taxes on real property, or sales property.*
- 8 (b) *Sales or transaction taxes on the sales of real property may*
 9 *be imposed.*

10 Third—That the heading of Article XIII C thereof is amended
 11 to read:

12
 13 ARTICLE XIII C
 14 ~~{VOTER-VOTER APPROVAL FOR LOCAL TAX LEVIES}~~
 15 LEVIES
 16

17 Fourth—That Section 1 of Article XIII C thereof is amended to
 18 read:

- 19 SECTION 1. Definitions. As used in this ~~article~~ *Constitution:*
- 20 (a) “General tax” means any tax imposed for general
 21 governmental purposes.
 - 22 (b) “Governmental entity” means the State or a local
 23 government.
 - 24 ~~(b)~~
 - 25 (c) “Local government” means any county, city, city and county,
 26 including a charter city or county, any special district, or any other
 27 local or regional governmental entity.
 - 28 ~~(c)~~
 - 29 (d) “Special district” means an agency of the State, formed
 30 pursuant to general law or a special act, for the local performance
 31 of governmental or proprietary functions with limited geographic
 32 boundaries including, but not limited to, school districts and
 33 redevelopment agencies.
 - 34 ~~(d)~~
 - 35 (e) “Special tax” means ~~any a tax imposed, the revenues from~~
 36 *which are required by law to be expended for a specific purposes*
 37 *purpose or purposes, including a tax imposed for a specific*
 38 ~~purposes, which is purpose or purposes, the revenues from which~~
 39 *are placed into a general fund.*

1 (f) "Tax" means any monetary exaction imposed by a
2 governmental entity, except for any of the following:

3 (1) A monetary exaction imposed by a governmental entity, if
4 all of the following conditions are met:

5 (A) The exaction is in exchange for goods or services voluntarily
6 requested by the payer of the exaction.

7 (B) The revenues derived from the exaction are used solely to
8 provide the requested goods or services.

9 (C) The amount of the exaction does not exceed the actual cost
10 of providing the goods or services to the payer.

11 (2) Fines and penalties.

12 (3) A monetary exaction in the form of a fee for a license that
13 is required to engage in a trade or business, if that license fee
14 meets both of the following conditions:

15 (A) The revenues from the license fee are used solely to regulate
16 the trade or business to which the license pertains.

17 (B) The amount of the license fee does not exceed that portion
18 of the actual cost of regulating the trade or business to which the
19 license pertains that is reasonably attributable to the licensee.

20 (4) An assessment, or fee or charge, as defined by Article XIII
21 D.

22 Fifth—That Section 2 of Article XIII C thereof is amended to
23 read:

24 ~~SEC. 2. Local Government Tax Limitation.~~ Notwithstanding
25 any other provision of this Constitution:

26 (a) ~~All taxes~~ A tax imposed by any local government shall be
27 ~~deemed to be a governmental entity~~ is either a general taxes tax
28 or a special taxes tax. ~~Special~~ A special purpose districts or
29 agencies district or agency, including a school districts, shall have
30 ~~no power~~ district, does not have the authority to levy a general
31 taxes tax.

32 (b) ~~No local government may impose, extend, or increase any~~
33 ~~general tax unless and until that tax is submitted to the electorate~~
34 ~~and approved by a majority vote.~~ A general tax shall not be deemed
35 to have been increased if it is imposed at a rate not higher than the
36 ~~maximum rate so approved.~~ The election required by this
37 subdivision shall be consolidated with a regularly scheduled general
38 election for members of the governing body of the local
39 government, except in cases of emergency declared by a unanimous
40 vote of the governing body.

1 (b) (1) On and after January 1, 2007, any new tax or any
2 change in any tax enacted or authorized by a governmental entity
3 that increases the amount of any tax levied upon any taxpayer,
4 including, but not limited to, the imposition of a new tax, an
5 increase in the rate of a tax, a change in the method of computation
6 of a tax, or a change in the taxpayers subject to a tax, shall not be
7 imposed unless all of the following conditions are met:

8 (A) The measure imposing the increase is approved by
9 two-thirds of the membership of the applicable of the following:

10 (i) In the case of the State, each house of the Legislature.

11 (ii) In the case of a local government, the governing body of the
12 local government.

13 (B) The measure imposing the increase is submitted to the
14 electorate of the governmental entity at an election and is approved
15 by voters in accordance with the applicable of the following:

16 (i) In the case of a general tax, by a majority vote of the voters
17 voting on the measure.

