

1984

Taxation.

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Official Title and Summary Prepared by the Attorney General

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 governmental taxes. Restricts imposition of fees exceeding direct costs of services provided. Provides specified refunds including taxes attributable to assessed value inflation adjustments in assessment years 1976-77 through 1978-79. Makes other changes. Operative date for specified provisions—August 15, 1983. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: (1) state government revenues reduced by at least \$100 million, net, over two-year period 1984-85 to 1985-86; (2) state costs increased up to \$750 million over two-year period 1984-85 to 1985-86, and by about \$150 million annually in subsequent years, to replace revenue losses experienced by K-12 school districts; (3) local agencies other than schools identifiable property tax and other revenue losses of approximately \$2.8 billion, net, over two-year period 1984-85 to 1985-86, and revenue losses of about \$1.1 billion annually in subsequent years.

Analysis by the Legislative Analyst

Background

On June 6, 1978, the voters approved Proposition 13, which added Article XIII A to the State Constitution. This constitutional amendment had three major provisions. First, it reduced local property taxes by limiting the *property tax rate*. Second, it required county assessors to roll back the *assessed values* of property to what these values were in 1975 and it limited increases in those values in subsequent years. Finally, the measure limited the ability of the state and local agencies to increase *other taxes* or impose new taxes. These provisions of Proposition 13 are described in more detail below.

1. **Property Tax Rate Limits.** Article XIII A limits ad valorem property taxes (that is, taxes based on a property's value) to 1 percent of the property's assessed value. Benefit assessments, which pay for the cost of capital improvements that increase property values (such as streets, lighting, and sewers), or which finance certain services (such as the maintenance and operation of flood control districts), are not subject to this limitation.

Proposition 13 permits local agencies to levy ad valorem property taxes in excess of the 1-percent limit in order to pay off indebtedness, provided the indebtedness was approved by the voters before July 1, 1978. This exception to the 1-percent limit is available for both *bonded* debt (that is, debt incurred by a local agency through the sale of bonds), and for other types of voter-approved indebtedness. In 1983-84, 51 local agencies levied a total of \$155 million in property taxes to pay off debt that was *not* incurred through the sale of bonds. Most of this indebtedness represents either a local agency's obligation to make contributions to the pension plans covering its employees, or a local agency's obligation to pay its share of the costs associated with the delivery of water pursuant to State Water Project contracts.

2. **Limits on Assessed Value.** For the 1978-79 tax year, Article XIII A required county assessors to set the assessed values of most real property (that is, land and buildings) at a level equal to the property's full cash value for the

1975-76 tax year, plus no more than a 2-percent inflation factor for each subsequent year. (Properties that had changed ownership or had been improved could be assessed at a higher value.) Consequently, the assessed values of properties in 1978-79 could have been as much as 6.12 percent higher than the full cash value of these properties in 1975-76.

Article XIII A also provides that the assessed value of property which is sold or newly constructed on or after March 1, 1975, is to be set at the appraised (or market) value of the property at the time of sale or at the time that the new construction is deemed to have been completed. In the case of ownership changes, transfers of property between spouses, or from parents to minor orphan children, are exempt from reappraisal. In the case of new construction, only that portion of the property which is newly constructed can be reappraised. The remainder of the property retains its existing assessed value.

3. **Limits on New and Increased Taxes.** Article XIII A provides that any new or increased *state* taxes may be imposed only through legislation enacted by a two-thirds vote of each house of the Legislature.

Article XIII A also provides that *local* agencies may impose "special taxes" only if these taxes are approved by a two-thirds vote of the agency's voters. A "special tax" is a tax which raises revenue for a *specific* purpose. Article XIII A does not limit local taxes, other than property taxes, which raise revenue for *general* purposes. Nevertheless, under state law, counties, special districts, and school districts have very limited authority to impose general taxes. Cities, however, may impose a variety of general taxes through a majority vote of their governing bodies.

Existing state law also contains a variety of provisions relating to fees. Generally, fees may be imposed by state law or local ordinance. In many cases, state law limits the rate of specific state and local fees, and thus the amount of revenue which can be raised by the fees, either specifically establishing the rate to be charged, or by re-

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Text of Proposed Law

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

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

PROPOSED AMENDMENTS TO ARTICLE XIII A

SECTION 1. Subdivision (a) of Section 1 of Article XIII A of the California Constitution 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~~ 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:

Sec. 1. (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 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 ~~this section becomes effective~~.

SECTION 3. Subdivision (a) of Section 2 of Article XIII A of the California Constitution is amended to read:

~~SEC.~~ Sec. 2. (a) The 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, subdivision:

(1) ~~the~~ 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 that~~ real property, as reconstructed, is comparable to its fair market value prior to the disaster. ~~Also, the term "newly constructed" shall not include the portion of reconstruction or improvement to a structure, constructed of unreinforced masonry bearing wall construction, necessary to comply with any local ordinance relating to seismic safety during the first 15 years following that reconstruction or improvement.~~

(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 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 Section 2(a));

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

(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 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 13 of this Constitution and by statutes authorized by Section 9 of Article 13 of this 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 governed by this article.

