

# Ballot Measure Summary

## PROPOSITION

# 36

**DRUGS. PROBATION  
AND TREATMENT PROGRAM.**

INITIATIVE STATUTE.

Put on the Ballot by Petition Signatures.

### SUMMARY

Requires probation and drug treatment, not incarceration, for possession, use, transportation of controlled substances and similar parole violations, except sale or manufacture. Authorizes dismissal of charges after completion of treatment. Fiscal Impact: Net annual savings of \$100 million to \$150 million to the state and about \$40 million to local governments. Potential avoidance of one-time capital outlay costs to the state of \$450 million to \$550 million.

### WHAT YOUR VOTE MEANS

#### YES

A **YES** vote on this measure means: Adult offenders convicted of being under the influence of illegal drugs or using, transporting, or possessing illegal drugs for personal use would generally be sentenced to probation and drug treatment.

#### NO

A **NO** vote on this measure means: Adult offenders convicted of being under the influence of illegal drugs or using, transporting, or possessing illegal drugs would generally continue to be sentenced to prison, jail, or probation. There would be no requirement that they be sentenced to drug treatment.

### ARGUMENTS

#### PRO

The war on drugs has failed. Nonviolent drug users are overcrowding our jails. Violent criminals are being released early. Drug treatment programs are rarely available. We pay \$25,000 annually for prisoners when treatment costs only \$4,000. Expanded treatment programs will reduce crime, save lives, and save taxpayers hundreds of millions.

#### CON

Proposition 36 prohibits jail for persons convicted of using heroin, crack, PCP and other illegal drugs, or for possessing "date rape" drugs—even those with prior convictions for rape, child molesting and other violent crimes. Proposition 36 has no regulatory safeguards, cripples legitimate treatment, invites fraud and endangers public safety.

### FOR ADDITIONAL INFORMATION

#### FOR

California Campaign for New Drug Policies

(310) 394-2952  
www.drugreform.org

#### AGAINST

Californians United Against Drug Abuse/Sponsored by Law Enforcement, Drug Treatment Professionals, Healthcare, Crime Victims and Taxpayers—No on 36.  
455 Capitol Mall, Suite 801  
Sacramento, CA 95814  
1-800-995-3221  
www.noonprop36.com

## PROPOSITION

# 37

**FEES. VOTE REQUIREMENTS. TAXES.**

INITIATIVE CONSTITUTIONAL AMENDMENT.

Put on the Ballot by Petition Signatures.

### SUMMARY

Requires two-thirds vote of State Legislature, majority or two-thirds of local electorate to impose future state, local fees on activity to study or mitigate its environmental, societal or economic effects. Defines such fees as taxes except property, development, certain other fees. Fiscal Impact: Unknown, potentially significant, reduction in future state and local government revenues from making it more difficult to approve certain regulatory charges.

### WHAT YOUR VOTE MEANS

#### YES

A **YES** vote on this measure means: Government actions to establish certain regulatory charges would require approval by a greater number of legislators or local voters.

#### NO

A **NO** vote on this measure means: Current laws and constitutional requirements regarding regulatory charges would not be changed.

### ARGUMENTS

#### PRO

The California Taxpayers Association urges you to vote Yes on Proposition 37 to stop hidden taxes on food, gasoline, utilities and other necessities. Proposition 37 makes politicians accountable to taxpayers by requiring a vote of the people or a 2/3 vote of the Legislature to enact these hidden taxes.

#### CON

Proposition 37 *protects polluters and shifts their costs to taxpayers.* The oil and tobacco lobbies who paid for Prop. 37 want you to pay for the pollution and sickness they cause. *American Cancer Society, League of Women Voters, Sierra Club and California Tax Reform Association say: No on 37!*

### FOR ADDITIONAL INFORMATION

#### FOR

Californians Against Hidden Taxes

591 Redwood Hwy., Suite 4000  
Mill Valley, CA 94941  
(916) 448-4266  
info@yesonprop37.org  
www.yesonprop37.org

#### AGAINST

Doug Linney  
Taxpayers Against Polluter Protection

1904 Franklin Street, Suite 909  
Oakland, CA 94612  
(510) 444-4793  
info@polluterprotection.com  
www.polluterprotection.com

## 37

**FEES. VOTE REQUIREMENTS. TAXES.**  
Initiative Constitutional Amendment.**Official Title and Summary Prepared by the Attorney General****FEES. VOTE REQUIREMENTS. TAXES.**

Initiative Constitutional Amendment.

