

AMENDED IN SENATE MARCH 21, 2007

Senate Constitutional Amendment

No. 5

Introduced by Senator McClintock

(Coauthors: Senators Aanestad, Harman, and Wyland)

*(Coauthors: Assembly Members Benoit, DeVore, Gaines, Garrick,
Jeffries, Nakanishi, and Strickland)*

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 amended, McClintock. State and local government finance: ~~voter approval.~~ *taxes: 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 *taxes that generate less than \$0.10 per capita* and certain taxes imposed by certain school entities. This measure would also *prohibit* a governmental entity, as defined, ~~to comply with these conditions retroactively for the imposition of a tax that, without voter approval, imposed a new tax or a change in tax on or after January 1, 2007, and before the effective date of the measure, from continuing to levy that tax or change in tax unless it obtains voter approval of the imposition at the next election. unless the tax~~ This measure would *exclude from this prohibition a tax that was imposed to repay bonded indebtedness that was incurred during that period, as provided and a tax imposed during that same period that is estimated to generate less than \$0.10 per capita. This measure would also authorize a governmental entity to impose a new special tax or an increase in an existing special tax to address an emergency proclaimed by the Governor without voter approval if the tax is approved by a $\frac{4}{5}$ vote of the entity's governing body, but would condition the continued collection of that tax or increase in tax after the next election upon $\frac{2}{3}$ voter approval at that election.* 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
19 distributed to the members. No bill may be passed unless, by
20 rollcall vote entered in the journal, a majority of the membership
21 of each house concurs.

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

28 (2) A statute, other than a statute establishing or changing
29 boundaries of any legislative, congressional, or other election
30 district, enacted by a bill passed by the Legislature on or before
31 the date the Legislature adjourns for a joint recess to reconvene in
32 the second calendar year of the biennium of the legislative session,
33 and in the possession of the Governor after that date, shall go into
34 effect on January 1 next following the enactment date of the statute
35 unless, before January 1, a copy of a referendum petition affecting
36 the statute is submitted to the Attorney General pursuant to
37 subdivision (d) of Section 10 of Article II, in which event the
38 statute shall go into effect on the 91st day after the enactment date
39 unless the petition has been presented to the Secretary of State
40 pursuant to subdivision (b) of Section 9 of Article II.

1 (3) Statutes calling elections, statutes providing for
2 appropriations for the usual current expenses of the State, urgency
3 statutes and, except as otherwise required by Article XIII C, statutes
4 providing for tax levies shall go into effect immediately upon their
5 enactment.

6 (d) Urgency statutes are those necessary for immediate
7 preservation of the public peace, health, or safety. A statement of
8 facts constituting the necessity shall be set forth in one section of
9 the bill. In each house the section and the bill shall be passed
10 separately, each by rollcall vote entered in the journal, two thirds
11 of the membership concurring. An urgency statute may not create
12 or abolish any office or change the salary, term, or duties of any
13 office, or grant any franchise or special privilege, or create any
14 vested right or interest.

15 Second—That Section 3 of Article XIII A thereof is amended
16 to read:

17 Section 3. On and after June 7, 1978, the State shall not impose,
18 extend, or increase either of the following:

- 19 (a) New ad valorem taxes on real property.
- 20 (b) Sales or transaction taxes on the sales of real property.

21 Third—That the heading of Article XIII C thereof is amended
22 to read:

23
24 ARTICLE XIII C
25 VOTER APPROVAL FOR TAX LEVIES
26

27 Fourth—That Section 1 of Article XIII C thereof is amended to
28 read:

29 SECTION 1. Definitions. As used in this Constitution:

- 30 (a) “General tax” means any tax imposed for general
31 governmental purposes.
- 32 (b) “Governmental entity” means the State or a local
33 government.
- 34 (c) “Local government” means any county, city, city and county,
35 including a charter city or county, any special district, or any other
36 local or regional governmental entity.
- 37 (d) “Special district” means an agency of the State, formed
38 pursuant to general law or a special act, for the local performance
39 of governmental or proprietary functions with limited geographic

1 boundaries including, but not limited to, school districts and
2 redevelopment agencies.

