

Assembly Constitutional Amendment

No. 1

**Introduced by Assembly Member Aguiar-Curry
(Coauthors: Assembly Members Chiu, Eggman, Eduardo Garcia,
Gloria, McCarty, Mullin, Santiago, and Ting)**

December 3, 2018

Assembly Constitutional Amendment No. 1—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Sections 1 and 4 of Article XIII A thereof, by amending Section 2 of, and by adding Section 2.5 to, Article XIII C thereof, by amending Section 3 of Article XIII D thereof, and by amending Section 18 of Article XVI thereof, relating to local finance.

LEGISLATIVE COUNSEL'S DIGEST

ACA 1, as introduced, Aguiar-Curry. Local government financing: affordable housing and public infrastructure: voter approval.

(1) The California Constitution prohibits the ad valorem tax rate on real property from exceeding 1% of the full cash value of the property, subject to certain exceptions.

This measure would create an additional exception to the 1% limit that would authorize a city, county, or city and county to levy an ad valorem tax to service bonded indebtedness incurred to fund the construction, reconstruction, rehabilitation, or replacement of public infrastructure or affordable housing, if the proposition proposing that tax is approved by 55% of the voters of the city, county, or city and county, as applicable, and the proposition includes specified accountability requirements.

(2) The California Constitution conditions the imposition of a special tax by a local government upon the approval of $\frac{2}{3}$ of the voters of the

local government voting on that tax, and prohibits these entities from imposing an ad valorem tax on real property or a transactions or sales tax on the sale of real property.

This measure would authorize a local government to impose, extend, or increase a sales and use tax or transactions and use tax imposed in accordance with specified law or a parcel tax, as defined, for the purposes of funding the construction, rehabilitation, or replacement of public infrastructure or affordable housing, if the proposition proposing that tax is approved by 55% of its voters voting on the proposition and the proposition includes specified accountability requirements. This measure would also make conforming changes to related provisions.

(3) The California Constitution prohibits specified local government agencies from incurring any indebtedness exceeding in any year the income and revenue provided in that year, without the assent of $\frac{2}{3}$ of the voters and subject to other conditions. In the case of a school district, community college district, or county office of education, the California Constitution permits a proposition for the incurrence of indebtedness in the form of general obligation bonds 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, to be adopted upon the approval of 55% of the voters of the district or county, as appropriate, voting on the proposition at an election.

This measure would similarly lower to 55% the voter-approval threshold for a city, county, or city and county to incur bonded indebtedness, exceeding in any year the income and revenue provided in that year, that is in the form of general obligation bonds issued to fund the construction, reconstruction, rehabilitation, or replacement of public infrastructure or affordable housing projects, if the proposition proposing that bond includes specified accountability requirements.

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

- 1 *Resolved by the Assembly, the Senate concurring,* That the
- 2 Legislature of the State of California at its 2017–18 Regular
- 3 Session commencing on the fifth day of December 2016, two-thirds
- 4 of the membership of each house concurring, hereby proposes to
- 5 the people of the State of California, that the Constitution of the
- 6 State be amended as follows:

1 First—That Section 1 of Article XIII A thereof is amended to
2 read:

3 SECTION 1. (a) The maximum amount of any ad valorem
4 tax on real property shall not exceed ~~One 1 percent (1%)~~ of the
5 full cash value of ~~such~~ *that* property. The ~~one 1 percent (1%)~~ tax
6 ~~to~~ *shall* be collected by the counties and apportioned according to
7 law to the districts within the counties.

8 (b) The limitation provided for in subdivision (a) shall not apply
9 to ad valorem taxes or special assessments to pay the interest and
10 redemption charges on any of the following:

11 (1) Indebtedness approved by the voters ~~prior to~~ *before* July 1,
12 1978.

13 (2) Bonded indebtedness ~~for~~ *to fund* the acquisition or
14 improvement of real property approved on or after July 1, 1978,
15 by two-thirds of the votes cast by the voters voting on the
16 proposition.

17 (3) Bonded indebtedness incurred by a school district,
18 community college district, or county office of education for the
19 construction, reconstruction, rehabilitation, or replacement of
20 school facilities, including the furnishing and equipping of school
21 facilities, or the acquisition or lease of real property for school
22 facilities, approved by 55 percent of the voters of the district or
23 county, as appropriate, voting on the proposition on or after ~~the~~
24 ~~effective date of the measure adding this paragraph.~~ *November 8,*
25 *2000.* This paragraph shall apply only if the proposition approved
26 by the voters and resulting in the bonded indebtedness includes
27 all of the following accountability requirements:

28 (A) A requirement that the proceeds from the sale of the bonds
29 be used only for the purposes specified in ~~Article XIII A, Section~~
30 ~~1(b)(3),~~ *this paragraph,* and not for any other purpose, including
31 teacher and administrator salaries and other school operating
32 expenses.