- Requires two-thirds vote of State Legislature, or either majority or two-thirds of local electorate, to impose on any activity fees used to pay for monitoring, studying, or mitigating the environmental, societal or economic effects of that activity when the fees impose no regulatory obligation upon the payor.
- Redefines such fees as taxes.
- Excludes certain real property related fees, assessments and development fees.
- Excludes damages, penalties, or expenses recoverable from a specific event.
- Does not apply to fees enacted before July 1, 1999, or increased fees due to inflation or greater workload, as specified.

**Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:**

- Unknown, potentially significant, reduction in future state and local government revenues from making it more difficult to approve certain regulatory charges.

**Analysis by the Legislative Analyst****BACKGROUND**

State and local governments impose a variety of taxes and fees on people and businesses. Generally, taxes—such as income, sales, and property taxes—are used to pay for general public services such as education, transportation, and the courts. Fees, by comparison, typically pay for a particular service or program benefitting individuals or businesses. There are two major categories of fees:

- User fees, such as state park entrance fees and garbage fees, where the user pays for the cost of a specific service or program.
- Regulatory fees, such as fees on restaurants to pay for health inspections, smog check fees, and land development fees. Regulatory fees pay for programs which place rules upon the activities of businesses or people to achieve particular public goals.

The State Constitution has different rules regarding taxes and fees. Most notably, the process for creating

new taxes is more difficult than the process for creating new fees. As Figure 1 shows, state or local governments usually can create or increase a fee by a majority vote of the governing body. Imposing or increasing a tax, in contrast, requires approval by two-thirds of the state Legislature (for state taxes) or a vote of the people (for local taxes).

**Figure 1****State and Local Fees and Taxes: Approval Requirements**

	<b>Fee</b>	<b>Tax</b>
<b>State</b>	Majority of Legislature	Two-thirds of Legislature
<b>Local</b>	Generally, a majority of the governing body.	Two-thirds of local voters (or a majority of local voters if the use of the money is not designated for a specific purpose).

In recent years, there has been disagreement regarding the difference between regulatory fees and

## Analysis by the Legislative Analyst

taxes, particularly when the money is raised to pay for a program of broad public benefit. In 1991, for example, the state began imposing a regulatory fee on those paint companies and other businesses which make or previously made products containing lead. The state uses this money to screen children at risk for lead poisoning, follow-up on their treatment, and identify sources of lead contamination responsible for the poisoning. In court, the Sinclair Paint Company argued that the regulatory fee was a tax because (1) the program provides a broad public benefit, not a benefit to the regulated business, and (2) the companies which pay the fee have no duties regarding the lead poisoning program other than payment of the fee.

In 1997, the California Supreme Court ruled that this charge on businesses was a regulatory fee, not a tax. The court said government may impose fees on companies which make contaminating products in order to help correct adverse health effects related to those products.

## PROPOSAL

This proposition, which amends the State Constitution, would classify as “taxes” some new charges that government otherwise could impose as “fees.” As taxes, these charges would be subject to the more difficult approval requirements shown in Figure 1.

## Which Fees Would Be Considered Taxes?

This proposition affects fees imposed for the primary purpose of addressing health, environmental, or other “societal or economic” concerns. The proposition states that charges imposed for these purposes are taxes, unless government also imposes significant responsibilities on the fee payer related to addressing the public problem.

The proposition, however, exempts from these provisions:

- Any fee authorized before July 1, 1999. (Increases in these fees to cover the cost of inflation and workload changes would be permitted.)
- Any penalties, or money paid as damages for the cost of fixing a problem associated with a specific event (such as a penalty imposed to clean up a hazardous waste spill).

**Example.** Under current law, the state could impose a charge on businesses which sell cigarettes and use the money to provide health services to people with smoking-induced illnesses. The state could create this charge as a “regulatory fee” by a majority vote of the Legislature. Unless the state also imposed other significant duties on the businesses, this proposition would define this charge to be a “tax.” As a tax, the cigarette charge would require approval by a two-thirds vote of the Legislature.

## Constitutional Standard Regarding the Amount of a Regulatory Fee

This measure also places into the State Constitution a provision regarding the level of regulatory fees. Specifically, if a regulatory fee is greater than the reasonable cost of regulating the activities of the business or individual, the regulatory fee is a tax. In this regard, the proposition’s wording appears similar to the standard that courts currently use to distinguish between regulatory fees and taxes.

