



1-1-1991

Financing Local Government in the Post-Proposition 13 Era: The Use and Effectiveness of Nontaxing Revenue Sources

Julie K. Koyama

University of the Pacific; McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Julie K. Koyama, *Financing Local Government in the Post-Proposition 13 Era: The Use and Effectiveness of Nontaxing Revenue Sources*, 22 PAC. L. J. 1333 (1991).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol22/iss4/10>

This Comments is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Financing Local Government in the Post-Proposition 13 Era: The Use and Effectiveness of Nontaxing Revenue Sources

INTRODUCTION

In 1978, California voters approved initiative Proposition 13, amending the California Constitution.¹ Prior to Proposition 13, property taxes were the main source of revenue for local governments,² including cities, counties, and special districts.³

1. CAL. CONST. art. XIII § 1-6 (West Supp. 1991). Proposition 13 was placed on the June 1978 primary ballot through the initiative process. *See* CAL. CONST. art. II §§ 8, 10 (West 1983) (constitutional provisions for the state initiative process); CAL. ELEC. CODE §§ 3500-3524, 3530-3579 (West 1977 & Supp. 1991) (statutes governing initiatives, excluding initiatives proposed by the legislature). Proposition 13 has been amended several times since 1978. References in this Comment are to the current amended text unless otherwise indicated. *See infra* notes 26-47 and accompanying text (discussing the relevant provisions of Proposition 13).

2. In 1977, one year before Proposition 13 was adopted, property taxes in California contributed 22.4% of city revenues, 36.3% of county revenues, and 67.4% of nonenterprise special district revenues. *See* CALIFORNIA LEGISLATIVE ANALYST, AN ANALYSIS OF THE EFFECT OF PROPOSITION 13 ON LOCAL GOVERNMENTS 6-10 (Oct. 1979) (prepared by the California Legislative Analyst pursuant to Cal. S.B. No. 154, 1979 Cal. Stat. ch. 292 (1978) and Cal. S.B. 2212, 1978 Cal. Stat. ch. 332 (1978)) [hereinafter LEGISLATIVE ANALYSIS]. Other significant sources of state and local government revenues are, in order of decreasing percentage of contribution: Sales and use taxes, personal income taxes, and corporate franchise and income taxes. 11 N. LANE, CALIFORNIA PRACTICE STATE AND LOCAL TAXATION § 1 (2d ed. 1987).

3. The following is an overview of the legal structure of local government in California. Cities and Counties: Cities and counties in California are either general law or chartered. CALIFORNIA ASSEMBLY, OFFICE OF RESEARCH, CALIFORNIA STATE AND LOCAL TAX SYSTEMS: A REVIEW OF MAJOR REVENUE SOURCES 245 (July 1985) [hereinafter ASSEMBLY RESEARCH REPORT]. General law cities and counties are organized under the general laws of the state and must derive their authority to act from a constitutional grant of authority or from an act of the legislature. *Id.* In contrast, chartered cities and counties may act without specific statutory authority, subject to constitutional constraints. *Id.* Cities have constitutional authority to adopt a charter while counties may do so only with approval of the legislature. *Id.* Special Districts: Special districts are autonomous units of local government which provide governmental services, generally within unincorporated areas. *Id.* at 246. Examples of special districts include the following: Water districts, transit districts, waste disposal districts, and lighting and lighting maintenance districts. *Id.* Each special district's authority is restricted to those powers and activities specifically provided for in the special district's enabling statute. *Id.* at 247. The term "special district" as used in this Comment refers loosely to all local

Proposition 13, however, severely curbed the ability of state and local taxing jurisdictions to raise money by limiting annual levies on real property to one percent of the 1975-76 assessed value⁴ and by restricting the passage of state tax increases.⁵ Although Proposition 13 permits local taxing authorities to collect revenues through the use of "special taxes" under section 4 of the proposition, such taxes require a two-thirds vote of the local electorate.⁶ As a result, revenues flowing to local governments from general property taxes have abruptly diminished.⁷ Cities, counties, and special districts which had been dependent on property taxes to finance municipal improvements, services, and facilities were thus faced with the prospect of drastically reducing expenditures or finding new sources of revenue.⁸

Increasingly, municipalities have responded to the harsh fiscal effect caused by the taxing restrictions of Proposition 13 by turning to nontaxing revenue sources not subject to the provisions of the amendment.⁹ Specifically, local governments have employed

taxing districts, including school and police and fire protection districts, as well as those districts created by statute.

4. CAL. CONST. art. XIII § 1(a), 2(a) (West Supp. 1991).

5. *Id.* § 3. Proposition 13 provides for a maximum 2% annual increase of the assessed value of real property after the 1975-76 base year. *Id.* § 2(b). Further, any changes in the state taxing scheme must be approved by two-thirds of each of the two houses of the legislature, except that no new ad valorem taxes on real property may be imposed. *Id.* § 3.

6. *Id.* § 4. No definition of the term "special tax" appears in section 4. However, the California Supreme Court has construed this term to mean taxes "levied for a specific purpose rather than . . . a levy placed in the general fund to be utilized for general governmental purposes." *City and County of San Francisco v. Farrell*, 32 Cal. 3d 47, 57, 648 P.2d 935, 940, 184 Cal. Rptr. 713, 718 (1982). See *infra* notes 102-113 and accompanying text (discussing the *Farrell* decision).

7. See LEGISLATIVE ANALYSIS, *supra* note 2, at 3 (discussing the loss of property tax revenues effected by Proposition 13). Property tax revenues dropped 51% one year after the enactment of Proposition 13, a \$5.9 billion decrease from revenues in the previous fiscal year. *Id.*

8. T. SCHWADRON & P. RICHTER, CALIFORNIA AND THE AMERICAN TAX REVOLT 70-79 (1984). Examples of how local governments have reacted to Proposition 13 include curtailed local services, deferred facility maintenance, layoffs, and increased user fees. ASSEMBLY RESEARCH REPORT, *supra* note 3, at 239.

9. Henke, *The Effect of Proposition 13 Court Decisions on California Local Government Revenue Sources*, 22 U.S.F. L. REV. 251, 281-90 (1988); Lefcoe & Allison, *The Legal Aspects of Proposition 13: The Amador Valley Case*, 53 S. CAL. L. REV. 173, 190-91 (1979). See *Kroll, California Cities v. Prop. 13*, 3 CAL. LAW., Jun. 1983, at 28, 30 (stating that "cities and counties are beating the bushes for new taxes, fees and assessments" and "are developing creative ways of financing local government").

special benefit assessments¹⁰ and governmental regulatory and service fees¹¹ to ease their financial burdens.¹² However, the use of these nontaxing alternatives has been challenged in recent years as circumventing the purposes of Proposition 13.¹³

Part I of this Comment surveys the background, relevant provisions, and fiscal impact of Proposition 13.¹⁴ Part II examines court decisions interpreting Proposition 13 which have impacted the ability of local governments to raise revenues for municipal improvements, services, and facilities.¹⁵ Part III analyzes the use and effectiveness of special benefit assessments and governmental regulatory and service fees to avoid the taxing restrictions of Proposition 13 and recoup lost revenues.¹⁶ Part IV considers the current status and future of Proposition 13 and summarizes the role of California courts in shaping the amendment.¹⁷ This Comment concludes that California courts have tempered the effect of Proposition 13's taxing restrictions by allowing local governments to develop nontaxing sources of revenue.¹⁸

10. A special assessment is a charge imposed on particular real property for a local public improvement of direct benefit to that property. *Spring Street Co. v. City of Los Angeles*, 170 Cal. 24, 29, 148 P. 217, 219 (1915). See *infra* notes 122-180 and accompanying text (discussing special assessments).

