

Local Governments Navigating the California
Constitution:

Rough Waters and Shifting Sands

Presented by the Municipal Law Institute of the League of
California Cities and the California Constitution Center of UC
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Constitutional Issues Relating to Finance and Revenue

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Current Legislative Proposals to Lower Local Vote Thresholds

Voter Approval for Special/Parcel Taxes: Article XIII A, section 4 of the California Constitution requires 2/3 voter approval to impose a “special tax.” A “special tax” is a tax imposed for a specific purpose.

Article XIII C, section 3(a)(2) of the California Constitution requires 2/3 voter approval to impose a “parcel tax” even if the tax is imposed for general use rather than for a specific purpose.

The Legislature may place a measure on the statewide ballot to amend the Constitution with a 2/3 vote. Since Legislative Democrats obtained a “supermajority” (at least two-thirds of all seats in both the Assembly and Senate) serious discussions have begun about the prospect of placing one or more constitutional amendment measures on the 2014 statewide ballot. One option being discussed would provide more flexibility for local governments to raise revenue by reducing the two-thirds voter threshold to 55% from 66.67%.

The introduction of these measures represents the beginning of a discussion. Final decisions could be postponed until 2014. The variety of proposals highlights different approaches and legislative priorities. Voter preferences and polling will also shape the final decisions, because any such measure will require voter approval at the statewide ballot in 2014. The Public Policy Institute of California (PPIC) released a poll on December 5, 2012 indicating that while voter approval of lower vote thresholds is possible, the margins point to a difficult campaign. The PPIC poll found that 54% of adults surveyed and 50% of likely voters would support reducing local vote thresholds from two-thirds to 55percent. Yet 45% of likely voters in the same poll were opposed to the concept. Nevertheless, PPIC reports that the percentage of voters supporting a reduction in the approval requirement represents a “record high” since PPIC began polling the issue in 2003.

Measures introduced as of January 7, 2013 are:

- ✓ **SCA 3 (Leno)**: Allows a school district, county office of education or a community college district to impose, extend or increase a parcel tax with a 55% vote.
- ✓ **SCA 4 (Liu) and SCA 8 (Corbett)**: Allows a local government to impose, extend or increase a special tax to provide funding for local transportation projects with a 55% vote. Requires the Legislature to define “local transportation projects.”
- ✓ **SCA 7 (Wolk)**: Authorizes a local government to impose, extend or increase a parcel tax or special tax for public libraries with a 55% vote.
- ✓ **SCA 9 (Corbett)**: Authorizes a local government to impose, extend or increase a special tax to fund local “community and economic development” with a 55% vote. Defines “community and economic development” to include projects that improve, upgrade or revitalize areas that have become blighted because of deterioration, disuse or unproductive economic conditions.

Property Tax Override for Indebtedness

Article XIII A, section 1(a) of the California Constitution provides that the maximum county-wide property tax rate shall not exceed 1% of full cash value of such property. Article XIII A, section 1(b) makes an exception to the 1% rate to pay for (1) indebtedness approved by the voters prior to July 1, 1978; and (2) bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978 by two-thirds of the votes cast on a local ballot measure for that purpose. Although the 1% county-wide property tax rate added by Proposition 13 in 1978 was a dramatic change in the law, the requirement for 2/3 voter approval to incur bonded indebtedness repayable by a property tax increase was not.

Article XVI, section 18 (“debt limit”) prohibits cities, counties, and special districts from becoming indebtedness for an amount exceeding their income and revenue for a single year without two-third voter approval. Therefore, even prior to Proposition 13 adding Article XIII A,

section 1(b) to the Constitution, 2/3 voter approval was required to increase the property tax to repay bonded debt.