3 (e) “Special tax” means a tax, the revenues from which are
4 required by law to be expended for a specific purpose or purposes,
5 including a tax imposed for a specific purpose or purposes, the
6 revenues from which are placed into a general fund.

7 (f) “Tax” means any monetary exaction imposed by a
8 governmental entity, except for any of the following:

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

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

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

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

17 (D) *Payment of the exaction is not a condition of receiving a*
18 *decision, a privilege, or permission from any governmental entity.*

19 (2) Fines and penalties *imposed by the judicial branch.*

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

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

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

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

30 Fifth—That Section 2 of Article XIII C thereof is amended to
31 read:

32 SEC. 2. Notwithstanding any other provision of this
33 Constitution:

34 (a) A tax imposed by a governmental entity is either a general
35 tax or a special tax. A special purpose district or agency, including
36 a school district, does not have the authority to levy a general tax.

37 ~~(b) (1) On and after January 1, 2007, any~~

38 ~~(b) (1) Except as otherwise provided in paragraphs (2) and~~
39 ~~(3), any new tax or any change in any tax enacted or authorized~~
40 ~~by a governmental entity that increases the amount of any tax~~

1 levied upon any taxpayer, including, but not limited to, the
2 imposition of a new tax, an increase in the rate of a tax, a change
3 in the method of computation of a tax, or a change in the taxpayers
4 subject to a tax, shall not be imposed unless all of the following
5 conditions are met:

6 (A) ~~The measure imposing the increase~~ *proposed tax or change*
7 *in tax* is approved by two-thirds of the membership of ~~the~~
8 ~~applicable~~ *either* of the following:

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

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

12 ~~(B) The measure imposing the increase is submitted to the~~

13 (B) (i) *The proposed tax or change in tax 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)–~~

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

19 ~~(ii)–~~

20 (II) In the case of a special tax, by a two-thirds vote of the voters
21 voting on the measure.

22 (ii) *Clause (i) does not apply to a tax or change in tax that is*
23 *estimated to annually generate less than ten cents (\$0.10) per*
24 *capita based on the total population of the imposing governmental*
25 *entity, as that population was most recently estimated by the*
26 *Department of Finance as of the calendar year immediately*
27 *preceding the date upon which the imposition of the tax or change*
28 *in tax is approved by the governing body of the imposing entity.*

29 ~~(C) The election required by this subdivision shall be~~
30 ~~consolidated with a regularly scheduled general election for~~
31 ~~members of the governing body of the local government in the~~
32 ~~case of a tax measure submitted by a local government, and shall~~
33 ~~be consolidated with a regularly scheduled general election for~~
34 ~~members of the Legislature in the case of a tax measure submitted~~
35 ~~by the State.~~

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

1 (3) (A) *If the Governor proclaims an emergency under the*
2 *Emergency Services Act set forth in Chapter 7 (commencing with*
3 *Section 8550) of Division 2 of Title 2 of the Government Code, or*
4 *any successor to that act, a governmental entity with jurisdiction*
5 *over an area in which that emergency was proclaimed may impose*
6 *either a new special tax or a change in an existing special tax that*
7 *increases the amount of tax levied upon a taxpayer, that is levied*
8 *until and including the day of the next regularly scheduled election*
9 *of the imposing governmental entity, if the tax or change in tax is*
10 *to be imposed for the exclusive purpose of addressing the causes*
11 *or effects of the emergency and is approved by four-fifths of the*
12 *membership of either of the following:*

- 13 (i) *In the case of the State, each house of the Legislature.*
- 14 (ii) *In the case of a local government, the governing body of the*
15 *local government.*

16 (B) *A governmental entity may levy a tax or change in tax*
17 *imposed in accordance with subparagraph (A) on and after the*
18 *day immediately following the election described in subparagraph*
19 *(A), if that tax or change in tax is submitted to the electorate of*
20 *the governmental entity at that election and is approved by a*
21 *two-thirds vote of the voters voting on the issue.*

