

Assembly Constitutional Amendment

No. 2

Introduced by Assembly Member Blumenfield

March 14, 2011

Assembly Constitutional Amendment No. 2—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by adding Section 36 to Article XIII thereof, relating to local government finance.

LEGISLATIVE COUNSEL'S DIGEST

ACA 2, as introduced, Blumenfield. The Schools and Local Public Safety Protection Act of 2011.

(1) Existing law, until July 1, 2011, imposes a state sales and use tax on retailers and on the storage, use, or other consumption of tangible personal property in this state at the rate of 7¼% of the gross receipts from the retail sale of tangible personal property in this state and of the sales price of tangible personal property purchased from any retailer for storage, use, or other consumption in this state. Existing law reduces the state sales and use tax rate by 1% on July 1, 2011.

The Vehicle License Fee Law establishes, until July 1, 2011, in lieu of any ad valorem property tax upon vehicles, an annual license fee for any vehicle subject to registration in this state in the amount of 1.15% of the market value of that vehicle, as provided. Existing law, on and after July 1, 2011, reduces that rate to 0.65%.

This measure would extend the existing sales and use tax rate and vehicle license fees until July 1, 2016, and would deposit the revenues derived from the increase in those taxes into the Local Revenue Fund 2011, established by this measure, to be appropriated by the Legislature to fund the provision of public safety services, as described, by local

agencies pursuant to the 2011 Realignment Legislation, as defined. This measure would also provide that the assignment of responsibilities to local agencies under the 2011 Realignment Legislation shall not be reimbursable as a new program or higher level of service, but would require reimbursement to local agencies resulting from subsequent state actions under certain circumstances. This measure would further state that local agency costs increased in complying with statutory open meeting requirements shall not be deemed a reimbursable state mandate.

This measure would additionally provide, when the rates in the above-described taxes cease to be operative, for the appropriation of state funds in an equivalent amount to fund the provision of Public Safety Services.

(2) The Personal Income Tax Law imposes taxes based upon taxable income. That law also allows credits for personal exemptions, and imposes an alternative minimum tax, as specified. Existing law, for taxable years beginning on or after January 1, 2009, and before January 1, 2011, decreased the amount allowable as a credit for personal exemption for dependents, increased the tax rate applicable to taxable income, and increased the alternative minimum tax rate, as provided.

This measure would continue the decrease in the amount allowable as a credit for personal exemption for dependents, the increase in the tax rate applicable to taxable income, and the increase in the alternative minimum tax rate for taxable years beginning before January 1, 2016. This bill would require the Controller to deposit 6.5% of the net personal income tax receipts, as defined, into the Education Protection Account, established by this measure. Funds in the account would be appropriated by the Legislature for the support of school districts and community college districts, and would apply to the state's constitutional minimum funding obligation under Proposition 98.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

- 1 *Resolved by the Assembly, the Senate concurring, That the*
- 2 *Legislature of the State of California at its 2011–12 First*
- 3 *Extraordinary Session commencing on the sixth day of December*
- 4 *2010, two-thirds of the membership of each house concurring,*
- 5 *hereby proposes to the people of the State of California, that the*
- 6 *Constitution of the State be amended as follows:*
- 7 *First—This measure shall be known and may be cited as “The*
- 8 *Schools and Local Public Safety Protection Act of 2011.”*

Second—Purpose and Intent:

(a) The chief purpose of this measure is to protect schools and local public safety by keeping certain 2010 taxes. These taxes shall be placed in dedicated special funds and constitutionally required to be used exclusively for schools and local public safety.

(b) This measure is part of a broader state budget plan that makes billions of dollars in permanent cuts to State spending.

(c) The measure guarantees solid, reliable funding for schools, community colleges, and public safety.

(d) This measure keeps sales and use taxes, vehicle license fees, and income taxes at the same rates that were in effect in 2010, and requires that these tax rates automatically drop to 2008 levels in five years.

(e) This measure also promotes transparency and supports improved outcomes in the delivery of public safety services.

(f) All revenues from this measure are subject to audit by the independent Controller to ensure that they will be used only for schools and local public safety.

(g) This measure guarantees that local governments will continue to receive funding for public safety services even after the tax rates drop to their 2008 levels.

Third—That Section 36 is added to Article XIII thereof, to read:

SEC. 36. (a) For purposes of this section:

(1) “Public Safety Services” includes the following:

(A) Employing and training public safety officials, including law enforcement personnel, attorneys assigned to criminal proceedings, and court security staff.