11. Governmental fees are charges exacted by local taxing authorities for regulatory activities or municipal services. *Mills v. County of Trinity*, 108 Cal. App. 3d 656, 660-61, 166 Cal. Rptr. 674, 676-77 (1980). See *infra* notes 181-233 and accompanying text (discussing governmental fees).

12. Kroll, *supra* note 9, at 30. See CALIFORNIA COMM'N ON GOV'T REFORM, FINAL REPORT 118 (Jan. 1979) (listing numerous new or increased county permit, service, and license fees in the year following the enactment of Proposition 13). See generally ANNUAL REPORTS OF THE STATE CONTROLLER, FINANCIAL TRANSACTIONS CONCERNING SPECIAL DISTRICTS (1980) (documenting 175% increase in special assessments levied between 1978 and 1980).

13. Kroll, *supra* note 9, at 31. See, e.g., *City of Sacramento v. Drew*, 207 Cal. App. 3d 1287, 1294, 255 Cal. Rptr. 704, 708 (1989) (school construction special assessment struck down); *Bixel Assoc. v. City of Los Angeles*, 216 Cal. App. 3d 1208, 1220, 265 Cal. Rptr. 347, 355 (1989) (fire hydrant fee struck down); *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.*, 165 Cal. App. 3d 227, 238, 211 Cal. Rptr. 567, 573 (1985) (water facilities fee struck down).

14. See *infra* notes 19-63 and accompanying text.

15. See *infra* notes 64-119 and accompanying text.

16. See *infra* notes 120-233 and accompanying text.

17. See *infra* notes 234-53 and accompanying text.

18. See *infra* notes 254-260 and accompanying text.

I. PROPOSITION 13

A. Historical Background and Purposes

Prior to the enactment of Proposition 13, local property taxes in California were among the highest in the nation.¹⁹ The adoption of Proposition 13 was the culmination of a long-standing protest by California landowners against burdensome property taxes,²⁰ and the event was widely characterized as a "taxpayer's revolt."²¹ The "Jarvis-Gann Initiative"²² was intended by its authors to provide effective property tax relief and, as a corollary, reduce governmental waste and spending.²³ Moreover, since California had a tax surplus which the legislature refused to spend or rebate to taxpayers, high property taxes seemed unnecessary.²⁴ By

19. See U.S. BUREAU OF THE CENSUS, GOVERNMENT FINANCES IN 1976-77, at 64, table 25 (1978) (documenting amount of per capita property taxes collected according to state). In the year preceding Proposition 13, only Alaska, Massachusetts, and New Jersey had higher per capita property taxes than California. *Id.*

20. Proposition 13 was the third attempt in 10 years to limit state and local government taxing power. CALIFORNIA ASSEMBLY REVENUE & TAXATION COMM., FACTS ABOUT PROPOSITION 13, THE JARVIS/GANN INITIATIVE 7 (1978). In 1968, Proposition 9, which proposed a 1% limit on the property tax rate, was defeated. *Id.* In 1972, Proposition 14, which would have limited the tax rate from 1.75% to 2%, was also defeated. *Id.* Proposition 13 received 4,280,689 "yes" votes (64.8%) to 2,326,167 "no" votes (35.2%). CAL. SECRETARY OF STATE, STATEMENT OF VOTE 39 (1978).

21. Henke, *supra* note 9, at 251.

22. Proposition 13 is often called the "Jarvis-Gann Initiative" after the names of its outspoken authors: Howard Jarvis and Paul Gann.

23. Henke, *supra* note 9, at 260. Proponents of Proposition 13 argued in the voters pamphlet, "More than 15% of all government spending is wasted! Wasted on huge pensions for politicians which sometimes approach \$80,000 per year! Wasted on limousines for elected officials or taxpayer-paid junkets. Now we have the opportunity to trade waste for property tax relief." CALIFORNIA VOTERS PAMPHLET, 56-58, Jun. 6, 1978 (compiled by Cal. Secretary of State) (comments by H. Jarvis, Chairman, United Organization of Taxpayers and P. Gann, President, Peoples Advocate). A later Gann initiative, Proposition 4, which passed in 1979, directly addressed governmental spending. See CAL. CONST. art. XIII § 1-12 (West Supp. 1991), for full text of Proposition 4. Proposition 4 limits the amount of revenue which state and local governments may spend by imposing a ceiling on most appropriations. *Id.* § 1. The proposition provides that such appropriations may only increase consistently with increases in population and the consumer price index. *Id.*

24. Comment, *Police and Fire Service Special Assessments Under Proposition 13*, 16 U.S.F. L. REV. 781, 784 (1982). In the years preceding Proposition 13, huge state income tax surpluses accumulated as economic growth and inflation generated revenues far in excess of budget estimates. Lefcoe & Allison, *supra* note 9, at 176. The State Legislature failed to spend or refund the excess income tax dollars collected and, only after Proposition 13 was enacted, did the Legislature finally pass a form of inflation indexing designed to reduce the surplus. *Id.*

approving Proposition 13, California voters greatly checked the taxing powers of their state and local governments.²⁵

B. Summary of Relevant Constitutional Provisions

Proposition 13 provides a new scheme²⁶ for taxing real property and applies to all residential and commercial land uses.²⁷ Prior to the amendment, local governments generally had the power to impose any taxes and fees, within constitutional or legislative limits,²⁸ by a vote of their governing bodies.²⁹ However, Proposition 13 significantly curtailed the independent taxing authority of local jurisdictions.³⁰ The provisions that have restricted the ability of local governments to raise revenues are outlined briefly below.

Section 1 of Proposition 13 limits ad valorem taxes³¹ on real property to one percent of the assessed value of such property.³² Section 2 restricts inflationary increases in the assessed value of real property, or “full cash value base,”³³ to two percent per year.³⁴ This section further rolled back the full cash value base of real property to the 1975-76 county assessor’s valuation, subject to

25. In 1977-78, the year prior to Proposition 13, California local property taxes were 51% above the national norm (norm is the average per \$1000 of personal income for residents). SECURITY PACIFIC NAT’L BANK, TAXES AND OTHER REVENUE OF STATES AND LOCAL GOVERNMENT IN CALIFORNIA A4-A6 (1982) [hereinafter SECURITY PACIFIC STUDY]. One year after Proposition 13, local property taxes in California were 27% below the national norm. *Id.*

26. See CAL. REV. AND TAX. CODE §§ 50-100.5 (West 1987 & Supp. 1991) (statutes implementing Proposition 13).

27. CAL. CONST. art. XIII § 1(a) (West Supp. 1991).

28. See CAL. CONST. art. XI § 7 (West Supp. 1991) (home rule taxing authority provision for counties and cities); CAL. CONST. art. XIII § 37 (repealed provision authorizing state legislature to vest taxing authority in local governments); CAL. GOV’T CODE § 25202 (West 1988) (statute authorizing counties to levy property taxes); *id.* § 37100-37101 (West 1988 & Supp. 1991) (statutes authorizing cities to pass ordinances and levy license, sales, and use taxes).