SECTION 4. Subdivision (b) of Section 2 of Article XIII A of the California Constitution is amended to read:

Sec. 2. (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~~ Consumer Price Index of the Bureau of Labor Statistics, United States Department of Labor, under the heading "All Items," or ~~comparable data~~ any index substituted by the Department of ~~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 assessee

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.

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

Sec. 2. (c) 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.

SECTION 6. Section 3 of Article XIII A of the California Constitution is amended to read:

Section Sec. 3. ~~From~~ On and after the effective date of this article August 15, 1983, any new tax or any changes change in State taxes any tax enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must 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 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 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 sales sale or lease of real property, may be imposed.

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

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

SECTION 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 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 one percent (1%) tax referred to in Section 1(a), 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.

SECTION 9. Section 4.5 is added to Article XIII A of the California Constitution, to read:

Sec. 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).

(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 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.

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Arguments in Favor of Proposition 36

SAVE PROPOSITION 13. VOTE YES ON 36.

Proposition 13 is in serious trouble. Since it became law the courts have created many loopholes which undermine the clear intent of Proposition 13 by allowing politicians to increase many taxes without a vote of the people.

The courts have allowed local governments to call certain taxes "fees" or "assessments" so they can be raised without voter approval.

They have ruled new taxes are not tax increases, and not subject to voter approval.

Another court ruling allowed county assessors to unfairly overcharge taxpayers hundreds of millions of dollars more than provided for under Proposition 13.

IF LEFT UNCHECKED, THE NEXT TARGET FOR THE ANTI-13 FORCES WILL BE THE 1% PROPERTY TAX LIMITATION—THE MOST BASIC PROTECTION OF PROPOSITION 13. IN FACT, ANTI-13 FORCES HAVE ALREADY PROPOSED THIS ON TWO OCCASIONS.

Every homeowner should remember that. **REGARDLESS OF WHEN THEY PURCHASED THEIR PROPERTY**, they would be paying three to four times as much property taxes had 13 not passed!

Renters should remember 36 will protect them against increases in the taxes they pay: income, sales, gasoline and government "fees."

Proposition 36 will save Proposition 13 by closing these loopholes once and for all, and require the courts to retrospectively reverse anti-13 rulings.

Proposition 36 will not allow any politicians to raise any tax without a two-thirds vote.

Proposition 36 provides a one-time refund to the millions of taxpayers who were improperly overcharged by county assessors.

Proposition 36 prohibits local governments from indirectly raising

taxes by increasing "fees" for services traditionally provided from tax revenues.

Proposition 36 is NOT intended to regulate "rates" levied or imposed by governmental entities to pay capital costs and operating expenses of supplying commodities such as water, gas or electricity, or of providing services or property in proprietary or enterprise functions such as transportation, health, airports, ports or waste disposal; nor is it intended to regulate reimbursements for costs of mandated programs such as Medicare, or payments for contractual services. Moreover, the ability of governmental entities to levy or impose rates to maintain credit ratings of obligations providing funds for such purposes will not be affected by this initiative. State Water Project bonds were approved by voters prior to July 1, 1978. Consequently, this initiative does not apply to any present or future taxes levied to pay amounts due under state water contracts.

UNLESS 36 PASSES, YOUR PROPOSITION 13 TAX SAVINGS WILL BE EATEN UP BY CONFISCATORY TAX AND FEE INCREASES.

Proposition 13 has saved taxpayers billions of dollars and allowed millions to keep their homes, when they otherwise would have been lost. Likely, you or a member of your family is among those whose homes were saved by 13. Now we must **SAVE PROPOSITION 13.**

Join 1,012,450 taxpayers who signed petitions to put this vital initiative on the ballot, to **SAVE PROPOSITION 13.**

VOTE YES ON PROPOSITION 36!

HOWARD JARVIS

Author, Proposition 13

Chairman, California Tax Reduction Movement

I strongly support Proposition 36 and urge your YES vote.

PAUL GANN

Coauthor, Proposition 13

Rebuttals to Arguments in Favor of Proposition 36

Proposition 36 *is* unfair to taxpayers.

Intended or not, it contains many provisions *not* in the best interest of taxpayers.

Read the Jarvis argument for Proposition 36 carefully. He says he did not *INTEND* for 36 to do certain things. But 36 *in fact* does everything he says he did not "intend"—and more.

And, despite Jarvis' good intentions, Proposition 36 will do *everything* the American Association of Retired Persons and Chamber of Commerce say it will do.

Instead of saving 13, Proposition 36 opens many *new* loopholes for the courts and politicians to "interpret."

Howard Jarvis spent over \$2,000,000 to put 36 on the ballot—\$2 per signature. When THE PEOPLE put Proposition 13 on the ballot, Jarvis spent 5 cents per signature.

Do not be misled by slick, well-financed public relations gimmicks. Reject *scare tactics* which seek to exploit taxpayers' support for 13 in order to pass this unfair proposal.

VOTE NO ON PROPOSITION 36.