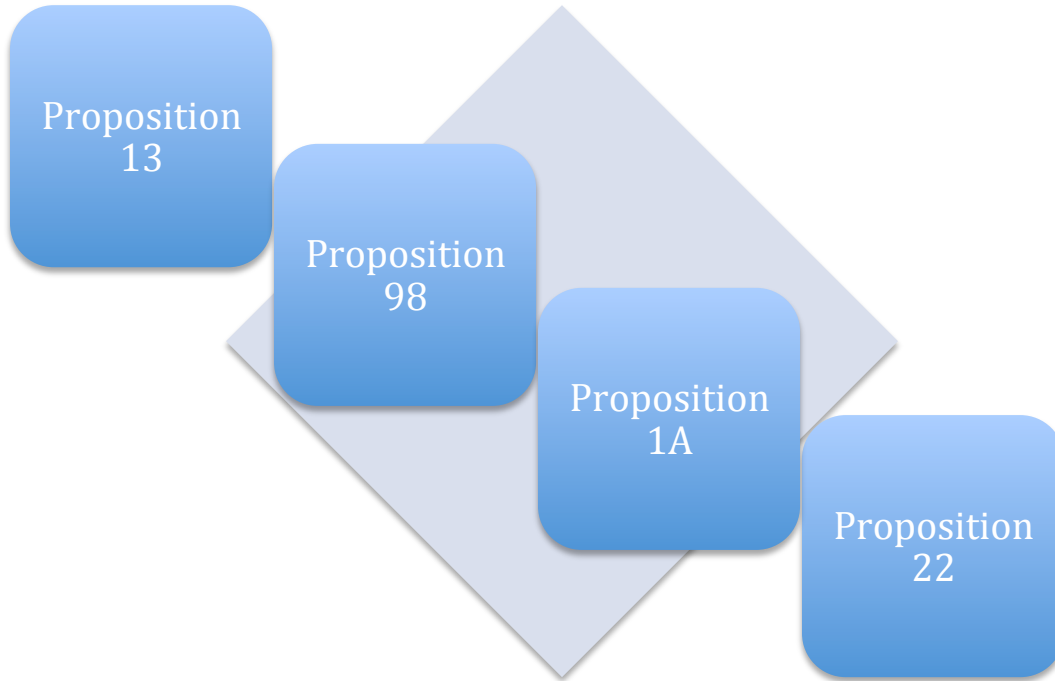
On November 7, 2000, California voters approved Proposition 39 which amended Article XIII A, section 1(b) to allow for a lower voter threshold for bonded indebtedness incurred by a school district, community college district, or county office of education for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities. For these purposes, 55% voter approval is required. Teacher and administrator salaries are specifically exempted from the list of allowable purposes. A corresponding amendment was made to the debt limit section as well. Along with lowering the voter threshold came certain accountability measures including a requirement to list specific school facilities projects to be funded; a requirement that the issuer conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects lists; and a requirement that the issuer conduct an annual, independent financial audit from the sale of the bonds until all of those proceeds have been expended for school facilities projects.

Measures introduced as of January 7, 2013 to amend Article XIII A, section 1 are:

- ✓ **SCA 7 (Wolk):** Authorizes the issuance of indebtedness backed by a increase in ad valorem property tax to fund public libraries with a 55% vote.

The progress of these measures through the Legislative session can be followed at sen.ca.gov.

Responding to Legislative Maneuvers: Property Tax and Sales Tax



Proposition 13 (1978): Limits property tax to 1% countywide rate + bonded indebtedness.

- ✚ *Amador Valley Joint Union High School District v. SBOE* (1978) 22 Cal.3d 208: Plenary power of Legislature to allocate property tax

Proposition 98 (1992): Guaranteed level of funding for K-14 education calculated based primarily on combination of General Fund and local property tax

- ✚ ERAF: Revenue and Taxation Code §§97.2 & 97.3; *County of Los Angeles v. Sasaki* (1994) 23 Cal.app.4th 1442