## FISCAL EFFECT

This proposition’s primary fiscal effect would be to make it more difficult for government to impose new regulatory charges on businesses and individuals to pay for certain programs. Some charges which government currently may impose as fees would be considered taxes. To the extent that a newly defined tax does not obtain the higher level of approval required for a tax, government would receive less revenue than otherwise would have been the case.

The amount of future revenues potentially reduced due to the more difficult approval requirement cannot be estimated. This revenue reduction could range from minor to significant. The amount would depend on the factors discussed below.

- **Resolution of Legal Questions.** The range of fees affected by this measure would depend on court interpretation of many matters, including the purpose of future fees, the level of additional responsibilities assigned to fee payers, and any difference between the proposed standard regarding the cost of regulatory fees and the current standard.
- **Actions by Legislature and Public.** The voting decisions of local residents and the Legislature would also affect the proposition’s fiscal impact. For example, if most newly designated taxes are approved (even with the higher vote requirements) the proposition would have little effect.
- **Actions by State and Local Governments.** Government decisions regarding regulatory requirements would affect the proposition’s fiscal effect. Under this proposition, if government imposes a new fee and, in addition, imposes a significant “regulatory obligation” on the fee payer, the fee would not be redefined as a tax. (While the proposition does not define the term regulatory obligation, this term presumably includes duties such as requiring a business to change the way it makes a product or provides a service.) Thus, if governments impose significant regulatory duties *along with* new fees, the proposition may have little fiscal effect. (Implementing or participating in new regulatory programs, however, could impose other costs on businesses or individuals.)

For text of Proposition 37 see page 69.

# 37 FEES. VOTE REQUIREMENTS. TAXES.

## Initiative Constitutional Amendment.

### Argument in Favor of Proposition 37

Vote YES on Proposition 37 to STOP HIDDEN TAXES!

Vote YES on Proposition 37 to REQUIRE CITY AND COUNTY POLITICIANS TO GET VOTER PERMISSION BEFORE RAISING YOUR TAXES!

Vote YES on Proposition 37 to REQUIRE STATE POLITICIANS TO GET TWO-THIRDS LEGISLATIVE APPROVAL BEFORE RAISING YOUR TAXES!

Current law makes it easy for politicians to raise your taxes by calling them fees. What's the difference between a tax on gasoline, utilities, food, property or household products and a government-imposed fee on those necessities? Nothing! But by calling them fees, POLITICIANS CAN RAISE YOUR TAXES without a two-thirds vote of the Legislature or a vote of the people.

Proposition 37 means that politicians must be MORE ACCOUNTABLE TO TAXPAYERS. You, the taxpayer, will decide if you want to pay more in local fees on goods or services that you use. At the state level, politicians who want to create new programs funded by tax-like fees must justify those fees to a two-thirds majority of the State Legislature.

Proposition 37 will reduce the threat of bigger government, bureaucratic waste and higher prices for consumers.

WE PAY ENOUGH TAXES IN CALIFORNIA. Gasoline taxes, utility taxes, income taxes, property taxes, inheritance taxes, insurance taxes, motor vehicle taxes, cable television taxes, parking taxes, tourism taxes, telephone taxes. The list goes on and on.

TAXPAYERS SHOULD HAVE A VOICE IN HOW OUR MONEY IS SPENT. Government seems to have an endless appetite for new programs—some good, some not so good. Once in place, they are almost impossible to get rid of—and taxpayers keep paying and paying and paying. Proposition 37 makes certain taxpayers know what they're paying for.

A YES vote on Proposition 37 will make it tougher for politicians to force you to pay for their pet projects. A YES vote means YOU DECIDE which programs are worth paying for with your tax dollars.

Here are some of the fees that consumers and taxpayers could pay if we don't vote YES to stop these hidden taxes:

- Fees on fast food to pay for litter clean-up.
- Fees on aspirin to pay for poison control centers.
- Fees on fatty foods to pay for health programs.
- Fees on movie tickets to pay for parks and recreation programs.
- Fees on automobiles to pay for accident prevention and investigation.
- Fees on cell phones to study possible health effects.

On two occasions, California voters said that new taxes should be subject to a two-thirds vote of the State Legislature and local taxes should be approved by the local electorate. A YES vote on Proposition 37 says that government-imposed "fees" should be subject to the same standards as government-imposed taxes.

