

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).

	Fee	Tax
State	Majority of Legislature	Two-thirds of Legislature
Local	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

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 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.

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

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 Council
 - 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

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)

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.

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