33 (B) A list of the specific school facilities projects to be funded
34 and certification that the school district board, community college
35 board, or county office of education has evaluated safety, class
36 size reduction, and information technology needs in developing
37 that list.

38 (C) A requirement that the school district board, community
39 college board, or county office of education conduct an annual,

1 independent performance audit to ensure that the funds have been
2 expended only on the specific projects listed.

3 (D) A requirement that the school district board, community
4 college board, or county office of education conduct an annual,
5 independent financial audit of the proceeds from the sale of the
6 bonds until all of those proceeds have been expended for the school
7 facilities projects.

8 (4) (A) *Bonded indebtedness incurred by a city, county, or city
9 and county for the construction, reconstruction, rehabilitation, or
10 replacement of public infrastructure or affordable housing, or the
11 acquisition or lease of real property for public infrastructure or
12 affordable housing, approved by 55 percent of the voters of the
13 city, county, or city and county as appropriate, voting on the
14 proposition on or after the effective date of the measure adding
15 this paragraph. This paragraph shall apply only if the proposition
16 approved by the voters and resulting in the bonded indebtedness
17 includes all of the following accountability requirements:*

18 (i) *A requirement that the proceeds from the sale of the bonds
19 be used only for the purposes specified in this paragraph, and not
20 for any other purpose, including city, county, or city and county
21 employee salaries and other operating expenses.*

22 (ii) *A list of the specific projects to be funded, and a certification
23 that the city, county, or city and county has evaluated alternative
24 funding sources.*

25 (iii) *A requirement that the city, county, or city and county
26 conduct an annual, independent performance audit to ensure that
27 the funds have been expended only on the specific projects listed.*

28 (iv) *A requirement that the city, county, or city and county
29 conduct an annual, independent financial audit of the proceeds
30 from the sale of the bonds until all of those proceeds have been
31 expended for the public infrastructure or affordable housing
32 projects, as applicable.*

33 (v) *A requirement that the city, county, or city and county post
34 the audits required by clauses (iii) and (iv) in a manner that is
35 easily accessible to the public.*

36 (vi) *A requirement that the city, county, or city and county
37 appoint a citizens' oversight committee to ensure that bond
38 proceeds are expended only for the purposes described in the
39 measure approved by the voters.*

1 (B) For purposes of this paragraph, “affordable housing” shall
2 include housing developments, or portions of housing
3 developments, that provide workforce housing affordable to
4 households earning up to 150 percent of countywide median
5 income, and housing developments, or portions of housing
6 developments, that provide housing affordable to lower, low-, or
7 very low income households, as those terms are defined in state
8 law.

9 (C) For purposes of this paragraph, “public infrastructure”
10 shall include, but is not limited to, projects that provide any of the
11 following:

- 12 (i) Water or protect water quality.
- 13 (ii) Sanitary sewer.
- 14 (iii) Treatment of wastewater or reduction of pollution from
15 stormwater runoff.
- 16 (iv) Protection of property from impacts of sea level rise.
- 17 (v) Parks.
- 18 (vi) Open space and recreation facilities.
- 19 (vii) Improvements to transit and streets and highways.
- 20 (viii) Flood control.
- 21 (ix) Broadband Internet access service expansion in underserved
22 areas.
- 23 (x) Local hospital construction.

24 (c) (1) Notwithstanding any other provisions of law or of this
25 Constitution, a school ~~districts, district,~~ community college
26 ~~districts, and district,~~ or county ~~office~~ office of education may
27 levy a 55 percent vote ad valorem tax pursuant to paragraph (3)
28 of subdivision (b).

29 (2) Notwithstanding any other provisions of law or this
30 Constitution, a city, county, or city and county may levy a 55
31 percent ad valorem tax pursuant to paragraph (4) of subdivision
32 (b).

33 Second—That Section 4 of Article XIII A thereof is amended
34 to read:

35 SEC. 4. ~~Cities, Counties and special districts, Except as~~
36 ~~provided by Section 2.5 of Article XIII C, a city, county, or special~~
37 ~~district, by a two-thirds vote of the qualified electors of such~~
38 ~~district, its voters voting on the proposition, may impose special~~
39 ~~taxes on such district, a special tax within that city, county, or~~
40 ~~special district, except an ad valorem taxes tax on real property~~

1 or a ~~transaction~~ *transactions* tax or sales tax on the sale of real
 2 property within ~~such City, County~~ *that city, county*, or special
 3 district.