18 (ii) In the case of a special tax, by a two-thirds vote of the voters
19 voting on the measure.

20 (C) The election required by this subdivision shall be
21 consolidated with a regularly scheduled general election for
22 members of the governing body of the local government in the case
23 of a tax measure submitted by a local government, and shall be
24 consolidated with a regularly scheduled general election for
25 members of the Legislature in the case of a tax measure submitted
26 by the State.

27 (2) Paragraph (1) does not apply to ad valorem taxes to pay
28 the interest and redemption charges on bonded indebtedness
29 described in paragraph (3) of subdivision (b) of Section 1 of Article
30 XIII A and in subdivision (c) of Section 1 of Article XIII A.

31 (c) (1) Any general tax imposed, extended, or increased, without
32 voter approval, by any local government on or after January 1,
33 1995, and prior to ~~the effective date of this article~~ November 6,
34 1996, shall continue to be imposed only if approved by a majority
35 vote of the voters voting in an election on the issue of the
36 imposition, which election ~~shall be~~ is held ~~within two years of the~~
37 ~~effective date of this article~~ no later than November 6, 1998, and
38 in compliance with subdivision (b).

39 (2) A governmental entity that increased the amount of any tax
40 levied upon any taxpayer on or after January 1, 2007, and before

1 *the effective date of the measure adding this paragraph, without*
 2 *obtaining the applicable governing body approval and voter*
 3 *approval described in subdivision (b), is not authorized, as of the*
 4 *effective date of the measure adding this paragraph, to continue*
 5 *to collect that increase until the entity complies with the applicable*
 6 *approval requirements described in subdivision (b). This paragraph*
 7 *does not apply to any tax imposed exclusively to pay the principal*
 8 *and interest on bonded indebtedness that was incurred on or after*
 9 *January 1, 2007, and before the effective date of the measure*
 10 *adding this paragraph.*

11 ~~(d) No local government may impose, extend, or increase any~~
 12 ~~special tax unless and until that tax is submitted to the electorate~~
 13 ~~and approved by a two-thirds vote. A special~~ *The amount of tax*
 14 ~~shall levied upon a taxpayer is not be deemed to have been~~
 15 ~~increased if it is imposed levied at a rate not higher than the~~
 16 ~~maximum rate so approved in compliance with the requirements~~
 17 ~~of this Constitution as it read on the date that maximum rate was~~
 18 ~~so approved.~~

19 Sixth—That Section 4 is added to Article XIII C thereof, to
 20 read:

21 SEC. 4. (a) Subject to Section 32 of Article XIII, any person,
 22 entity, or class of persons or entities that is liable for payment of
 23 a monetary exaction imposed by a governmental entity may
 24 maintain a legal or equitable action in a court of competent
 25 jurisdiction to invalidate that monetary exaction on the basis that
 26 the exaction, or the manner in which it was imposed, does not
 27 conform to the requirements of law.

28 (b) In any action described in subdivision (a), the governmental
 29 entity that imposed the monetary exaction shall bear the burden
 30 of proof to demonstrate that the monetary exaction, or the manner
 31 in which it was imposed, conforms to the requirements of law.

32 Seventh—That Section 3 of Article XIII D thereof is amended
 33 to read:

34 ~~SEC. 3. Property Taxes, Assessments, Fees and Charges~~
 35 ~~Limited.—(a) No~~ *An agency shall not assess a tax, assessment,*
 36 ~~fee, or charge shall be assessed by any agency upon any parcel of~~
 37 ~~property or upon any person as an incident of property ownership~~
 38 ~~except:~~

39 (1) The ad valorem property tax imposed pursuant to Article
 40 XIII and Article XIII A.

1 (2) ~~Any~~ A special tax receiving a two-thirds *or 55 percent* vote,
2 *as applicable*, pursuant to Section 1 or 4 of Article XIII A *or*
3 *subdivision (b) of Section 2 of Article XIIC*.

4 (3) Assessments as provided by this article.

5 (4) Fees or charges for property related services as provided by
6 this article.

7 (b) For purposes of this article, fees for the provision of electrical
8 or gas service shall not be deemed charges or fees imposed as an
9 incident of property ownership.

10 Eighth—The provisions of this measure shall be liberally
11 construed to effectuate its purpose of providing a comprehensive
12 definition of the term “tax” that includes the broadest possible
13 range of governmental monetary exactions, unless expressly
14 exempted.