29. LANE, *supra* note 2, § 4 (2d. ed. Supp. 1990) (citing CAL. CONST. art. XI § 5).

30. *Id.*

31. BLACK’S LAW DICTIONARY 51 (6th ed. 1991). An ad valorem tax is one based on the value of property.

32. CAL. CONST. art. XIII § 1(a) (West Supp. 1991).

33. The “full cash value base” of real property is the assessed value of such property. *Id.* § 2(a).

34. *Id.* § 2(b).

various adjustments.³⁵ While these two sections maintain proportion between property taxes and property values,³⁶ their effect was to severely reduce the traditional primary source of discretionary tax revenue available to local governments.³⁷

Section 3 of Proposition 13 provides that "any changes in State taxes enacted for the purpose of increasing revenues" require a two-thirds vote of all members of both the assembly and the senate.³⁸ Local governments are directly affected by this restraint on the state legislature since many local governing bodies derive their taxing authority from enabling statutes.³⁹ Section 3 also expressly prohibits the legislature from imposing any new ad valorem taxes on real property or new taxes on the sales of real property.⁴⁰ This provision is significant since even a nonproperty tax which receives the requisite supermajority legislative approval may be struck down if it too closely resembles an ad valorem tax.⁴¹

Section 4 is a key provision in Proposition 13 since it compounds the fiscal crisis caused by the amendment's one percent

35. *Id.* § 2(a).

36. One of the concerns leading to the enactment of Proposition 13 was the rapid increase of property values in California. *County of Fresno v. Malmstrom*, 94 Cal. App. 3d 974, 980, 156 Cal. Rptr. 777, 780 (1979). However, the increased income of the property owners did not offset the increased property taxes. *Id.* Sections 1 and 2 prevent property taxes from rising so high that owners are forced to sell their property in order to pay the higher assessments. Comment, *supra* note 24, at 781, 784 n.22 (1982).

37. Henke, *supra* note 9, at 263. See *infra* notes 48-63 and accompanying text (discussing the fiscal impact of Proposition 13).

38. CAL. CONST. art. XIII § 3 (West Supp. 1991).

39. LANE, *supra* note 2, § 2. General law cities and counties must derive their authority to tax from a constitutional grant of authority or from an act of the legislature. ASSEMBLY RESEARCH REPORT, *supra* note 3, at 245. Under the California Constitution, counties and cities are authorized to impose taxes in the exercise of their police power. See CAL. CONST. art. XI § 7 (West Supp. 1991) (provision authorizing enactment of local ordinances and regulations for the general public welfare). All other taxing authority is derived from the state legislature. Nauman, *Local Government Taxing Authority Under Proposition 13*, 10 Sw. L.J. 795, 804 (1978). See generally *supra* note 3 (discussing the legal structure of local government in California). The legislature may not impose taxes for local purposes but may authorize local governments to impose them. CAL. CONST. art. XIII § 24 (West Supp. 1991).

40. CAL. CONST. art. XIII § 3.

41. See Henke, *supra* note 9, at 263.

ad valorem limitation⁴² and prohibition of the enactment of new ad valorem and sales or transaction taxes on real property.⁴³ This section requires a two-thirds vote of the qualified local electorate for any new or increased "special tax."⁴⁴ A "special tax," as distinguished from taxes which flow to the local government's general fund, is one which is earmarked for a specific purpose.⁴⁵ Prior to the enactment of section 4, California law generally permitted any new or increased local taxes without voter approval.⁴⁶ The purpose of section 4 is to prevent local taxing jurisdictions from recouping their losses from decreased property taxes by imposing or increasing other taxes.⁴⁷

C. Fiscal Impact

Proposition 13 has been characterized as "the most significant fiscal act of the people of California in modern times."⁴⁸ Only one year following approval of the initiative, property tax revenues dropped fifty-one percent, a \$5.9 billion decrease from property tax revenues in the prior fiscal year.⁴⁹ The effect of Proposition 13 upon local governments was debilitating, since property taxes are the largest single source of tax revenue for cities, counties, and

42. See CAL. CONST. art. XIII § 1(a) (West Supp. 1991) ("The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property.").

43. See *id.* § 3 ("[N]o new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.").

44. *Id.* § 4.

45. *City and County of San Francisco v. Farrell*, 32 Cal. 3d 47, 57, 648 P.2d 935, 940, 184 Cal. Rptr. 713, 718 (1982). See *infra* notes 102-113 and accompanying text (discussing the California Supreme Court's interpretation of "special taxes" as used in Proposition 13).

46. See, e.g., CAL. CONST. art. XI § 7 (West Supp. 1991) (home rule taxing authority provision for counties and cities).

47. *Los Angeles County Transp. Comm'n v. Richmond*, 31 Cal. 3d 197, 205-08, 643 P.2d 941, 945-47, 182 Cal. Rptr. 324, 328-30 (1982).

48. CALIFORNIA COMM'N ON GOV'T REFORM, FINAL REPORT 1 (Jan. 1979).

49. LEGISLATIVE ANALYSIS, *supra* note 2, at 3.

special districts,⁵⁰ and because all property tax revenues are devoted to support of local government activities.⁵¹

The California Legislature softened the impact of Proposition 13 by granting financial assistance to local governments.⁵² Commonly referred to as a "bail-out,"⁵³ the state aid program replaced some of the lost revenues caused by Proposition 13 through block grants and loans,⁵⁴ and implemented a method of distributing the proceeds of the one percent property tax to local governments.⁵⁵ However, in the early 1980's the legislature was forced to reduce financial assistance to local governments because of the severe recession.⁵⁶ Federal cutbacks and inflation compounded the cities' and counties' financial problems.⁵⁷ As a

50. LANE, *supra* note 2, § 4.

51. *Id.* According to the Assembly Office of Research, "the quality of the functions performed by local jurisdictions has deteriorated." ASSEMBLY RESEARCH REPORT, *supra* note 3, at 239.

52. See CALIFORNIA ASSEMBLY REVENUE & TAXATION COMM., SUMMARY OF LEGISLATION IMPLEMENTING PROPOSITION 13 FOR FISCAL YEAR 1978-79, S.B. 154 at ii-iii (1978) (discussing the legislative financial aid plan provided in Senate Bill 154, the short-term program for implementing Proposition 13).

53. See, e.g., Henke, *supra* note 9, at 252; Comment, *supra* note 24, at 788 n.38.

54. For fiscal year 1978-79, the California Legislature allocated \$4.2 billion to local governments and established a \$900 million loan fund. CALIFORNIA COMM'N ON GOV'T REFORM, FINAL REPORT 17-19 (Jan. 1979). In fiscal year 1979-80, the "bail-out" was \$4.9 billion, and in fiscal year 1980-81, the "bail-out" was \$5.5 billion. Comment, *supra* note 24, at 788 n.39. State financial assistance was based on the surplus generated by the increase in other state taxes. *Id.* at 787-88. Although Proposition 13 reduced property tax revenues during 1978-79, the high rate of inflation that resulted increased other state taxes, including death and gift taxes, state property taxes on motor vehicles and mobile homes, taxes on corporation net income, and individual income taxes. See SECURITY PACIFIC STUDY, *supra* note 25, at A4-A12.