The California Taxpayers' Association calls Proposition 37, "the most important taxpayer protection the people of California can have."

Join taxpayers, consumers, farmers and businesses. Vote YES on Proposition 37.

LARRY MCCARTHY, *President*  
California Taxpayers' Association  
DAVID MOORE, *President*  
Western Growers Association  
SUSAN CORRALES-DIAZ, *Director*  
California Chamber of Commerce

PROPOSITION 37

### Rebuttal to Argument in Favor of Proposition 37

The oil, tobacco, and alcohol companies who put this on the ballot are hiding their real goal: Polluter Protection.

THEY WANT THE TAXPAYER TO PAY, instead of those corporations responsible for environmental and health damage. That's what Prop. 37 is REALLY about.

Read their argument carefully. No facts. No law. No information. Just a SMOKESCREEN about taxes and politicians.

FACT: all local taxes and homeowner fees MUST be voted on by taxpayers, according to Proposition 13 and Proposition 218.

FACT: Proposition 13 ALREADY provides for 2/3 vote of the legislature on taxes.

FACT: the examples the proponents give are ABSURD. No one is suggesting such ridiculous fees, except the proponents. And they would be found ILLEGAL UNDER CURRENT LAW.

THE BOTTOM LINE: they don't want to pay to clean up toxic sites and other environmental and health damage they cause.

Here's what the Supreme Court said in the case which Prop. 37 would overturn:

"A reasonable way to achieve Proposition 13's goal of tax relief is to shift the costs of controlling . . . pollution from the tax-paying public to the pollution-causing industries themselves."

FACT: Proposition 37 OVERTURNS THAT TAXPAYER PROTECTION, in favor of the polluters. They want to shift their costs to the tax-paying public.

As the *Sacramento Bee* framed Proposition 37:

"WHO PAYS? . . . If not polluters, then the rest of us." (July 6, 2000)

Join with:

- American Cancer Society
  - Natural Resources Defense Counsel
  - Children's Advocacy Institute
  - Common Cause
  - California Nurses Association
  - California Tax Reform Association
- NO on Proposition 37!

GAIL D. DRYDEN, *President*  
League of Women Voters of California  
LUCY CRAIN, M.D., M.P.H., *District Chair*  
California District IX, American Academy of Pediatrics  
MARGUERITE YOUNG, *California Director*  
Clean Water Action

## FEES. VOTE REQUIREMENTS. TAXES. **37**

### Initiative Constitutional Amendment.

#### Argument Against Proposition 37

Proposition 37 asks a simple question of voters: should polluters or taxpayers pay for the cost of cleaning up pollution?

We say that polluters, not taxpayers, should pay. So we say NO on Proposition 37.

The oil, tobacco, and alcohol companies who put this on the ballot don't want to pay the costs of cleaning up their mess, or even monitoring or researching the problems they cause. *They'd rather stick you with the bill.*

That's why we call Prop. 37 **THE POLLUTER PROTECTION ACT** ([www.polluterprotection.com](http://www.polluterprotection.com))

OIL, TOBACCO, AND ALCOHOL CORPORATIONS CONTRIBUTED 92% OF THE MONEY BEHIND THIS MEASURE, according to their first report with the Secretary of State. They spent over \$1 million to put this on the ballot.

And oil, tobacco, and alcohol will spend millions more to pass it. Monitor their spending at [www.calvoter.org](http://www.calvoter.org).

Here's how it works:

Proposition 37 would overturn a UNANIMOUS decision of the California Supreme Court which upheld the Childhood Lead Poisoning Prevention Act. (*Sinclair Paint vs. Board of Equalization*, 1997.)

The Childhood Lead Poisoning Prevention Act enacted fees, by majority vote, on those oil and paint companies who put lead in our environment. Those fees pay for removing lead paint from the environment and treating children poisoned by lead.

Proposition 37 would make it impossible to enact such fees to address clean-up and health costs ever again. Instead, these fees would be prohibited, so that these companies would now be able to hide behind laws designed to protect ordinary taxpayers.

They want to call clean-up fees "taxes", in order to require 2/3 vote of the Legislature. These special interests know that they have enough power to get 1/3 of one house of the Legislature to block such taxes.

And, by calling clean-up fees "taxes", they know that politicians would then have to vote for "tax" increases. Since politicians are reluctant to buck these powerful interests, they can now say they are against "tax increases". That's how special interest protection works.