(B) Managing local jails and providing housing, treatment, and services for, and supervision of, juvenile and adult offenders.

(C) Providing fire protection and support services.

(D) Preventing child abuse, neglect, or exploitation; providing services to children who are abused, neglected, or exploited, or who are at risk of abuse, neglect, or exploitation, and the families of those children; providing adoption services, providing transitional housing and other services to emancipated youth, and providing adult protective services.

(E) Providing community mental health services and mental health services and institutional placements to children and adults to reduce failure in school, harm to themselves and others, homelessness, and preventable incarceration.

(F) Preventing, treating, and providing recovery services for substance abuse.

(2) “2011 Realignment Legislation” means legislation enacted on or before October 9, 2011, to implement the state budget plan, that is entitled 2011 Realignment and provides for the assignment of Public Safety Services responsibilities to local agencies, including related reporting responsibilities. The legislation shall provide local agencies with maximum flexibility and control over the design, administration, and delivery of Public Safety Services consistent with federal law and funding requirements, as determined by the Legislature.

(b) (1) The sales tax described in subdivision (a) of Section 6051.7 of the Revenue and Taxation Code, as that section read on January 1, 2011, shall continue in operation on and after July 1, 2011, and shall cease to be operative on July 1, 2016.

(2) The use tax described in subdivision (a) of Section 6201.7 of the Revenue and Taxation Code, as that section read on January 1, 2011, shall continue in operation on and after July 1, 2011, and shall cease to be operative on July 1, 2016.

(3) The Sales and Use Tax Law, including any amendments enacted on or after the effective date of this section, shall apply to the taxes imposed pursuant to this subdivision.

(4) The continuation of the sales and use taxes described in this subdivision maintains and does not increase the 2010 sales and use tax rates.

(c) (1) (A) (i) The amount of the license fee described in paragraph (2) of subdivision (a) of Section 10752 of the Revenue and Taxation Code, as amended by Section 4 of Chapter 18 of the Third Extraordinary Session of the Statutes of 2009, shall continue in operation on and after July 1, 2011, and shall cease to be operative on July 1, 2016.

(ii) Section 10752 of the Revenue and Taxation Code, as added by Section 5 of Chapter 18 of the Third Extraordinary Session of the Statutes of 2009, shall not become operative until July 1, 2016.

(B) (i) The amount of the license fee described in paragraph (2) of subdivision (a) of Section 10752.1 of the Revenue and Taxation Code, as amended by Section 6 of Chapter 18 of the Third Extraordinary Session of the Statutes of 2009, shall continue in operation on and after July 1, 2011, and shall cease to be operative on July 1, 2016.

(ii) Section 10752.1 of the Revenue and Taxation Code, as added by Section 7 of Chapter 18 of the Third Extraordinary Session of the Statutes of 2009, shall not become operative until July 1, 2016.

(C) The amount of the license fee described in subdivision (a) of Section 10752.2 of the Revenue and Taxation Code, as that section read on January 1, 2011, shall continue in operation on and after July 1, 2011, and shall cease to be operative on July 1, 2016.

(2) The Vehicle License Fee Law, including any amendments enacted on or after the effective date of this section, shall apply to the fees imposed pursuant to this subdivision.

(3) The continuation of the vehicle license fee described in this subdivision maintains and does not increase the 2010 vehicle license fee.

(d) (1) All revenues derived from the continuation of the taxes described in subdivisions (b) and (c), less refunds and costs of tax and license fee collection and deposit, shall be deposited into the Local Revenue Fund 2011, which is hereby created in the State Treasury.

(2) Funds deposited in the Local Revenue Fund 2011, less costs of administering the fund, shall be continuously appropriated by the Legislature exclusively to fund the provision of Public Safety Services by local agencies. Pending full implementation of the 2011 Realignment Legislation, funds may also be used to reimburse the State for costs incurred in providing Public Safety Services on behalf of local agencies. The methodology for allocating funds to local agencies and reimbursing state costs shall be specified in the 2011 Realignment Legislation.

(3) The county treasurer, city and county treasurer, or other appropriate official shall create a County Local Revenue Fund 2011 within the treasury of each county or city and county. The money in each County Local Revenue Fund 2011 shall be exclusively used to fund the provision of Public Safety Services by local agencies as specified by the 2011 Realignment Legislation.