4 Third—That Section 2 of Article XIII C thereof is amended to
 5 read:

6 SEC. 2. ~~Local Government Tax Limitation.~~ Notwithstanding
 7 any other provision of this Constitution:

8 (a) ~~All taxes~~ *Any tax* imposed by ~~any a~~ *a* local government ~~shall~~
 9 ~~be deemed to be~~ *is* either ~~a general taxes tax or a special taxes.~~
 10 ~~Special purpose districts tax. A special district or agencies, agency,~~
 11 ~~including a school districts, shall have no power~~ *district, has no*
 12 ~~authority to levy a general taxes. tax.~~

13 (b) ~~No~~ *A* local government may *not* impose, extend, or increase
 14 any general tax unless and until that tax is submitted to the
 15 electorate and approved by a majority vote. A general tax ~~shall is~~
 16 ~~not be~~ deemed to have been increased if it is imposed at a rate not
 17 higher than the maximum rate so approved. The election required
 18 by this subdivision shall be consolidated with a regularly scheduled
 19 general election for members of the governing body of the local
 20 government, except in cases of emergency declared by a unanimous
 21 vote of the governing body.

22 (c) Any general tax imposed, extended, or increased, without
 23 voter approval, by any local government on or after January 1,
 24 1995, and ~~prior to~~ *before* the effective date of this article, ~~shall~~
 25 *may* continue to be imposed only if *that general tax is* approved
 26 by a majority vote of the voters voting in an election on the issue
 27 of the imposition, which election shall be held ~~within two years~~
 28 ~~of the effective date of this article~~ *no later than November 6, 1996,*
 29 and in compliance with subdivision (b).

30 (d) ~~No~~ *Except as provided by Section 2.5,* a local government
 31 may *not* impose, extend, or increase any special tax unless and
 32 until that tax is submitted to the electorate and approved by a
 33 two-thirds vote. A special tax ~~shall is~~ *not be* deemed to have been
 34 increased if it is imposed at a rate not higher than the maximum
 35 rate so approved.

36 Fourth—That Section 2.5 is added to Article XIII C thereof, to
 37 read:

38 SEC. 2.5. (a) The imposition, extension, or increase of a sales
 39 and use tax imposed in accordance with the Bradley-Burns Uniform
 40 Local Sales and Use Tax Law (Part 1.5 (commencing with Section

1 7200) of Division 2 of the Revenue and Taxation Code) or a
2 successor law, a transactions and use tax imposed in accordance
3 with the Transactions and Use Tax Law (Part 1.6 (commencing
4 with Section 7251) of Division 2 of the Revenue and Taxation
5 Code) or a successor law, or a parcel tax imposed by a local
6 government for the purpose of funding the construction,
7 reconstruction, rehabilitation, or replacement of public
8 infrastructure or affordable housing, or the acquisition or lease of
9 real property for public infrastructure or affordable housing, is
10 subject to approval by 55 percent of the voters in the local
11 government voting on the proposition, if both of the following
12 conditions are met:

13 (1) The proposition is approved by a majority vote of the
14 membership of the governing board of the local government.

15 (2) The proposition contains all of the following accountability
16 requirements:

17 (A) A requirement that the proceeds of the tax only be used for
18 the purposes specified in the proposition, and not for any other
19 purpose, including general employee salaries and other operating
20 expenses of the local government.

21 (B) A list of the specific projects that are to be funded by the
22 tax, and a certification that the local government has evaluated
23 alternative funding sources.

24 (C) A requirement that the local government conduct an annual,
25 independent performance audit to ensure that the proceeds of the
26 special tax have been expended only on the specific projects listed
27 in the proposition.

28 (D) A requirement that the local government conduct an annual,
29 independent financial audit of the proceeds from the tax during
30 the lifetime of that tax.

31 (E) A requirement that the local government post the audits
32 required by subparagraphs (C) and (D) in a manner that is easily
33 accessible to the public.

34 (F) A requirement that the local government appoint a citizens'
35 oversight committee to ensure the proceeds of the special tax are
36 expended only for the purposes described in the measure approved
37 by the voters.

38 (b) For purposes of this section, the following terms have the
39 following meanings:

1 (1) “Affordable housing” shall include housing developments,
 2 or portions of housing developments, that provide workforce
 3 housing affordable to households earning up to 150 percent of
 4 countywide median income, and housing developments, or portions
 5 of housing developments, that provide housing affordable to lower,
 6 low-, or very low income households, as those terms are defined
 7 in state law.