RICHARD P. SIMPSON

California Taxpayers' Association

Less than two years ago, California ranked next to *last* in the percentage of per capita income devoted to education. Today, a broad package of educational reforms has begun to narrow that gap.

At a time when concerned citizens throughout California are working together to improve the quality of education, Proposition 36 will cost our schools over one-half *billion* dollars and make them less competitive with other states.

DO NOT JEOPARDIZE EDUCATIONAL PROGRESS. VOTE NO ON 36.

BILL HONIG

State Superintendent of Public Instruction

BOBETTE BENNETT

President, California Parent-Teacher Association (PTA)

Argument Against Proposition 36

If you *support* Proposition 13, you should vote *no* on Proposition 36. Instead of making Proposition 13 fairer for all taxpayers, Proposition 36 makes it less fair. Instead of clarifying 13 and closing loopholes created by politicians and the courts, Proposition 36 makes Proposition 13 more complicated and adds new loopholes.

PROPOSITION 36 IS UNFAIR.

Proposition 13 provided relief to all property taxpayers evenly. **ACROSS THE BOARD. PROPOSITION 36 DOES NOT.**

Proposition 36 gives \$1.3 billion in tax cuts to properties which already have the oldest, lowest assessments. Properties bought or built since 1978 get *no* tax cut. Most of these properties would get a **TAX INCREASE.**

Many homeowners pay higher taxes than their neighbors living in similar houses just because they bought their homes after 1978. Proposition 36 makes this inequity worse. It *raises* taxes for homeowners paying the *highest* taxes and *lowers* taxes for homeowners paying the *lowest* taxes.

Proposition 36 also is unfair to new businesses. New businesses are forced to pay *higher* taxes in order to help pay for tax reductions for older businesses. Is this how we want to encourage people to start new job-creating businesses in our state?

Under Proposition 36 users no longer would pay the full cost of providing special benefit services. **IS THIS "SAVING" PROPOSITION 13, BY FORCING PROPERTY TAXPAYERS TO PICK UP THE COST OF SERVICES THEY DON'T EVEN USE?**

Proposition 36's fee provisions are counterproductive and unnecessary. Our Constitution already controls excessive fees, through the "Spirit of 13" amendment sponsored by Paul Gann in 1979. In fact, the Gann amendment **LIMITS ALL GOVERNMENT SPENDING—STATE AND LOCAL—IN ORDER TO PREVENT EXCESSIVE TAX AND FEE INCREASES.**

PROPOSITION 36 IS COMPLICATED AND COUNTERPRODUCTIVE.

Proposition 36 is a badly bungled attempt to "save" Proposition 13. Hidden in Proposition 36's long and complicated provisions are many changes *not* in the interest of taxpayers.

For example, Proposition 36:

- Requires a 2/3 legislative vote for tax **DECREASES**;
- Lets the Legislature authorize new local taxes *without* a local vote;
- Repeals local taxes already approved by more than 2/3 of the voters as required by Proposition 13.

PROPOSITION 36 IS A TAX SHIFT, NOT TAX REFORM.

Proposition 13 was a fundamental reform which limited runaway property taxes for everyone. **PROPOSITION 36 IS SIMPLY A TAX SHIFT.**

VOTE NO ON THE PROPOSITION 36 TAX REDISTRIBUTION SCHEME.

We needed Proposition 13 to get our property taxes under control. Proposition 36 *is not in the spirit of 13.*

It's unfair to new homeowners, new businesses, and renters—who get no benefit at all.

It's long, complicated and full of new loopholes for the politicians and the courts to interpret, and for special interests to exploit at the expense of average taxpayers.

IF YOU SUPPORT PROPOSITION 13, VOTE NO ON PROPOSITION 36!

JOHN HAY
California Chamber of Commerce

KENNETH S. CARNINE
American Association of Retired Persons

Rebuttal to Argument Against Proposition 36

PROPOSITION 36 HELPS POST-1978 PROPERTY OWNERS. New property owners would be paying three or four times more property tax if Proposition 13 had not passed. These tax savings are threatened by the new taxes and fees being imposed without a vote of the people. Proposition 36 provides that politicians cannot increase any tax without a **TWO-THIRDS VOTE.**

PROPOSITION 36 HELPS PRE-1978 PROPERTY OWNERS. County tax assessors overvalued homes and other property and charged higher taxes than Proposition 13 intended. Proposition 36 provides a one-time refund which could be applied as a credit against future property taxes. **WHEN GOVERNMENT TAKES MONEY THAT DOESN'T BELONG TO IT, THE MONEY SHOULD BE RETURNED. NOTHING COULD BE FAIRER.**

PROPOSITION 36 HELPS RENTERS. Without Proposition 36 politicians will increase sales, income taxes and fees which renters must pay without a vote of the people.

PROPOSITION 36 HELPS SENIOR CITIZENS AND THEIR CHILDREN.

DREN. It prohibits reassessment of property transferred between family members through inheritance, gift or sale.