55. ASSEMBLY RESEARCH REPORT, *supra* note 3, at 232. Senate Bill 154, the local government bail-out bill, provided that the countywide proceeds of the 1% property tax collected by local assessors were to be distributed pro rata to local jurisdictions, based on the average percentage of annual property taxes revenues collected by the city, county, or district. *Id.* See generally Doerr, *The California Legislature's Response to Proposition 13*, 53 S. CAL. L. REV. 77, 77-79 (1979) (discussing the legislation implementing Proposition 13 and providing for the bail-out program); CALIFORNIA ASSEMBLY REVENUE & TAXATION COMM., OVERVIEW OF CURRENT COURT CHALLENGES TO PROPOSITION 13 AND ITS IMPLEMENTATION LAWS: ASSESSMENT OF SIMILAR PROPERTIES AND REVENUE ALLOCATION TO LOCAL AGENCIES 20-25 (Dec. 1989) (discussing the provisions and underlying policy of legislation implementing Proposition 13).

56. ASSEMBLY RESEARCH REPORT, *supra* note 3, at 235-39.

57. *Id.* at 249-50.

result, the long-term impact of Proposition 13 is now being felt by many municipalities.⁵⁸

Because Proposition 13 is not susceptible to legislative repeal,⁵⁹ and since legislative efforts to assist local governments have been insufficient,⁶⁰ cities, counties, and special districts have been forced to counter property tax revenue losses resulting from Proposition 13 by developing other sources of revenue, especially nontaxing levies, for the longer term since the alternative of cutting expenditures is politically unpalatable.⁶¹ Expectedly, these efforts to generate revenues through alternative sources have been resisted as contrary to the provisions of Proposition 13.⁶² However, California courts have responded favorably toward local taxing jurisdictions by restricting the application of Proposition 13.⁶³ It has been the courts, rather than the legislature, which have taken an active role in moderating the harsh fiscal impact of Proposition 13, as demonstrated by the decisions discussed below.

II. RELEVANT PROPOSITION 13 COURT DECISIONS

Since the enactment of Proposition 13, California courts have examined almost every aspect of the amendment.⁶⁴ The California

58. See, e.g., *City of Oakland v. Digre*, 205 Cal. App. 3d 99, 102, 252 Cal. Rptr. 99, 99 (1988) (Oakland faced anticipated \$14.5 million deficit for fiscal year 1989 because of reduced federal funding and the long-term impact of reduced property tax revenues); *Northgate Partnership v. City of Sacramento*, 202 Cal. Rptr. 15, 17 (1984) (Sacramento faced revenue loss of approximately \$16.6 million in fiscal year 1978-79 as a result of Proposition 13).

59. CAL. CONST. art. II § 10(c) (West Supp. 1991) ("[T]he Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval.").

60. According to the Assembly Office of Research, state fiscal relief since fiscal year 1978-79, while essential, "helped save a drowning person, but it did not help that person reach shore." ASSEMBLY RESEARCH REPORT, *supra* note 3, at 241.

61. See SCHWADRON & RICHTER, *supra* note 8, at 70-79 (discussing aftermath of Proposition 13 revolt).

62. See *infra* note 64 (describing cases interpreting the main provisions of Proposition 13).

63. See *infra* notes 64-119 and accompanying text (discussing relevant Proposition 13 court decisions).

64. See, e.g., *Heckendorn v. City of San Marino*, 42 Cal. 3d 481, 486-89, 723 P.2d 64, 67-69, 229 Cal. Rptr. 324, 327-29 (1986) (defining scope of 1% ad valorem tax limit); *City and County of San Francisco v. Farrell*, 32 Cal. 3d 47, 57, 648 P.2d 935, 940, 184 Cal. Rptr. 713, 718 (1982) (defining special tax provision); *Carman v. Alvord*, 31 Cal. 3d 318, 326-33, 644 P.2d 192, 197-201,

Supreme Court promptly reviewed the constitutionality of Proposition 13 in *Amador Valley Joint Union High School District v. State Board of Equalization*⁶⁵ and upheld the amendment.⁶⁶ The court noted that it was only addressing “those principal, fundamental challenges to the validity of [Proposition 13] as a whole.”⁶⁷ Thus, the interpretation and application of particular provisions was expressly left for later litigation.⁶⁸ Since the *Amador* decision, most of the litigation surrounding Proposition 13

182 Cal. Rptr. 506, 511-15 (1982) (interpreting bond indebtedness exception to 1% limitation provision); *Los Angeles County Transp. Comm'n v. Richmond*, 31 Cal. 3d 197, 205-07, 643 P.2d 941, 945-47, 182 Cal. Rptr. 324, 328-30 (1982) (interpreting application of two-thirds majority vote requirement); *Amador Valley Joint Union High School Dist. v. State Board of Equalization*, 22 Cal. 3d 208, 219, 248, 583 P.2d 1281, 1283, 1302, 149 Cal. Rptr. 239, 241, 259 (1978) (deciding constitutionality of Proposition 13).

65. 22 Cal. 3d 208, 583 P.2d 1281, 149 Cal. Rptr. 239 (1978) (decided Sept. 22, 1978, only 3 months after Proposition 13 was adopted).

66. *Id.* at 219, 248, 583 P.2d at 1283, 1302, 149 Cal. Rptr. at 241, 259. The *Amador* case consolidated multiple constitutional challenges to Proposition 13, and the supreme court reached several holdings. First, the court held that Proposition 13 was a constitutional amendment rather than an impermissible “revision,” and, therefore, an appropriate subject of the initiative process for amending the California Constitution. *Id.* at 229, 583 P.2d at 1289, 149 Cal. Rptr. at 247. Second, the court held that Proposition 13 did not violate the single subject requirement of the initiative process. *Id.* at 232, 583 P.2d at 1292, 149 Cal. Rptr. at 250. Third, the court held that Proposition 13 did not deny equal protection of the laws required by the fourteenth amendment of the United States Constitution. *Id.* at 237, 583 P.2d at 1294-95, 149 Cal. Rptr. at 252-53. Fourth, the court held that Proposition 13 did not impermissibly infringe upon the right to travel. *Id.* at 238, 583 P.2d at 1295, 149 Cal. Rptr. at 253. Fifth, the court held that Proposition 13 did not unconstitutionally impair contractual rights. *Id.* at 242, 583 P.2d at 1298, 149 Cal. Rptr. at 256. Sixth, the court held that Proposition 13 did not violate the title and ballot summary requirements for initiatives required by the California Constitution. *Id.* at 243, 583 P.2d at 1298, 149 Cal. Rptr. at 256. Lastly, the court held that Proposition 13 was not void for vagueness. *Id.* at 246, 583 P.2d at 1301, 149 Cal. Rptr. at 259.

67. *Id.* at 219, 583 P.2d at 1283, 149 Cal. Rptr. at 241.

68. *Id.* at 247-48, 583 P.2d at 1301, 149 Cal. Rptr. at 259. Specifically, the supreme court stated:

[W]e decline to reach the question whether the various interpretations put forth by the Legislature and State Board of Equalization are correct . . . [W]e recently affirmed that “it seems apparent that we cannot, and should not, attempt to pass upon the meaning or validity of each contested provision in every hypothetical context—adjudication of these matters must await an actual controversy, and should proceed on a case-by-case basis as the need arises.”

Id. at 247, 583 P.2d at 1301, 149 Cal. Rptr. at 259 (citing *County of Nevada v. MacMillen*, 11 Cal. 3d 662, 674, 522 P.2d 1345, 1352, 114 Cal. Rptr. 345, 352 (1974)).

has focused on the amendment's one percent ad valorem tax and special tax limitations,⁶⁹ which are discussed below.