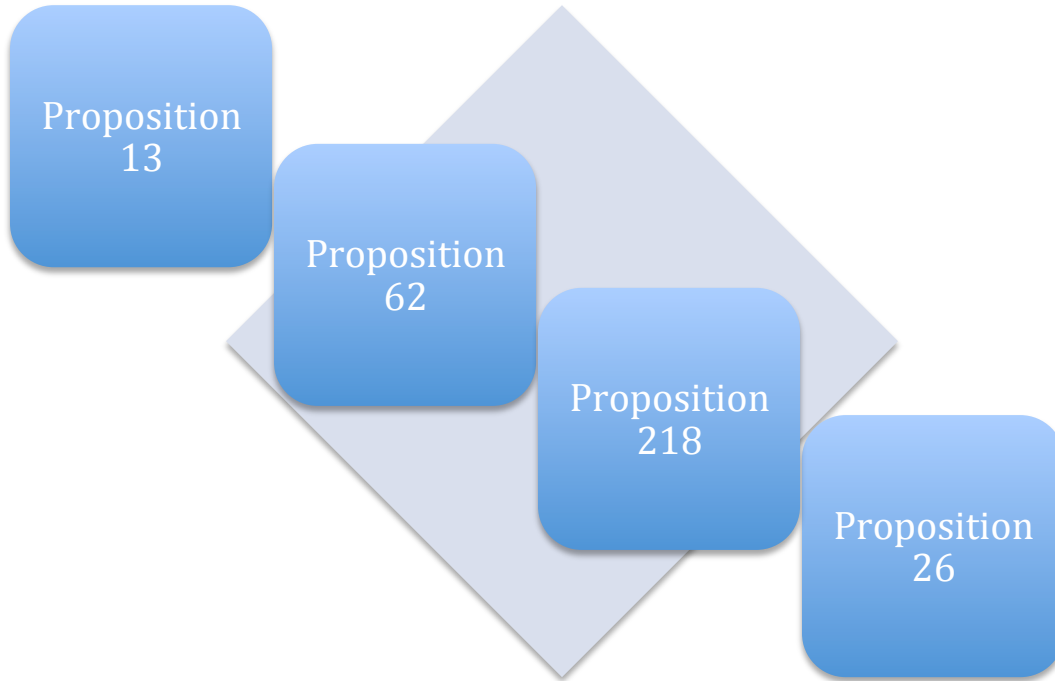
Proposition 1A (2004): No reallocation of pro rata share of local agencies' property taxes to schools. No reallocation among local agencies unless 2/3 vote of Legislature. No reallocation of property taxes for mandate reimbursement. No reallocation of sales tax.

- ✚ SERAF: Health & Safety Code §§ 33680- 33692

Proposition 22 (2010): No reallocation, use, restriction on local taxes. No more SERAF or use of tax increment for State or other taxing entity. No reallocation of VLF to reimburse mandates.

- ✚ SB 89/AB 118: Funding realignment with VLF
 - *League of California Cities v. Chiang*
 - Proposition 30

Plugging Constitutional Loopholes: General and Special Taxes



Proposition 13 (1978): Local “special taxes” require 2/3 voter approval

- ✚ *S.F. v. Farrell* (1982) 32 Cal.3d 47: “Special taxes” are for taxes levied for specific purposes

Proposition 62 (1986): General taxes majority vote, special taxes 2/3 vote; no real estate transfer tax

- ✚ *Fisher v. County of Alameda* (1993) 20 Cal.App.4th 120: Legislative desire to restrict local taxation conflicts with charter cities’ sovereignty over municipal affairs

Proposition 218 (1996): General taxes majority vote; special taxes 2/3 vote; assessments; property-related fees and charges; initiatives to reduce taxes, fees, assessments; parcel taxes requires 2/3 voter approval

Proposition 26 (2010): All levies are taxes except as defined.

California Constitution: Sections Relating to Finance and Revenue

Article XI Local Government

SECTION 1. (a) The State is divided into counties which are legal subdivisions of the State. The Legislature shall prescribe uniform procedure for county formation, consolidation, and boundary change. Formation or consolidation requires approval by a majority of electors voting on the question in each affected county. A boundary change requires approval by the governing body of each affected county. No county seat shall be removed unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

(b) The Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county. Except as provided in subdivision (b) of Section 4 of this article, each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum. The Legislature or the governing body may provide for other officers whose compensation shall be prescribed by the governing body. The governing body shall provide for the number, compensation, tenure, and appointment of employees.

SECTION 2. (a) The Legislature shall prescribe uniform procedure for city formation and provide for city powers.

(b) Except with approval by a majority of its electors voting on the question, a city may not be annexed to or consolidated into another.

SECTION 5. (a) It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.

(b) It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force (2) subgovernment in all or part of a city (3) conduct of city elections and (4) plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees.

SECTION 7. A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.