PROPOSITION 36 DOES NOT HELP BIG CORPORATIONS, PUBLIC EMPLOYEE UNIONS OR HIGH-TAXING POLITICIANS. That is why they are financing the campaign against Proposition 36. California's biggest corporations, which opposed Proposition 13, now oppose Proposition 36. They don't want you voting on tax increases!

One organization the opposition signers represent opposed 13, the other was neutral. Their argument falsely implies they support 13.

DON'T BE FOOLED. Join with the author of 13 and the million taxpayers who signed petitions to Save 13. Please . . .

VOTE YES.

HOWARD JARVIS
Author, Proposition 13
Chairman, California Tax Reduction Movement

DR. ARTHUR B. LAFFER
Professor of Economics
Presidential Economics Adviser

Proposition 27 Analysis

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reimbursed, with interest, if and when additional funds become available from one or more of these sources.

Other Provisions Tied to Passage of the Bond Act. If the bond act is approved by the voters, additional provisions contained in Chapter 376, Statutes of 1984, would take effect. These provisions would:

- Increase the Hazardous Substance Account tax from \$10 million to \$15 million annually, through July 1, 1991.
- Provide for the continued existence of the Hazardous Substance Account beyond July 1, 1991 (when it is scheduled to terminate under existing law), if the Director of the Department of Finance determines that either the bonds sold pursuant to the bond act have not been paid off or the General Fund has not been fully reimbursed for advances made to pay principal and interest on the bonds. After that date, the committee established to issue bonds under the bond act would annually set the level of revenue collections from certain generators of hazardous wastes at an amount not to exceed \$15 million annually, until these payments are completed.
- Exempt generators from paying certain hazardous substance taxes and hazardous waste fees assessed on wastes that originate from remedial actions at Superfund sites.
- Require the Department of Health Services or the regional water quality control boards to prepare and approve remedial action plans for all Superfund sites. In addition, the department or the State Water Resources Control Board would have to respond to requests to prepare or approve remedial action plans for specified sites.
- Require the Attorney General to recover from responsible parties any cleanup costs incurred under the bond act program.
- Create a binding arbitration panel to apportion cleanup costs among participating responsible parties who do not contest liability.
- Establish strict liability as the legal standard for recovering the cost of cleanup action.

Fiscal Effect

1. Cost of Paying Off the Bonds

Although this measure would allow bonds to be issued for a maximum term of 30 years, the Treasurer advises that the \$100 million in bonds authorized by the measure prob-

ably would be paid off over a period of up to 20 years. The principal portion of these repayments would average \$5 million per year. In addition, the state would have to pay interest on the borrowed funds. We estimate that if the bonds were sold at an interest rate of 10 percent, annual cost of these interest payments would average approximately \$5.25 million.

These payments would be supported by the state's General Fund if the other funding sources identified in the measure collectively do not yield sufficient amounts. If the General Fund is required to make these payments, it would be repaid with interest. Consequently, assuming that the state's ability to collect Hazardous Substance Account taxes is not significantly impaired in the future, we estimate that there would be no net cost to the General Fund if this measure is approved by the voters.

2. Other Fiscal Effects

Increased Borrowing Costs. Generally, an increase in the amount borrowed by the state tends to raise the interest rate on borrowed funds. Consequently, the state and local governments could incur higher costs under other bond programs as a result of this measure. The size of any such costs cannot be estimated.

Revenue Loss. The interest paid by the state on these bonds would be exempt from the state personal income tax. Therefore, to the extent that the bonds are purchased by California taxpayers in lieu of taxable investments, the state would collect less income tax revenue. It is not possible to estimate what this revenue loss would be.

Provisions of Chapter 376, Statutes of 1984. Provisions of this measure would result in an increase in tax revenue to the Hazardous Substance Account amounting to \$5 million annually until at least 1991.

The exemption of specified wastes from fees, as provided for by the measure, would result in a loss of revenue to the Hazardous Waste Control Account, which supports the state's regulatory program. We estimate that this revenue loss would exceed \$1 million annually.

The measure also would result in increased expenditures from the Hazardous Substance Account, the Hazardous Waste Control Account, and/or the General Fund in order to pay the expenses of (a) the Attorney General in seeking recoveries from responsible parties, (b) the Department of Health Services, the State Water Resources Control Board, and the regional water quality control boards in preparing, reviewing, and approving remedial action plans for all Superfund sites on the state priority list, and (c) the arbitration panel to apportion cleanup costs. We estimate that these costs would exceed \$1 million annually.

Proposition 36 Analysis

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stricting the charge to the estimated reasonable cost of providing the service.

Proposal

This initiative would (1) eliminate some existing property taxes and benefit assessments by making them subject to the 1-percent tax rate limit, (2) invalidate the inflation adjustments made to assessed values for the three years following 1975-76, and require payment of tax refunds to

some taxpayers, (3) revise the procedures for reappraising new construction and property which changes ownership, and (4) limit the ability of the state and local agencies to impose new, or increase existing, taxes and fees.

In several instances the exact meaning of the language contained in this measure is unclear. Where this is the case, we have based our analysis on advice from the Legislative Counsel regarding the probable interpretation of the language by the courts.