A. *The One Percent Ad Valorem Tax Limit*

The scope of the one percent limit on ad valorem real property taxes in section 1 of Proposition 13⁷⁰ was addressed by the California Supreme Court in *Heckendorn v. City of San Marino*.⁷¹ San Marino drafted an ordinance authorizing a special tax which went into effect after approval by approximately eighty percent of the city's voters.⁷² The plaintiff, a city property owner, filed a complaint alleging that the ordinance, which imposed a graduated tax based on the size of a real property parcel,⁷³ was an unconstitutional ad valorem tax.⁷⁴ However, the court upheld the ordinance, defining "ad valorem tax" in section 1 of Proposition 13 narrowly as "any source of revenue derived from applying a property tax rate to the assessed value of property."⁷⁵ Under this definition, the ordinance did not constitute an ad valorem tax since the ordinance involved no appraisal of property value and taxed parcels within a zone at the same rate, even if the actual value of the parcels differed.⁷⁶ The *Heckendorn* decision established that Proposition 13 only prohibits applying a tax rate *directly* to the

69. While the courts have examined many other aspects of Proposition 13, this Comment only discusses decisions which have affected local government revenue sources. *See generally* CALIFORNIA TAX FOUND., PROPOSITION 13 REPORTER (1985), for a comprehensive compilation of Proposition 13 litigation.

70. CAL. CONST. art. XIII § 1(a) (West Supp. 1991).

71. 42 Cal. 3d 481, 723 P.2d 64, 229 Cal. Rptr. 324 (1986).

72. *Id.* at 484, 723 P.2d at 65, 229 Cal. Rptr. at 325.

73. The challenged tax was graduated according to the city's zoning classifications, which were determined by real property parcel size. *Id.* at 484, 484-85 n.2, 723 P.2d at 65, 65-66 n.2, 229 Cal. Rptr. at 325, 325-26 n.2. However, within each zone, the ordinances imposed a flat tax rate on all parcels, despite any variations in size, improvements, and ultimate value. *Id.* at 484-85, 723 P.2d at 65-66, 229 Cal. Rptr. at 325-26.

74. *Id.* at 485, 723 P.2d at 66, 229 Cal. Rptr. at 326. New ad valorem taxes on real property are strictly prohibited under Proposition 13. CAL. CONST. art. XIII § 4 (West Supp. 1991).

75. *Heckendorn*, 42 Cal. 3d at 487, 723 P.2d at 67, 229 Cal. Rptr. at 327 (quoting CAL. REV. & TAX. CODE § 2202 (West 1987)).

76. *Id.*

assessed value of property.⁷⁷ Thus, the supreme court seemingly opened the door to the use of taxes which are closely correlated to parcel values but not imposed on assessed property values.⁷⁸

B. The Special Tax Two-Thirds Vote Requirement

Application of the two-thirds voter majority requirement for enactment of special taxes under section 4 of Proposition 13⁷⁹ was first considered in *Los Angeles County Transportation Commission v. Richmond*.⁸⁰ Two years before the adoption of Proposition 13, the California Legislature created the Los Angeles County Transportation Committee (LACTC).⁸¹ After the initiative was approved, the LACTC attempted to levy a sales tax for public transit purposes with only simple majority voter approval.⁸² The defendant, LACTC's executive director, refused to implement the tax, and the LACTC filed a petition for writ of mandate.⁸³ The California Supreme Court issued an alternative writ,⁸⁴ holding that the LACTC was not a special district within the meaning of section 4,⁸⁵ and thus was not subject to the two-thirds voter majority requirement imposed by that section.⁸⁶

77. Henke, *supra* note 9, at 275.

78. *Id.* For example, using floor area of buildings as well as lot area to define the steps in a graduated parcel tax presumably would not be precluded by *Heckendorn*, since no appraisal of property value is made. *Id.*

79. CAL. CONST. art. XIII A § 4.

80. 31 Cal. 3d 197, 643 P.2d 941, 182 Cal. Rptr. 324 (1982).

81. *Id.* at 199-200, 643 P.2d at 941-42, 182 Cal. Rptr. at 324-25.

82. *Id.* at 200, 643 P.2d at 942, 182 Cal. Rptr. at 325. LACTC's measure authorizing imposition of the sales tax was approved by 54% of the county voters. *Id.*

83. *Id.* *Richmond*, the executive director of the LACTC, refused to pay the State Board of Equalization the administrative costs of collecting the sales tax required by sections 7270 and 7272 of the Revenue & Taxation Code. *Id.* at 200 n.3, 643 P.2d at 942 n.3, 182 Cal. Rptr. at 325 n.3. *Richmond*'s refusal to implement the tax was prompted by the California Attorney General's opinion that the tax ordinance was unconstitutional under section 4 of Proposition 13 because the ordinance had not received the approval of two-thirds of the voters. *Id.* at 200, 643 P.2d at 942, 182 Cal. Rptr. at 325 (citing 64 Op. Att'y Gen. 156 (1981)).

84. *Id.* at 200, 643 P.2d at 942-43, 182 Cal. Rptr. at 325-36. The supreme court invoked the exercise of its original jurisdiction in *Richmond* "[b]ecause of the importance of the issues involved and the need for their prompt resolution." *Id.*

85. Section 4 is applicable specifically to "[c]ities, counties and special districts." CAL. CONST. art. XIII A § 4 (West Supp. 1991) (emphasis added).

86. *Richmond*, 31 Cal. 3d at 207-08, 643 P.2d at 947, 182 Cal. Rptr. at 330.

In *Richmond*, the court concluded that the term “special district” as used in section 4 of Proposition 13 applies only to districts authorized to impose ad valorem property taxes.⁸⁷ The majority reasoned that section 4 should apply only to districts which lost property tax revenues as a result of Proposition 13, since section 4 was intended to limit the power of local governments to replace property tax revenue losses.⁸⁸ Thus, because the LACTC did not have the power to levy ad valorem taxes, the LACTC was exempted from the provisions of the amendment.⁸⁹

The *Richmond* decision invited local taxing jurisdictions to circumvent the restrictions of Proposition 13 by replacing lost property tax revenues with the use of nonproperty tax special districts such as the LACTC.⁹⁰ Justice Richardson’s dissent characterized the majority’s ruling as “a hole in the financial fence which the people in their Constitution have erected around their government” which would lead to wholesale avoidance of the purpose of Proposition 13.⁹¹ The majority of the court, however,

87. *Id.* at 205, 643 P.2d at 945, 182 Cal. Rptr. at 328. In *Arvin Union School Dist. v. Ross*, 176 Cal. App. 3d 189, 221 Cal. Rptr. 720 (1985), the Second District Court of Appeal addressed an issue remaining after *Richmond* regarding whether the special tax restrictions of section 4 applied to special districts which were specifically authorized by statute to assess additional property taxes as needed. *Id.* at 193, 221 Cal. Rptr. at 722. The court held that Proposition 13 preempted the enactment authorizing collection of additional property taxes and affirmed the rule in *Richmond* that section 4’s “special districts” language includes all entities empowered to levy on real property. *Id.* at 199, 221 Cal. Rptr. at 726.

88. *Richmond*, 31 Cal. 3d at 205-06, 643 P.2d at 945-46, 182 Cal. Rptr. at 329 (citing language in the June 1978 California Voters Pamphlet to support the court’s conclusion). *See supra* note 23 (quoting comments made by the authors of Proposition 13 and printed in the California Voters Pamphlet).