As the *Sacramento Bee* warned, "The initiative won't change the underlying reality, which is that someone has to pay the costs of mitigating pollution; if not polluters, then the rest of us." (Editorial entitled, "Who Pays? Voters to decide who gets the bill for pollution," July 6, 2000.)

Here's the type of fees which would be banned if Proposition 37 passes:

- Fees on oil companies to clean up MTBE in our water supply.
- Fees on tobacco companies to research treatment for smoking-related diseases.
- Fees on liquor stores and stripclubs to pay for police protection in neighborhoods.
- Fees on airlines to monitor noise caused by airport expansion.

AND IF THE POLLUTERS DON'T PAY, WE, THE TAXPAYERS, WILL! If Prop. 37 passes, your taxes will pay for the problems that tobacco, oil, and other polluting companies cause.

Join California Professional Firefighters, Coalition for Clean Air, Sierra Club, Congress of California Seniors, Consumer Federation of California, California Nurses Association, and the California Association of Professional Scientists.

Vote NO on the Polluter Protection Act!

CLANCY FARIA, *President*

*Peace Officers Research Association of California*

LENNY GOLDBERG, *Executive Director*

*California Tax Reform Association*

JON RAINWATER, *Executive Director*

*California League of Conservation Voters*

#### Rebuttal to Argument Against Proposition 37

Opponents want you to think Proposition 37 is about pollution and the environment. It isn't. Proposition 37 doesn't change anything when it comes to holding companies responsible for damage they cause to the environment.

It's about politicians taxing everyday products without our permission.

If you believe TAXPAYERS SHOULD HAVE A VOICE IN HOW THEY'RE TAXED, you should vote YES on Proposition 37.

WE PAY ENOUGH FOR ESSENTIALS LIKE FOOD AND GASOLINE without politicians adding a hidden tax for some special interest program.

Proposition 37 is simple: IT WILL STOP LOCAL POLITICIANS FROM TAXING CONSUMERS WITHOUT OUR PERMISSION!

In nearly every case, the taxes addressed by Proposition 37 are ADDED DIRECTLY TO THE PRICE YOU PAY FOR THINGS LIKE FOOD, GASOLINE, UTILITIES, TELEPHONE, HOUSEHOLD PRODUCTS, MEDICINE, CABLE TV AND CELL PHONES.

The last thing we need when we have billion dollar budget surpluses is another way for politicians to raise taxes. If local

politicians propose a tax increase, Proposition 37 means YOU HAVE THE OPPORTUNITY TO VOTE ON IT. At the state level, a two-thirds vote of the Legislature is necessary to raise your taxes.

Voters said twice before that tax increases should be subject to voter approval and greater scrutiny by the State Legislature. Proposition 37 CLOSES A LOOPHOLE THAT ALLOWS POLITICIANS TO AVOID ACCOUNTABILITY to taxpayers and voters and restores our right to vote on higher taxes.

Protect your right to decide if you want to pay more in taxes.

Vote YES on Proposition 37.

LARRY MCCARTHY, *President*

*California Taxpayers Association*

JACK STEWART, *President*

*California Manufacturers and Technology Association*

RUTH LOPEZ WILLIAMS, *Chair*

*Latin Business Association*



## Text of Proposed Laws — Continued

## 11999.5. Funding Appropriation

Upon passage of this act, \$60,000,000 shall be continuously appropriated from the General Fund to the Substance Abuse Treatment Trust Fund for the 2000–01 fiscal year. There is hereby continuously appropriated from the General Fund to the Substance Abuse Treatment Trust Fund an additional \$120,000,000 for the 2001–02 fiscal year, and an additional sum of \$120,000,000 for each such subsequent fiscal year concluding with the 2005–06 fiscal year. These funds shall be transferred to the Substance Abuse Treatment Trust Fund on July 1 of each of these specified fiscal years. Funds transferred to the Substance Abuse Treatment Trust Fund are not subject to annual appropriation by the Legislature and may be used without a time limit. Nothing in this section precludes additional appropriations by the Legislature to the Substance Abuse Treatment Trust Fund.