8 (2) “Parcel tax” means a special tax imposed upon a parcel of
 9 real property at a rate that is determined without regard to that
 10 property’s value and that applies uniformly to all taxpayers or all
 11 real property within the jurisdiction of the local government.
 12 “Parcel tax” does not include a tax imposed on a particular class
 13 of property or taxpayers.

14 (3) “Public infrastructure” shall include, but is not limited to,
 15 the projects that provide any of the following:

- 16 (A) Water or protect water quality.
- 17 (B) Sanitary sewer.
- 18 (C) Treatment of wastewater or reduction of pollution from
 19 stormwater runoff.
- 20 (D) Protection of property from impacts of sea level rise.
- 21 (E) Parks.
- 22 (F) Open space and recreation facilities.
- 23 (G) Improvements to transit and streets and highways.
- 24 (H) Flood control.
- 25 (I) Broadband Internet access service expansion in underserved
 26 areas.
- 27 (J) Local hospital construction.

28 Fifth—That Section 3 of Article XIII D thereof is amended to
 29 read:

30 ~~SEC. 3. Property Taxes, Assessments, Fees and Charges~~
 31 ~~Limited.~~ (a) ~~No~~ *An agency shall not assess a tax, assessment, fee,*
 32 ~~or charge shall be assessed by any agency~~ upon any parcel of
 33 property or upon any person as an incident of property ownership
 34 except:

- 35 (1) The ad valorem property tax imposed pursuant to Article
 36 XIII and Article XIII A.
- 37 (2) Any special tax receiving a two-thirds vote pursuant to
 38 Section 4 of Article XIII ~~A~~ *or Section 2.5 of Article XIII C.*
- 39 (3) Assessments as provided by this article.

1 (4) Fees or charges for ~~property-related~~ *property-related* services
2 as provided by this article.

3 (b) For purposes of this article, fees for the provision of electrical
4 or gas service ~~shall are not be~~ deemed charges or fees imposed as
5 an incident of property ownership.

6 Sixth—That Section 18 of Article XVI thereof is amended to
7 read:

8 SEC. 18. (a) ~~No~~ A county, city, town, township, board of
9 education, or school district, shall *not* incur any indebtedness or
10 liability in any manner or for any purpose exceeding in any year
11 the income and revenue provided for ~~such~~ *that* year, without the
12 assent of two-thirds of the voters of the public entity voting at an
13 election to be held for that purpose, except that with respect to any
14 such public entity which is authorized to incur indebtedness for
15 public school purposes, any proposition for the incurrence of
16 indebtedness in the form of general obligation bonds for the
17 purpose of repairing, reconstructing or replacing public school
18 buildings determined, in the manner prescribed by law, to be
19 structurally unsafe for school use, shall be adopted upon the
20 approval of a majority of the voters of the public entity voting on
21 the proposition at such election; nor unless before or at the time
22 of incurring such indebtedness provision shall be made for the
23 collection of an annual tax sufficient to pay the interest on such
24 indebtedness as it falls due, and to provide for a sinking fund for
25 the payment of the principal thereof, on or before maturity, which
26 shall not exceed forty years from the time of contracting the
27 indebtedness.

28 (b) Notwithstanding subdivision (a), ~~on or after the effective~~
29 ~~date of the measure adding this subdivision, in the case of any~~
30 ~~school district, community college district, or county office of~~
31 ~~education, any proposition for the incurrence of indebtedness in~~
32 ~~the form of general obligation bonds for the construction,~~
33 ~~reconstruction, rehabilitation, or replacement of school facilities,~~
34 ~~including the furnishing and equipping of school facilities, or the~~
35 ~~acquisition or lease of real property for school facilities, for the~~
36 ~~purposes described in paragraph (3) or (4) of subdivision (b) of~~
37 ~~Section 1 of Article XIII A shall be adopted upon the approval of~~
38 55 percent of the voters of the ~~district or county, school district,~~
39 ~~community college district, county office of education, city, county,~~
40 ~~or city and county, as appropriate, voting on the proposition at an~~

1 election. This subdivision shall apply ~~only~~ to a proposition for the
2 incurrence of indebtedness in the form of general obligation bonds
3 for the purposes specified in this subdivision *only* if the proposition
4 meets all of the accountability requirements of paragraph (3) *or*
5 (4) of subdivision ~~(b)~~ (b), *as appropriate*, of Section 1 of Article
6 XIII A.

7 (c) When two or more propositions for incurring any
8 indebtedness or liability are submitted at the same election, the
9 votes cast for and against each proposition shall be counted
10 separately, and ~~when~~ *if* two-thirds or a majority or 55 percent of
11 the voters, as the case may be, voting on any one of those
12 propositions, vote in favor thereof, the proposition shall be deemed
13 adopted.