89. *Richmond*, 31 Cal. 3d at 205-08, 643 P.2d at 945-47, 182 Cal. Rptr. at 328-30. *Cf.* *Huntington Park Redevelopment Agency v. Martin*, 38 Cal. 3d 100, 695 P.2d 220, 211 Cal. Rptr. 133 (1985). In *Huntington Park*, the supreme court clarified the *Richmond* rule, stating that the term “special districts” as used in section 4 of Proposition 13 encompasses only those agencies which are empowered to impose and collect property taxes. *Id.* at 105, 695 P.2d at 224, 211 Cal. Rptr. at 137. Thus, the court held that the plaintiff, a community redevelopment agency which did not have authority to impose and collect property taxes, was not a special district, even though the agency received a substantial share of property tax revenues collected by other governmental entities. *Id.* at 105-07, 695 P.2d at 222-24, 211 Cal. Rptr. at 135-37.

90. Henke, *supra* note 9, at 265-66 n.78.

91. *Richmond*, 31 Cal. 3d at 213, 643 P.2d at 950, 182 Cal. Rptr. at 333 (Richardson, J., dissenting). Specifically, Justice Richardson wrote:

The majority has cut a hole in the financial fence which the people in their Constitution have erected around their government. Governmental entities may be expected, instinctively, to pour

rejected the argument that its decision in *Richmond* would result in such legislative evasion of the restrictions of Proposition 13.⁹² Indeed, the myriad of nonproperty tax special districts has not materialized as predicted by the dissent.⁹³

However, *Richmond* was a harbinger of further erosion of Proposition 13 in a case decided later the same year, *City and County of San Francisco v. Farrell*,⁹⁴ which interpreted the term "special tax" in section 4 of the amendment.⁹⁵ Although the *Richmond* court declined to reach the issue of the meaning of "special taxes" as used in section 4 and decided the case on the "special districts" definition issue,⁹⁶ the supreme court did establish a "framework" for resolving future ambiguities in section 4 of Proposition 13.⁹⁷ In *Richmond*, the court could have interpreted the term "special districts" broadly⁹⁸ but declined to

through the opening seeking the creation of similar revenue-generating entities in myriad forms which will be limited only by their ingenuity.

Id.

92. *Id.* at 208, 643 P.2d at 947, 182 Cal. Rptr. at 330. The *Richmond* majority stated, "We cannot assume that the Legislature will attempt to avoid the goals of article XIII A by [reorganizing special districts to remove their property-taxing power or creating new ones without such power]. In any event, that problem can be dealt with if and when the issue arises." *Id.*

93. Henke, *supra* note 9, at 267. Henke suggests that nonproperty tax special districts have not proliferated, partly because of the supreme court's liberal response to the "special tax" issue in *City and County of San Francisco v. Farrell*, 32 Cal. 3d 47, 648 P.2d 935, 184 Cal. Rptr. 713 (1982). *Id.*

94. 32 Cal. 3d 47, 648 P.2d 935, 184 Cal. Rptr. 713 (1982).

95. *See id.* at 53-54, 648 P.2d at 937-38, 184 Cal. Rptr. at 716-17 (discussing the *Richmond* decision as a precedent for the court's decision in *Farrell*).

96. *Richmond*, 31 Cal. 3d at 201-02, 643 P.2d at 943, 182 Cal. Rptr. at 326. While acknowledging that an ambiguity existed in the meaning of "special taxes" under section 4, the *Richmond* court indicated that it was only considering the meaning of the term "special districts." *Id.* Because the court determined that the LACTC was not a "special district" within the meaning of section 4, further analysis of section 4 was neither necessary nor appropriate.

97. *Id.* at 205, 643 P.2d at 945, 182 Cal. Rptr. at 328. The *Richmond* court stated, "The purpose of our discussion [of the substance and effect of an extraordinary vote requirement] is not to throw doubt on the constitutionality of the two-thirds vote requirement in section 4, but rather to establish the framework in which the ambiguity in the language of the provision should be resolved." *Id.*

98. *Id.* at 202, 643 P.2d at 943-44, 182 Cal. Rptr. at 327. The *Richmond* court noted that the term "special district" is generally defined as "a legally constituted governmental entity established for the purpose of carrying on specific activities within definitely defined boundaries." *Id.* at 202, 643 P.2d at 943, 182 Cal. Rptr. at 326 (citing SENATE FACT FINDING COMM. REPORT ON REVENUE AND TAXATION, INTERGOVERNMENTAL FISCAL RELATIONS IN CALIFORNIA 177 (Jun. 1965)). The defendant urged the court to interpret "special districts" to mean "any unit of local government

do so, stating that the language must be strictly construed and the ambiguities resolved in favor of permitting special districts to enact special taxes because of the “fundamentally undemocratic nature” of the supermajority vote requirement contained in section 4.⁹⁹ Thus, for policy reasons, the supreme court departed from the rules of construction applicable to constitutional initiatives set forth in *Amador*,¹⁰⁰ and adopted a rule of strict construction for interpreting section 4 of Proposition 13.¹⁰¹

The California Supreme Court followed the *Richmond* rule of strict construction and defined the term “special taxes” as used in section 4 narrowly in *Farrell*.¹⁰² In *Farrell*, San Francisco had increased its payroll and gross receipts tax without the approval of two-thirds of the voters.¹⁰³ When the mayor approved a request for funding of municipal improvements to be appropriated from the gross receipts tax proceeds, Farrell, the city’s controller, refused to allow the appropriation.¹⁰⁴ The defendant asserted that the increased gross receipts tax was an unconstitutional special tax under section 4 of Proposition 13.¹⁰⁵ However, the majority rejected Farrell’s argument that section 4 required two-thirds voter approval for *all* new and increased nonproperty taxes.¹⁰⁶ The supreme court defined “special tax” as used in section 4 as a tax “levied for a specific purpose rather than . . . a levy placed in the general fund to be utilized for general governmental

other than a city or county that is empowered to levy a ‘special tax.’” *Id.* at 202, 643 P.2d at 943, 182 Cal. Rptr. at 327.

99. *Id.* at 205, 643 P.2d at 945, 182 Cal. Rptr. at 328.

100. 22 Cal. 3d 208, 219, 245-246, 583 P.2d 1281, 1283, 1300-01, 149 Cal. Rptr. 239, 241, 257-58 (1978). The *Amador* court stated that constitutional initiatives must be “liberally construed” and that constitutional provisions and enactment must receive a “practical common-sense construction” which will meet “changed conditions and the growing needs of the people.” *Id.*

101. *Richmond*, 31 Cal. 3d at 205, 643 P.2d at 945, 182 Cal. Rptr. at 328.

102. *City and County of San Francisco v. Farrell*, 32 Cal. 3d 47, 56-57, 648 P.2d 935, 940, 184 Cal. Rptr. 713, 718 (1982).

103. *Id.* at 51, 648 P.2d at 936, 184 Cal. Rptr. at 714. The measure in *Farrell*, which extended the operation of an ordinance providing for a 0.4% increase in the tax rate, was passed by 55% of city and county voters. *Id.* at 51, 648 P.2d at 936-37, 184 Cal. Rptr. at 714-15.

104. *Id.* at 51, 648 P.2d at 937, 184 Cal. Rptr. at 715.