The following is a summary of the initiative's provisions:

1. **Further Restrictions on Property Tax Rates.** This

measure would limit the sum of *all* taxes on real property to 1 percent of the property's assessed value. This limit could be exceeded only to pay the cost of retiring *bonded* debt approved by the voters before July 1, 1978.

This provision would invalidate all of the ad valorem taxes that are currently levied by local agencies to pay for contributions to their employees' pension plans, as well as all other property tax levies imposed for the purpose of paying off voter-approved indebtedness that was not incurred through the sale of bonds. In addition, the initiative apparently would eliminate that portion of a water agency's property tax levy which is used to pay for the operation and maintenance of the State Water Project (as opposed to the portion of the levy used to retire the state bonds which financed the project's construction).

2. Restrictions on Benefit Assessments. Under this measure, the 1-percent limit on property tax rates would also apply to benefit assessments, unless the assessment (a) is levied exclusively on land, (b) pays only for the cost of a local capital improvement which directly benefits that land, (c) creates no personal liability for the landowner, and (d) is limited in time and locality. Thus, this measure would invalidate all existing benefit assessments which are used to pay for services or maintenance. Among the assessments that may be invalidated are those that support fire protection, police and paramedic services and mosquito abatement services, routine maintenance of streets, levees or flood control facilities, and operation of street lights.

The measure also provides that the portion of any purported assessment which raises an amount exceeding the cost of the capital improvement for which it is levied would be invalidated on a "prospective" basis (that is, the effective date of the measure). Any amount collected pursuant to an invalid assessment, plus interest at an annual rate of 13 percent, would have to be refunded to the persons from whom it was collected.

3. Restrictions on Inflation Adjustments. This measure would eliminate *any* inflation adjustments that were made to the 1975-76 full cash value of property for the purpose of determining the property's assessed value for 1978-79. As a result, county assessors would be required to reduce the assessed value of properties that reflect such adjustments. The owners of any property that has its assessed value reduced would be entitled to refunds or credits equal to the amount of the additional property taxes they paid in 1978-79 and subsequent years as a result of these inflation adjustments. The owners would also be entitled to interest on the amount refunded, calculated at an annual rate of 13 percent from the date on which the payment was made. The measure does not specify when these refunds would have to be paid.

4. Revisions to the Procedures for Reappraisal. This measure provides that the appraised value of property which changes ownership or is newly constructed could not exceed the sum of:

- (a) The most recent price at which the property was sold, or for property last purchased before the 1976 assessment, the 1975-76 full cash value;
 - (b) The direct cost of any new construction; and
- any applicable inflation adjustments.

This provision has two effects. First, by requiring the use of the sales price instead of market value in reappraising newly purchased property, the measure would result in

higher appraisals for some properties and lower appraisals for others. Second, by prohibiting the appraised value of new construction from exceeding the direct cost of construction, the measure generally would result in lower appraisals for those properties where new construction has taken place. Because the initiative does not define the term "direct cost," however, it is not clear how much lower these appraisals would be.

This measure also would remove from the State Constitution certain provisions which were added by Proposition 23 on the June 1984 ballot. The provisions which would be removed exempt from reappraisal for a period of 15 years certain modifications which are needed to comply with local seismic safety ordinances.

The proposition also exempts from reappraisal any property which is transferred by the owner to his or her parents, grandparents, stepparents, uncles, aunts, spouse, stepchildren, siblings, lineal descendants, or the guardian or trustee of any of these persons. This provision of the measure would require a reduction in the assessed value of property that has been transferred to such persons since 1975-76, and would prevent reappraisal of any property transferred to such persons in the future.

5. Limits on New or Increased Taxes. This measure provides that on or after August 15, 1983, the Legislature may not impose any new tax, or make changes in any existing tax that would increase the amount of tax paid by any taxpayer, *unless* it does so through an act approved by a two-thirds vote of each house of the Legislature. Consequently, legislation which increases some taxes and decreases others would require a *two-thirds* vote in order to take effect, even if on balance the legislation resulted in no net revenue gain. Any measure enacted by the Legislature on or after August 15, 1983, which was not approved by a two-thirds vote would be invalidated on a prospective basis.

This measure also limits the ability of *local* agencies to impose new taxes or increase existing taxes. It provides that on or after August 15, 1983, a local agency may not impose any new tax, or make changes in any existing tax that would increase the amount of tax paid by any taxpayer, *unless* two-thirds of the local electorate approved the new tax or tax increase. Any ordinance enacted by a local agency on or after August 15, 1983, which was not approved by two-thirds of the voters would be invalidated on a prospective basis.

Neither the Legislature nor local voters, however, would be permitted to approve any new or increased taxes on real property or taxes that are based on the ownership of real property.

6. Limits on New or Increased Fees. This measure defines a "fee" to be a charge imposed on persons or property for either of the following purposes:

- (a) To pay for the direct costs of services provided to, or benefits conferred upon, the person or property subject to the charge.
- (b) To pay for the direct cost of a regulatory program under which the person or property subject to the charge is regulated.