22 (c) (1) *Except as otherwise provided in paragraph (2), a new*
23 *tax or a change in tax that is imposed on or after January 1, 2007,*
24 *and before the effective date of the measure adding this subdivision,*
25 *without the voter approval as prescribed in subparagraph (B) of*
26 *paragraph (1) of subdivision (b), shall cease to be levied beginning*
27 *on the day after the next regularly scheduled election held by the*
28 *imposing governmental entity, unless the new tax or change in tax*
29 *is placed on the ballot of that next election and receives the*
30 *applicable voter approval as prescribed in subparagraph (B) of*
31 *paragraph (1) of subdivision (b).*

32 (2) *Paragraph (1) does not apply to either of the following:*

33 (A) *Any tax imposed exclusively to pay the principal and interest*
34 *on bonded indebtedness that was incurred on or after January 1,*
35 *2007, and before the effective date of the measure adding this*
36 *subparagraph.*

37 (B) *A tax or change in tax described in clause (ii) of*
38 *subparagraph (B) of paragraph (1) of subdivision (b).*

39 (d) *If more than one tax or change in tax that requires the same*
40 *threshold for voter approval is submitted to the statewide or a*

1 *local electorate at the same election, those taxes or changes in*
 2 *taxes shall be placed on the ballot for that election as a single*
 3 *question.*

4 ~~(e)(1)~~

5 (e) Any general tax imposed, extended, or increased, without
 6 voter approval, by any local government on or after January 1,
 7 1995, and prior to November 6, 1996, shall continue to be imposed
 8 only if approved by a majority vote of the voters voting in an
 9 election on the issue of the imposition, which election is held no
 10 later than November 6, 1998, and in compliance with subdivision
 11 (b).

12 ~~(2) A governmental entity that increased the amount of any tax~~
 13 ~~levied upon any taxpayer on or after January 1, 2007, and before~~
 14 ~~the effective date of the measure adding this paragraph, without~~
 15 ~~obtaining the applicable governing body approval and voter~~
 16 ~~approval described in subdivision (b), is not authorized, as of the~~
 17 ~~effective date of the measure adding this paragraph, to continue~~
 18 ~~to collect that increase until the entity complies with the applicable~~
 19 ~~approval requirements described in subdivision (b). This paragraph~~
 20 ~~does not apply to any tax imposed exclusively to pay the principal~~
 21 ~~and interest on bonded indebtedness that was incurred on or after~~
 22 ~~January 1, 2007, and before the effective date of the measure~~
 23 ~~adding this paragraph.~~

24 ~~(d)~~

25 (f) The amount of tax levied upon a taxpayer is not deemed to
 26 have been increased if it is levied at a rate not higher than the
 27 maximum rate approved in compliance with the requirements of
 28 this Constitution as it read on the date that maximum rate was so
 29 approved.

30 Sixth—That Section 4 is added to Article XIII C thereof, to
 31 read:

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

39 (b) In any action described in subdivision (a), the governmental
 40 entity that imposed the monetary exaction shall bear the burden

1 of proof to demonstrate that the monetary exaction, or the manner
2 in which it was imposed, conforms to the requirements of law.

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

5 SEC. 3. (a) An agency shall not assess a tax, assessment, fee,
6 or charge upon any parcel of property or upon any person as an
7 incident of property ownership except:

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

10 (2) A special tax receiving a two-thirds or 55 percent vote, as
11 applicable, pursuant to Section 1 or 4 of Article XIII A or
12 subdivision (b) *or* (c) of Section 2 of Article XIII C.

13 (3) Assessments as provided by this article.

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

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

19 Eighth—The provisions of this measure shall be liberally
20 construed to effectuate its purpose of providing a comprehensive
21 definition of the term “tax” that includes the broadest possible
22 range of governmental monetary exactions, unless expressly
23 exempted.