## 11999.6. Distribution of Monies from Substance Abuse Treatment Trust Fund

Monies deposited in the Substance Abuse Treatment Trust Fund shall be distributed annually by the Secretary of the Health and Human Services Agency through the State Department of Alcohol and Drug Programs to counties to cover the costs of placing persons in and providing (a) drug treatment programs under this act, and (b) vocational training, family counseling and literacy training under this act. Additional costs that may be reimbursed from the Substance Abuse Treatment Trust Fund include probation department costs, court monitoring costs and any miscellaneous costs made necessary by the provisions of this act other than drug testing services of any kind. Such monies shall be allocated to counties through a fair and equitable distribution formula that includes, but is not limited to, per capita arrests for controlled substance possession violations and substance abuse treatment caseload, as determined by the department as necessary to carry out the purposes of this act. The department may reserve a portion of the fund to pay for direct contracts with drug treatment service providers in counties or areas in which the director of the department has determined that demand for drug treatment services is not adequately met by existing programs. However, nothing in this section shall be interpreted or construed to allow any entity to use funds from the Substance Abuse Treatment Trust Fund to supplant funds from any existing fund source or mechanism currently used to provide substance abuse treatment.

## 11999.7. Local Government Authority to Control Location of Drug Treatment Programs

Notwithstanding any other provision of law, no community drug treatment program may receive any funds from the Substance Abuse Treatment Trust Fund unless the program agrees to make its facilities subject to valid local government zoning ordinances and development agreements.

## 11999.8. Surplus Funds

Any funds remaining in the Substance Abuse Treatment Trust Fund at the end of a fiscal year may be utilized to pay for drug treatment programs to be carried out in the subsequent fiscal year.

## 11999.9. Annual Evaluation Process

The department shall annually conduct a study to evaluate the effectiveness and financial impact of the programs that are funded pursuant to the requirements of this act. The study shall include, but not be limited to, a study of the implementation process, a review of lower incarceration costs, reductions in crime, reduced prison and jail construction, reduced welfare costs, the adequacy of funds appropriated, and any other impacts or issues the department can identify.

## 11999.10. Outside Evaluation Process

The department shall allocate up to 0.5 percent of the fund's total monies each year for a long-term study to be conducted by a public university in California aimed at evaluating the effectiveness and financial impact of the programs that are funded pursuant to the requirements of this act.

## 11999.11. County Reports

Counties shall submit a report annually to the department detailing the numbers and characteristics of clients-participants served as a result of funding provided by this act. The department shall promulgate a form which shall be used by the counties for the reporting of this information, as well as any other information that may be required by the department. The department shall establish a deadline by which the counties shall submit their reports.

## 11999.12. Audit of Expenditures

The department shall annually audit the expenditures made by any county that is funded, in whole or in part, with funds provided by this act. Counties shall repay to the department any funds that are not spent in accordance with the requirements of this act.

## 11999.13. Excess Funds

At the end of each fiscal year, a county may retain unspent funds received from the Substance Abuse Treatment Trust Fund and may spend those funds, if approved by the department, on drug programs that further the purposes of this act.

## SEC. 8. Effective Date

Except as otherwise provided, the provisions of this act shall become effective July 1, 2001, and its provisions shall be applied prospectively.

## SEC. 9. Amendment

This act may be amended only by a roll call vote of two thirds of the membership of both houses of the Legislature. All amendments to this act shall be to further the act and shall be consistent with its purposes.

## SEC. 10. Severability

If any provision of this act or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this initiative that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this initiative are severable.

## Proposition 37: Text of Proposed Law

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

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

## PROPOSED LAW

## Two-Thirds Vote Preservation Act of 2000

## SECTION 1. Title

This measure shall be known and may be cited as the "Two-Thirds Vote Preservation Act of 2000."

## SECTION 2. Findings and Declaration of Purpose

The People of the State of California find and declare that:

(a) Article XIII A, Section 3, of the California Constitution prohibits the California Legislature from imposing a state tax without approval by a two-thirds vote of the members of each house.

(b) Article XIII C, Section 2, subdivisions (b) and (d), of the California Constitution prohibit local governments from imposing a general tax without approval by a majority vote of the people or a special tax without approval by a two-thirds vote of the people.

(c) These vote requirements do not apply to the imposition of legitimate fees.

(d) There have been increasing attempts by the state and local governments to disguise new taxes as fees in order to avoid the vote requirements.

## Text of Proposed Laws — Continued

(e) In 1997 the California Supreme Court in the case of *Sinclair Paint Company v. State Board of Equalization* defined a fee in such manner as to unreasonably broaden the purposes for which fees can be imposed.

(f) The breadth of the Supreme Court's decision will encourage the use of fees to avoid the vote requirements of Articles XIII A and XIII C and significantly weaken the tax protections created by these propositions.