All fees charged by any state or local agency (including municipal utilities) would be subject to the following restrictions:

- (a) Fees could not produce more revenue than an

amount equal to the direct cost of the service or regulatory program for which the fee is charged. The term "direct cost" is not defined in the proposition. The measure, however, prohibits the use of fee revenues to pay pension liabilities.

- (b) On or after August 15, 1983, no *new* fee could be imposed unless the fee was approved by a two-thirds vote of each house of the Legislature (state fees) or by a two-thirds vote of local voters (local fees).
- (c) On or after August 15, 1983, an *existing* fee could not be increased by a percentage greater than the percentage increase in the U.S. Consumer Price Index during the past 12 months unless the increase was approved by a two-thirds vote of each house of the Legislature (state fees) or a two-thirds vote of local voters (local fees).

The measure provides that the portion of any fee which produces revenue exceeding the direct cost of the service or regulatory program for which the fee is charged constitutes a tax. If that tax was not validly imposed—that is, imposed by a two-thirds vote of the Legislature (state fees) or a two-thirds vote of local voters (local fees)—the portion of the fee constituting a tax would be invalidated on a prospective basis. The amount of any revenue collected after the effective date of this measure as a result of an invalid fee, plus interest at an annual rate of 13 percent, would have to be refunded to the persons from whom it was collected.

These provisions of the measure would require a reduction in the level of some existing fees that yield more revenues than the direct program costs. Moreover, because the measure specifically prohibits the use of fee revenue to pay pension liabilities, many local agencies would be unable to recover from fee revenues the full cost of providing specific services.

Fiscal Effect

1. **Impact on Local Agencies and School Districts.** This measure would result in major revenue losses to local agencies, for several reasons.

- The provisions restricting the use of benefit assessments would reduce revenues by up to \$100 million annually.
- By invalidating the property taxes levied to pay pension liabilities and pay off other nonbonded debt, this measure would result in revenue losses of up to \$60 million in 1984–85, and substantially greater amounts in subsequent years. These same provisions of the measure apparently would also invalidate property taxes levied by water agencies for support of their State Water Project contracts, reducing revenues by an additional \$98 million.
- The provision which invalidates the inflation adjustments made to the assessed value of real property for the 1976–77, 1977–78, and 1978–79 tax years and requires payment of refunds to certain taxpayers would result in a one-time revenue loss to local agencies and school districts of \$1.7 billion, including \$1.1 billion in *tax refunds* and \$600 million in *interest*. There would be a further revenue loss of \$120 million in 1985–86 and an ongoing loss in declining amounts during subsequent years.

- The provisions relating to the appraisal of new construction and property which changes ownership would result in *ongoing* losses of property tax revenue to local agencies and school districts of approximately \$400 million annually, beginning in 1984–85. Revenue losses would increase by major amounts in subsequent years.

A portion of these revenue losses would be offset by *increased taxes* collected from other property owners. These increases would result from the provision of existing law that requires property tax rates levied for the purpose of retiring voter-approved bonded debt to be increased whenever collections are less than what is needed to retire the debt. Approximately \$200 million of the one-time tax refunds required by the measure, as well as \$50 million of the *ongoing* revenue loss, involves tax levies for bonded debt service. The loss of these revenues would cause a shortfall in the accounts from which payments are made to retire the debt. As a result, property tax payments to retire voter-approved debt would *increase* on a one-time basis by \$200 million in order to compensate for the *one-time* revenue loss. Property tax payments to retire voter-approved debt would increase by \$50 million in 1985–86 and by potentially larger amounts in subsequent years, in order to offset the *ongoing* revenue losses attributable to the reductions in assessed value required by this measure.

In addition to the revenue losses noted above, county governments would experience increased costs in reappraising properties and paying property tax refunds, as required by this measure. The amount of these additional costs cannot be estimated, but probably would exceed \$10 million statewide.

2. **Impact on the State.** If the voters approve the measure, state income tax revenues would be *increased* by approximately \$100 million over the two-year period 1985–86 to 1986–87, due to the provisions requiring refunds of property taxes already paid. This is because most of those taxpayers who receive property tax refunds would have to include the refunds as income on their state tax returns, causing their income tax liability to increase. (Taxpayers who did not claim the property tax payments as deductions on their state income tax form would not have to include the refunds as part of their income.)

Income tax revenues would increase by approximately \$35 million in 1985–86, and by larger amounts in subsequent years, due to the *ongoing* reduction in property tax revenues resulting from the measure.

These additional revenues would, under existing state law, be more than offset by increased state expenditures. Current law provides that school districts are to receive a specified amount of funding for each unit of average daily attendance claimed by the district. This amount is referred to as the district's "revenue limit." State aid is provided in amounts sufficient to close the gap between a school district's "revenue limit" and the amount of revenue raised from local sources. A portion of the property tax refunds required by this measure would be charged against each school district's share of property tax revenues, probably in 1985–86. Under current law, the state would have to replace the full amount of this *one-time* revenue loss. This would cost approximately \$500 million in 1985–86. Furthermore, state aid to schools would be increased by \$150 million in 1985–86, and by increasing

amounts in subsequent years, in order to replace the school district's share of the ongoing property tax revenues that would not be collected as a result of the measure.