105. *Id.*

106. *Id.* at 57, 648 P.2d at 940, 184 Cal. Rptr. at 718.

purposes.”¹⁰⁷ Thus, San Francisco’s tax, the proceeds of which were to be paid in the city’s general fund, was not a special tax as contemplated by Proposition 13 because the tax was not levied for a specific purpose.¹⁰⁸

While the supreme court in *Farrell* could have construed section 4 to include all nonproperty taxes,¹⁰⁹ the court chose the narrowest application of the section’s supermajority vote requirement.¹¹⁰ *Farrell*, at least in theory, permits a city to recoup its lost property tax revenues simply by adopting some other replacement tax with simple majority vote approval.¹¹¹ *Farrell* requires only that the proceeds from the new tax be deposited into the local government’s general fund since proceeds collected for a specific purpose constitute a special tax requiring supermajority voter approval.¹¹² Although the *Farrell* result was partially nullified by the enactment of initiative Proposition 62 in 1986,¹¹³

107. *Id.*

108. *Id.*

109. Henke, *supra* note 9, at 267-68. The *Farrell* court, like the court in *Richmond*, also had an opportunity to choose a broad interpretation of the ambiguous provision of Proposition 13 at issue. 32 Cal. 3d at 53-54, 648 P.2d at 938, 184 Cal. Rptr. at 716. If one regards the ad valorem property tax as the “regular” local tax, then the term “special” in section 4 can be understood to include all additional nonproperty taxes. *Id.* at 59, 648 P.2d at 941, 184 Cal. Rptr. at 719 (Kaus, J., dissenting). The defendant had argued that a “special tax” is an “extra, additional, or supplemental charge imposed . . . to raise money for public purposes.” *Id.* at 53-54, 648 P.2d at 938, 184 Cal. Rptr. at 716.

110. *Farrell*, 32 Cal. 3d at 57, 648 P.2d at 940, 184 Cal. Rptr. at 718. The supreme court’s interpretation of the meaning of “special taxes” in *Farrell* is especially significant in light of an earlier decision, *Trent Meredith, Inc. v. City of Oxnard*, 114 Cal. App. 3d 317, 170 Cal. Rptr. 685 (1981). In *Trent Meredith*, although the Court of Appeal for the Second District did not attempt to define the meaning of “special taxes” in section 4, the court did express concern that if the term were defined as taxes collected and earmarked for a special purpose, local governments could easily avoid Proposition 13 by depositing their nonproperty tax proceeds in the general fund. *Id.* at 323, 170 Cal. Rptr. at 688. The *Farrell* majority did not address the court of appeal’s concern, which was echoed in the dissenting opinions to *Farrell*. *Farrell*, 32 Cal. 3d at 58, 648 P.2d at 941, 184 Cal. Rptr. at 719 (Richardson and Kaus, JJ., dissenting).

111. Henke, *supra* note 9, at 276.

112. *Farrell*, 32 Cal. 3d at 57, 648 P.2d at 940, 184 Cal. Rptr. at 718.

113. See 1986 Cal. Stat. prop. 62, codified at CAL. GOV’T CODE §§ 53720-53730 (West Supp. 1991) (codifying Initiative 62). Proposition 62 requires that a local governmental or district governing body approve by two-thirds vote the imposition of a general fund tax. *Id.* § 53722. Although the proposition also requires electorate approval to levy a general fund tax, only a simple majority is necessary. *Id.* § 53723.

the decision illustrates the supreme court's desire to limit the application of Proposition 13.

C. Summary

As *Heckendorn*, *Richmond*, and *Farrell* indicate, the California Supreme Court has construed the provisions of Proposition 13 narrowly and the consequences of these decisions can be summed briefly. First, Proposition 13 is aimed primarily at controlling ad valorem property taxes.¹¹⁴ However, the one percent limit on ad valorem taxes¹¹⁵ is limited in application, since the California Supreme Court has narrowly defined "ad valorem" as a tax rate based solely on the assessed value of property.¹¹⁶

Second, city and county general revenue taxing powers remain unaffected by Proposition 13 except that new or increased nonproperty tax revenues levied for a specific purpose require approval by two-thirds of the local voters.¹¹⁷ Of course, a new or increased nonproperty tax which too closely resembles an ad valorem tax is precluded by Proposition 13 even if approved by a supermajority local electorate vote, since Proposition 13 strictly prohibits such action.¹¹⁸

Thus, although the California Supreme Court initially approved the constitutionality of all sections of Proposition 13,¹¹⁹ the court has since been unwilling to read the amendment expansively. This result is encouraging to local governments. However, local taxing

114. See *supra* notes 19-25 and accompanying text (discussing the historical background and purposes of Proposition 13).

115. CAL. CONST. art. XIII § 1(a).

116. See *supra* notes 70-78 and accompanying text (discussing the *Heckendorn* decision, defining "ad valorem tax").

117. See *supra* notes 79-101 and accompanying text (discussing the *Richmond* decision, interpreting the application of the two-thirds voter majority requirement).

118. See *supra* notes 42-47 and accompanying text (discussing the restrictions of section 4). The California Constitution does permit increases in ad valorem taxes on real property above the 1% limit to pay interest and redemption charges on indebtedness for the acquisition or improvement of real property. CAL. CONST. art. XIII § 1(b).

119. See *Amador Valley Joint Union High School Dist. v. State Board of Equalization*, 22 Cal. 208, 219, 248, 583 P.2d 1281, 1283, 1302, 149 Cal. Rptr. 239, 241, 259 (1978) (holding Proposition 13 to be a valid constitutional amendment).

jurisdictions have received the biggest boost from the courts' tolerance of bold municipal moves to finance local government through nontaxing alternatives.

III. THE USE AND EFFECTIVENESS OF NONTAXING ALTERNATIVES TO AVOID PROPOSITION 13

On its face, Proposition 13 applies only to tax revenues, as opposed to nontax revenues.¹²⁰ Thus, an avenue is open to local taxing jurisdictions to offset the fiscal impact of Proposition 13 on ad valorem property taxes and special purpose nonproperty taxes by generating revenues through nontaxing levies.¹²¹ Two specific types of nontax revenue devices are special benefit assessments and governmental fees, discussed below.

A. Special Benefit Assessments

A special assessment is "a charge imposed on particular real property for a local public improvement of direct benefit to that property."¹²² An "assessment district" consists of the property or properties specially assessed to bear the expense of such improvement.¹²³ The theory underlying special assessments is that the assessed property receives a direct benefit as it increases in value due to the property's proximity to the local improvement.¹²⁴ This benefit to the property or properties within the district is greater than that received by the general public.¹²⁵

120. See CAL. CONST. art. XIII § 1-6 (West Supp. 1991) (using term "tax" rather than another descriptive term such as "levy" or "assessment").

121. See generally Henke, *supra* note 9 (discussing the effect of Proposition 13 on existing local government revenue sources).

122. *Solvang Mun. Improvement Dist. v. Board of Supervisors*, 112 Cal. App. 3d 545, 552, 169 Cal. Rptr. 391, 395 (1980).

123. *Russ Bldg. Partnership v. City and County of San Francisco*, 44 Cal. 3d 839, 848, 750 P.2d 324, 329, 244 Cal. Rptr. 682, 687 (1988) (citing *Dawson v. Town of Los Altos Hills*, 16 Cal. 3d 676, 683, 547 P.2d 1377, 1381, 129 Cal. Rptr. 97, 101 (1976)). See generally CAL. STS. & HIGH. CODE §§ 5000-6794 (West 1969 & Supp. 1991) (Improvement Act of 1911); *id.* §§ 10000-10706 (West 1969 & Supp. 1991) (Municipal Improvement Act of 1913).