(4) Notwithstanding Section 6 of Article XIII B, or any other constitutional provision, a mandate of a new program or higher level of service on a local agency imposed by the 2011 Realignment Legislation, or by any regulation adopted or any executive order or administrative directive issued to implement that legislation, shall not constitute a mandate requiring the State

1 to provide a subvention of funds within the meaning of subdivision
2 (b) of that section. Any requirement that a local agency comply
3 with Chapter 9 (commencing with Section 54950) of Part 1 of
4 Division 2 of Title 5 of the Government Code, with respect to
5 performing its Public Safety Services responsibilities, or any other
6 matter, shall not be a reimbursable mandate under Section 6 of
7 Article XIII B.

8 (5) (A) Legislation enacted after October 9, 2011, that has an
9 overall effect of increasing the costs already borne by a local
10 agency for programs or levels of service mandated by the 2011
11 Realignment Legislation shall apply to local agencies only to the
12 extent that the State provides annual funding for the cost increase.
13 Local agencies shall not be obligated to provide programs or levels
14 of service required by legislation, described in this subparagraph,
15 above the level for which funding has been provided.

16 (B) Regulations, executive orders, or administrative directives,
17 implemented after October 9, 2011, that are not necessary to
18 implement the 2011 Realignment Legislation, and that have an
19 overall effect of increasing the costs already borne by a local
20 agency for programs or levels of service mandated by the 2011
21 Realignment Legislation, shall apply to local agencies only to the
22 extent that the State provides annual funding for the cost increase.
23 Local agencies shall not be obligated to provide programs or levels
24 of service pursuant to new regulations, executive orders, or
25 administrative directives, described in this subparagraph, above
26 the level for which funding has been provided.

27 (C) Any new program or higher level of service provided by
28 local agencies, as described in subparagraphs (A) and (B), in excess
29 of the provided fundings, shall not require a subvention of funds
30 by the State nor otherwise be subject to Section 6 of Article XIII B.
31 This paragraph shall not apply to legislation currently exempt from
32 subvention under paragraph (2) of subdivision (a) of Section 6 of
33 Article XIII B.

34 (D) The State shall not submit to the federal government any
35 plans or waivers, or amendments to those plans or waivers, that
36 have an overall effect of increasing the cost borne by a local agency
37 for programs or levels of service mandated by the 2011
38 Realignment Legislation, except to the extent that the plans,
39 waivers, or amendments are required by federal law, or the State
40 provides annual funding for the cost increase.

1 (E) The State shall not be required to provide a subvention of
2 funds pursuant to this paragraph for a mandate that is imposed by
3 the State at the request of a local agency or to comply with federal
4 law. State funds required by this paragraph shall be from a source
5 other than those described in subdivisions (b), (c), and (e), ad
6 valorem property taxes, or the Social Services Subaccount of the
7 Sales Tax Account of the Local Revenue Fund.

8 (6) (A) For programs described in subparagraphs (D) to (F),
9 inclusive, of paragraph (1) of subdivision (a) and included in the
10 2011 Realignment Legislation, if there are subsequent changes in
11 federal statutes or regulations that alter the conditions under which
12 federal matching funds as described in the 2011 Realignment
13 Legislation are obtained, and have the overall effect of increasing
14 the costs incurred by a local agency, the State shall annually
15 provide at least 50 percent of the nonfederal share of those costs
16 as determined by the State.

17 (B) When the State is a party to any complaint brought in a
18 federal judicial or administrative proceeding that involves one or
19 more of the programs described in subparagraphs (D) to (F),
20 inclusive, of paragraph (1) of subdivision (a) and included in the
21 2011 Realignment Legislation, and there is a settlement or judicial
22 or administrative order that imposes a cost in the form of a
23 monetary penalty or has the overall effect of increasing the costs
24 already borne by a local agency for programs or levels of service
25 mandated by the 2011 Realignment Legislation, the State shall
26 annually provide at least 50 percent of the nonfederal share of
27 those costs as determined by the State. Payment by the State is not
28 required if the State determines that the settlement or order relates
29 to one or more local agencies failing to perform a ministerial duty,
30 failing to perform a legal obligation in good faith, or acting in a
31 negligent or reckless manner.

32 (C) The state funds provided in this paragraph shall be from
33 funding sources other than those described in subdivisions (b), (c),
34 and (e), ad valorem property taxes, or the Social Services
35 Subaccount of the Sales Tax Account of the Local Revenue Fund.

36 (7) If the State or a local agency fails to perform a duty or
37 obligation under this section or under the 2011 Realignment
38 Legislation, an appropriate party may seek judicial relief. These
39 proceedings shall have priority over all other civil matters.