3. **Impact on State and Local Fees.** The provisions of the measure which restrict local fees would result in revenue losses to municipally owned electric utilities of over \$250 million annually. We have identified \$50 million in other local fees and \$120 million in state fees that also would be invalidated by this measure. It is likely that a significant portion of other existing state and local fees would be invalidated as well, thereby reducing state and local revenues by at least an additional \$100 million annually.

4. **Impact on Revenue Bonds.** Provisions of the measure would also restrict—and in some cases, perhaps even eliminate—the ability of state and local agencies to finance the acquisition and construction of public facilities by issuing revenue bonds. Many agencies issue revenue bonds as a means of borrowing money from private investors for this purpose, and then repay the loans, with interest, from the proceeds of fees charged for the use of the facility, once it is completed. Investors typically require that the agency seeking to borrow funds demonstrate that it has the ability to raise whatever fee revenue is needed both to repay the bond principal and interest and to sup-

port the operation of the facility. The restrictions on fees imposed by this measure would, in most cases, prevent state and local agencies from making such guarantees. Any restrictions on the ability of public agencies to issue revenue bonds resulting from this measure can be expected to reduce significantly the amount of public facility acquisition and construction that occurs in California.

Summary

1. State government revenues would be reduced by at least \$100 million, net, over the two-year period 1984–85 to 1985–86.

2. The state would incur increased costs of up to \$750 million over the two-year period 1984–85 to 1985–86, as a result of the requirement in current law that the state replace any revenue losses experienced by K–12 school districts. The increased cost to compensate for any school district's revenue losses in subsequent years would be about \$150 million.

3. Local agencies other than schools would experience an identifiable net loss of property tax and other revenues of approximately \$2.8 billion over the two-year period 1984–85 to 1985–86. The revenue losses experienced by these agencies would be about \$1.1 billion in 1986–87 and subsequent years.

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employment and training programs, (2) Medi-Cal, and Family Planning.

The measure would limit the expenditure of federal, state, and county funds in California for the specified public assistance programs to 110 percent of the average per capita expenditure in the other 49 states. Thus, expenditures in California for these programs could not exceed the average per capita expenditures in the other states by more than 10 percent. The measure would place a similar limit on the amount that could be spent to administer these programs.

Under the measure, the Legislature could decide how much expenditures in each affected program would be reduced in order to comply with the expenditure limits. The Legislature, by majority vote, with approval of the Governor, could decide to allow expenditures for any individual program to exceed 110 percent of comparable expenditures in the other 49 states, provided that total expenditures in California for all of the affected public assistance programs did not exceed the 110-percent limit. The Legislature, by two-thirds vote, with approval of the Governor and after specified public notice, could amend any portion of the measure.

The measure *excludes* from the expenditure limits, among others, the following assistance programs: (1) Supplemental Security Income/State Supplementary Program, (2) In-Home Supportive Services (which provides homemaker services to elderly and disabled individuals), (3) day care for elderly and other frail adults, (4) child care services, and (5) other specified social services provided by county welfare departments.

The measure also establishes the California Public Assistance Commission and appropriates \$250,000 annually

from the state General Fund to finance the commission's activities. The commission would conduct an annual survey of public assistance programs in California and other states. The commission would present the results of its survey each year to the Legislature and the Governor, along with a description of any changes in laws that it recommends be made in order to meet the expenditure limits imposed by the measure.

Fiscal Effect

Expenditures. The net effect of the measure would be to reduce the *combined* expenditures of state and county governments, beginning on July 1, 1986.

The measure would directly reduce expenditures under the specified public assistance programs by substantial amounts. These expenditure reductions would be partially offset by increases in the costs of other cash grant and medical assistance programs, primarily those supported by county governments.

The size of the net reduction in combined state-county expenditures that would result from this measure cannot be determined at this time. Nor is it possible to specify what the fiscal impact of the measure would be on individual levels of government. This is because the measure's impact would depend on future actions that cannot be predicted. Specifically, the size of the change in expenditures at each level of government would depend on (1) how much each of the other 49 states chooses to spend on public assistance programs in the future and (2) the extent to which program changes made by the Legislature in implementing this measure bring about an increase in the costs of other assistance programs that are not subject to the expenditure limitations.

Revenues. The measure also would reduce revenues to the state and local agencies. This is because reductions in expenditures under the specified public assistance pro-

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

"Fee" means an amount paid to a governmental entity as a 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 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 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.

SECTION 10. Section 5 of Article XIII A of the California Constitution is amended to read:

Section Sec. 5. This article shall take effect 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 on July 1 following the passage of this Amendment, 1985 except Section 3 which shall become be made as the result of the adoption of the constitutional amendment hereby revising effective upon the passage of this article Section .

SECTION 11. Section 6 of Article XIII A of the California Constitution is amended to read:

Section Sec. 6. If any section, subdivision, paragraph, part, clause, or phrase hereof of this article, or any amendment or 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 will shall remain in full force and effect.