(g) The distinction between a fee and a tax was reasonably clear before the Supreme Court decision.

(h) In order to preserve that distinction and prevent avoidance of the two-thirds legislative vote requirement of Article XIII A and the majority and two-thirds popular vote requirements of Article XIII C, it is necessary to amend the Constitution.

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

SEC. 3. From and after the effective date of this article, any changes in state taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in ~~methods~~ the method of computation must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed. For purposes of this section, "state taxes" do not include an "assessment" or "fee" as defined in Article XIII D, Section 2, subdivisions (b) and (e), real property development fees, or regulatory fees that do not exceed the reasonable cost of regulating the activity for which the fee is charged. Provided, however, compulsory fees enacted after July 1, 1999, to monitor, study or mitigate the societal or economic effects of an activity, and which impose no significant regulatory obligation on the fee payor's activity other than the payment of the fee, and regulatory fees that exceed the reasonable cost of regulating the activity for which the fee is charged, shall be deemed state taxes subject to the two-thirds vote requirement of this section. Monies recoverable as damages, remedial expenses or penalties arising from a specific event shall not be deemed taxes or fees.

This section shall not apply to (1) any fee that was authorized by law prior to July 1, 1999, (2) any increase in such fee attributable to inflation, or (3) any increase in such fee attributable to increased workload, provided such increased workload is not the result of expansion of the class of activity or activities to which the fee applied prior to July 1, 1999.

SECTION 4. Section 1 of Article XIII C of the California Constitution is amended to read as follows:

SECTION 1. Definitions. As used in this article:

(a) "General tax" means any tax imposed for general governmental purposes.

(b) "Local government" means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.

(c) "Special district" means an agency of the State, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.

(d) "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

(e) For purposes of subdivisions (a) and (d), "general taxes" and "special taxes" do not include an "assessment" or "fee" as defined in Article XIII D, Section 2, subdivisions (b) and (e), real property development fees, or regulatory fees that do not exceed the reasonable cost of regulating the activity for which the fee is charged. Provided, however, compulsory fees enacted after July 1, 1999, to monitor, study or mitigate the societal or economic effects of an activity, and which impose no significant regulatory obligation on the fee payor's activity other than the payment of the fee, and regulatory fees that exceed the reasonable cost of regulating the activity for which the fee is charged, shall be deemed general or special taxes subject to the majority or two-thirds vote requirements of Section 2, subdivisions (b) and (d), of this article. Monies recoverable as damages, remedial expenses or penalties arising from a specific event shall not be deemed taxes, special taxes, assessments or fees.

This section shall not apply to (1) any fee that was authorized by law prior to July 1, 1999, (2) any increase in such fee attributable to inflation, or (3) any increase in such fee attributable to increased workload, provided such increased workload is not the result of expansion of the class of activity or activities to which the fee applied prior to July 1, 1999.

SECTION 5. Severability

If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

## Proposition 38: Text of Proposed Law

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

This initiative measure expressly amends the California Constitution by adding sections thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED LAW

The National Average School Funding Guarantee and Parental Right to Choose Quality Education Amendment

#### SECTION 1. TITLE

This measure shall be known and may be cited as "The National Average School Funding Guarantee and Parental Right to Choose Quality Education Amendment."

SECTION 2. Section 8.1 is added to Article IX of the Constitution, to read:

SEC. 8.1. *The people of the State of California find and declare:*

(a) *The economic and social viability of California depends on a well educated citizenry.*

(b) *Test scores from students in government operated schools reveal that the public school system in this state has become an inefficient monopoly, with many parents forced to enroll their children in schools that are failing to prepare students with the foundation skills of reading, writing and mathematics.*

(c) *As California embarks on the 21st century, basic changes in California's education delivery structure must be made to ensure that our children receive the benefits of quality education services.*

(d) *Parents are best equipped to make decisions for their children and have the right to select the educational setting that will best serve the interests and educational needs of their child.*

(e) *Families have the right to have their children attend schools that successfully teach reading, writing and mathematics to all enrolled students.*

(f) *The scholarship provided pursuant to this measure is a grant in aid to the parents for the education of their children. The decision by a parent to accept a scholarship and how it is used is not the decision of the state but an exercise of independent parental judgement.*

(g) *The scholarships provided pursuant to this measure are consistent with existing programs operated by the state including Cal-Grants, special education services in non-public schools, and*