(8) The funds deposited into a County Local Revenue Fund 2011 shall be spent in a manner designed to maintain the State's eligibility for federal matching funds, and to ensure compliance by the State with applicable federal standards governing the State's provision of Public Safety Services.

(9) The funds deposited into a County Local Revenue Fund 2011 shall not be used by local agencies to supplant other funding for Public Safety Services.

(10) This section shall not be construed to prevent the Legislature from subsequently imposing a fee or tax enacted in accordance with this Constitution.

(e) When the taxes described in subdivisions (b) and (c) cease to be operative, the State shall annually provide moneys to the Local Revenue Fund 2011 in an amount equal to or greater than the aggregate amount that otherwise would have been provided by the taxes described in subdivisions (b) and (c). The method for determining that amount shall be described in the 2011 Realignment Legislation, and the State shall be obligated to provide that amount for so long as the local agencies are required to perform the Public Safety Services responsibilities assigned by the 2011 Realignment Legislation. If the State fails to annually appropriate that amount, the Controller shall transfer that amount from the General Fund in pro rata monthly shares to the Local Revenue Fund 2011. Thereafter, the Controller shall disburse these amounts to local agencies in the manner directed by the 2011 Realignment Legislation. The state obligations under this subdivision shall have a lower priority claim to General Fund money than the first priority for money to be set apart under Section 8 of Article XVI and the second priority to pay voter-approved debts and liabilities described in Section 1 of Article XVI.

(f) (1) The tax percentage increase described in paragraph (2) of subdivision (a) and paragraph (2) of subdivision (c) of Section 17041 of the Revenue and Taxation Code, as that section read on January 1, 2011, shall continue in operation for taxable years beginning on or after January 1, 2011, and shall cease to be operative for taxable years beginning on or after January 1, 2016.

(2) The amount of credit allowed by subparagraph (A) of paragraph (3) of subdivision (d) of Section 17054 of the Revenue and Taxation Code, as that section read on January 1, 2011, shall continue in operation for taxable years beginning on or after

January 1, 2011, and shall cease to be operative for taxable years beginning on or after January 1, 2016.

(3) (A) The tax percentage described in clause (iii) of subparagraph (A) of paragraph (3) of subdivision (b) of Section 17062 of the Revenue and Taxation Code, as that section read on January 1, 2011, shall continue in operation for taxable years beginning on or after January 1, 2011, and shall cease to be operative for taxable years beginning on or after January 1, 2016.

(B) Clause (iv) of subparagraph (A) of paragraph (3) of subdivision (b) of Section 17062 of the Revenue and Taxation Code, as that section read on January 1, 2011, shall be operative only for taxable years beginning on or after January 1, 2016.

(4) The continuation of the tax rates and credit amounts allowed pursuant to this subdivision maintains and does not increase the 2010 personal income tax rate.

(5) For taxable years beginning before January 1, 2012, an addition to tax shall not be imposed under Section 19136 of the Revenue and Taxation Code, as that section read on January 1, 2011, with respect to an underpayment to the extent that the underpayment was created or increased by this subdivision.

(g) (1) Beginning July 1, 2011, and ending July 1, 2016, the Controller shall deposit 6.5 percent of monthly net personal income tax receipts, within the meaning of Section 19602.5 of the Revenue and Taxation Code, as that section read on January 1, 2011, into the Education Protection Account, which is hereby created in the State Treasury. Notwithstanding any other provision of this Constitution, these moneys shall be deemed “General Fund revenues” and “General Fund proceeds of taxes” for the purposes of Section 8 of Article XVI. The deposit of 6.5 percent of monthly net personal income tax receipts is intended to approximate the total amount of additional revenue that is expected to be received from the continuation of tax rates and credit amounts allowed pursuant to subdivision (f).

(2) All funds in the Education Protection Account shall be appropriated by the Legislature by statute each year for the support of school districts and community college districts. These appropriations shall be deemed moneys applied by the State for the support of those entities for purposes of Section 8 of Article XVI.

1 (h) The Controller, pursuant to his or her statutory authority,
2 may perform audits of expenditures from the Local Revenue Fund
3 2011, any County Local Revenue Fund 2011, and the Education
4 Protection Account to ensure that those funds are used and
5 accounted for in a manner consistent with this section.

6 Fourth—This measure shall take effect the day after the election
7 in which it is approved by a majority of the voters voting on the
8 measure and shall be operative as provided by Section 36 of Article
9 XIII of the California Constitution.

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