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(d) Payments shall also be made directly to the Regents of the University of California on the basis of an amount for each unit of equivalent full-time enrollment.

It is the intent of this Chapter that all funds allocated from the California State Lottery Education Fund shall be used exclusively for the education of pupils and students and no funds shall be spent for acquisition of real property, construction of facilities, financing of research or any other non-instructional purpose.

§ 8880.6 Other Statutory Provisions

It is specifically found that Penal Code Sections 320, 321, 322, 323, 324, 325, 326, and 328 shall not apply to the California State Lottery or its operations.

§ 8880.7 Governing Definitions

The definitions contained in this Chapter shall govern the construction of this Chapter unless the context requires otherwise.

§ 8880.8 "Lottery" or "California State Lottery"

"Lottery" or "California State Lottery" means the California State Lottery created and operated pursuant to this Chapter.

§ 8880.9 "Commissioner"

"Commissioner" means one of the members of the Lottery Commission appointed by the Governor pursuant to this Chapter to oversee the California State Lottery.

§ 8880.10 "Director"

"Director" means the Director of the California State Lottery appointed by the Governor pursuant to this Chapter as the chief administrator of the California State Lottery.

§ 8880.11 "Lottery Commission" or "Commission"

"Lottery Commission" or "Commission" means the five members appointed by the Governor pursuant to this Chapter to oversee the Lottery and the Director.

§ 8880.12 "Lottery Game"

"Lottery Game" means any procedure authorized by the Commission whereby prizes are distributed among persons who have paid, or unconditionally agreed to pay, for tickets or shares which provide the opportunity to win such prizes.

§ 8880.13 "Lottery Game Retailer"

"Lottery Game Retailer" means a person with whom the Lottery Commission may contract for the purpose of selling tickets or shares in lottery games to the public.

§ 8880.14 "Lottery Contractor"

"Lottery Contractor" means a person with whom the Lottery has contracted for the purpose of providing goods and services required by the Lottery.

ARTICLE 2

California State Lottery Commission

§ 8880.15 Creation of Commission

The California State Lottery Commission is hereby created in state government.

§ 8880.16 Membership; Appointment; Vacancies; Political Affiliation; Removal

(1) The Commission shall consist of five members appointed by the Governor with the advice and consent of the Senate.

(2) The members shall be appointed for terms of five years, except of those who are first appointed, one member shall be appointed for a term of two years, one member shall be appointed for a term of three years,

one member shall be appointed for a term of four years, and two member shall be appointed for a term of five years

(c) All initial appointments shall be made within 30 days of the effective date of this Chapter.

(d) Vacancies shall be filled within 30 days by the Governor, subject to the advice and consent of the Senate, for the unexpired portion of the term in which they occur.

(e) No more than three members of the Commission shall be members of the same political party.

(f) The Governor may remove any Commissioner upon notification to the Commission and the Secretary of State.

§ 8880.17 Qualifications of Commissioners

At least one of the Commissioners shall have a minimum of five years experience in law enforcement, and at least one of the Commissioners shall be a certified public accountant.

§ 8880.18 Compensation and Expenses

Commissioners shall be compensated at the rate of one hundred dollars (\$100) for each day they are engaged in Commission business. Commission members shall be reimbursed for actual expenses incurred on Commission business, including necessary travel expenses as determined by the State Board of Control.

§ 8880.19 Annual Selection of Chairman

The Commission shall select annually from its membership a Chairman. The Chairman shall have the power to convene special meetings of the Commission upon forty-eight hours written notice to members of the Commission.

§ 8880.20 Meetings

Meetings of the Commission shall be open and public in accordance with the Bagley-Keene Open Meeting Act, commencing with Section 11120 of Chapter 1 of Part 1 of Division of this title.

§ 8880.21 Quorum; Voting

A quorum shall consist of a majority of the members of the Commission then in office. All decisions of the Commission shall be made by a majority vote of the Commissioners present, providing a quorum is present.

§ 8880.22 Reports

The Commission shall make quarterly reports of the operation of the Lottery to the Governor, Attorney General, State Controller, State Treasurer, and the Legislature. Such reports shall include a full and complete statement of Lottery revenues, prize disbursements, expenses, net revenues, and all other financial transactions involving Lottery funds.

§ 8880.23 Appointment of Director; Removal

The Governor, with the advice and consent of the Senate, shall appoint a Director within thirty days of the effective day of this Chapter. The Governor may remove the Director upon notification to the Commission and the Secretary of State. The Director shall be responsible for managing the affairs of the Commission. The Director shall be qualified by training and experience to direct the operations of a state-operated lottery.

ARTICLE 3

Powers and Duties of the Commission

§ 8880.24 Powers and Duties of the Commission

The Commission shall exercise all powers necessary to effectuate the purposes of this Chapter. In all decisions, the Commission shall take into account the particularly sensitive nature of the California State Lottery and shall act to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the Lottery.

§ 8880.25 Initiation and Operation of the Lottery

The Commission shall initiate operation of the Lottery on a continuous