124. *Solvang*, 112 Cal. App. 3d at 553, 169 Cal. Rptr. at 395.

125. *Id.* at 552, 169 Cal. Rptr. 395.

Therefore, a special assessment is fairly imposed on those benefitted, since the general public should not have to bear the expense when the public does not receive a corresponding benefit.¹²⁶

An assessment district is formed by local legislative resolution;¹²⁷ no electorate approval is required.¹²⁸ The creation of special assessment districts takes place “as the result of a peculiarly legislative process,”¹²⁹ and the authority of local governing bodies to impose special assessments is grounded in the taxing power of the sovereign.¹³⁰ Although a special assessment is imposed through the same mechanism used to finance the cost of a local government, special assessments are distinct from taxes, which are levied for general revenues and for general public

126. *Id.* The *Solvang* court stated that “[t]he general public should not be required to pay for special benefits for the few, and the few specially benefitted should not be subsidized by the general public.” *Id.*

127. *Russ Bldg.*, 44 Cal. 3d at 849, 750 P.2d at 329, 244 Cal. Rptr. at 687.

128. *Southern Cal. Rapid Transit Dist. v. Bolen*, 219 Cal. App. 3d 1446, 1466, 269 Cal. Rptr. 147, 159 (1990). In *Bolen*, the court stated that neither property owners nor nonproperty owners in a proposed district had a constitutional right to vote on the formation of an assessment district. *Id.* at 1463, 269 Cal. Rptr. at 157-58. However, the court noted that if the right to vote is conferred, the election must comply with equal protection requirements. *Id.* at 1464, 269 Cal. Rptr. at 158. Despite the lack of a constitutional right to vote on the imposition of an improvement assessment, interested parties are not completely foreclosed from challenging the proposed assessment. *Dawson v. Town of Los Altos Hills*, 16 Cal. 3d 676, 683 n.4, 547 P.2d 1377, 1381 n.4, 129 Cal. Rptr. 97, 101 n.4 (1976). The local rulemaking body must afford such parties a hearing at which the parties may question any aspect of the proposed improvement, assessment, or district. *Id.* A majority of affected property owners protesting the proposed improvement can generally block the formation of a district, subject to a four-fifths majority override by the local rulemaking body. *Id.* Failure to follow proper procedure for asserting a challenge to a proposed assessment may preclude later litigation of the matter. *See City of Larkspur v. Marin County Flood Control & Water Conservation Dist.*, 168 Cal. App. 3d 947, 956-58, 214 Cal. Rptr. 689, 695-97 (1985) (town did not object at special hearing, which was exclusive procedure for asserting lack of benefit).

129. *Dawson v. Town of Los Altos Hills*, 16 Cal. 3d, 676, 683, 547 P.2d 1377, 1381, 129 Cal. Rptr. 97, 101 (1976).

130. *Id.* *See Bryant v. Comm’r of Internal Revenue*, 111 F.2d 9, 14 (9th Cir. 1940) (stating that a city derives its power to levy and collect special assessments from its power of taxation). *See also* CAL. CONST. art. XI § 7 (home rule taxing authority provision for counties and cities). A distinction should be made between general law cities and counties and charter cities. *See supra* note 3 (discussing the legal structure of local government in California). Local general law governments may impose special assessments only if specifically authorized by the state legislature. ASSEMBLY RESEARCH REPORT, *supra* note 3, at 247. However, charter cities are authorized to impose special assessments without legislative approval pursuant to the California Constitution. *Id.*

improvements.¹³¹ Hence, as the California Supreme Court has observed, a special assessment is not a tax at all, but simply a charge imposed to recoup the cost of a public improvement made for the special benefit of particular property.¹³²

Prior to the enactment of Proposition 13, special assessment legislative acts¹³³ had been the most widely used procedure to finance construction of a variety of public improvements.¹³⁴ The use of special assessments became even more extensive after Proposition 13 as local governments sought to offset lost property tax revenues.¹³⁵ The effect of Proposition 13 upon special assessments was first examined in *County of Fresno v. Malmstrom*.¹³⁶ Fresno County attempted to collect assessments within a subdivision for the construction of streets.¹³⁷ However, the defendant, the Fresno County Treasurer and Tax Collector, refused to serve notice of assessment on the property owners, contending that the assessment in question contravened Proposition 13.¹³⁸ The Court of Appeal for the Fifth District granted the

131. *Solvang Mun. Improvement Dist. v. Board of Supervisors*, 112 Cal. App. 3d 545, 553, 169 Cal. Rptr. 381, 396 (1980). See *Northwestern Mut. Life Ins. Co. v. State Board of Equalization*, 73 Cal. App. 2d 548, 552, 166 P.2d 917, 920 (1946) (enumerating the significant differences between a special assessment and a tax).

132. *Spring Street Co. v. City of Los Angeles*, 170 Cal. 24, 29, 148 P. 217, 219 (1915). See *Solvang*, 112 Cal. App. 3d at 553, 169 Cal. Rptr. at 396 ("a special assessment is not a tax at all, but a benefit to specific real property financed through the use of public credit"). Property owners may pay for the special assessments either in cash or, at their option, by installments over a period of time. *County of Fresno v. Malmstrom*, 94 Cal. App. 3d 974, 978, 156 Cal. Rptr. 777, 779 (1979).

133. See, e.g., CAL. STS. & HIGH. CODE §§ 5000-6794 (West 1969 & Supp. 1991) (Improvement Act of 1911); *id.* §§ 8500-8851 (West 1969 & Supp. 1991) (Municipal Bond Act of 1915); *id.* §§ 10000-10706 (West 1969 & Supp. 1991) (Municipal Improvement Act of 1913).

134. *Malmstrom*, 94 Cal. App. 3d at 978, 156 Cal. Rptr. 779. Examples of public improvements are, streets, sidewalks, sewers, water systems, and lighting and public utility lines. *Id.*

135. Comment, *supra* note 24, at 797. In 1978-79, special assessments amounted to \$36 million. *Id.* at 797, n.88. In 1979-80, that amount jumped to \$98 million, an increase of almost 175%. *Id.*

136. 94 Cal. App. 3d 974, 156 Cal. Rptr. 777 (1979).

137. *Id.* at 977, 156 Cal. Rptr. at 778-79. Assessment proceedings were initiated by the Fresno County Board of Supervisors pursuant to Streets and Highways Code sections 10000 through 10600, the Municipal Improvement Act of 1913. *Id.*

138. *Id.* at 977-78, 156 Cal. Rptr. at 779. The defendant's argument that the assessment was unconstitutional was two-fold. First, the defendant contended that the assessment would result in a levy which exceeded the 1% limit of section 1 of Proposition 13. *Id.* Second, the defendant contended that the assessment constituted a "special tax" which had not been approved by a two-thirds vote of qualified electors under section 4 of the amendment. *Id.*

county's request for a writ of mandate to compel the county tax collector to serve the notice of assessment, ruling that the provisions of Proposition 13 did not apply to the assessment.¹³⁹

The decision in *Malmstrom* resolved two questions regarding the continuing viability of special assessments after Proposition 13.¹⁴⁰ First, the court held that the one percent limit on ad valorem taxes did not apply to special assessments because the purposes of Proposition 13 would not be thereby furthered.¹⁴¹ The court reasoned that it would be "illogical" to include special assessments within section 1, since that section was intended to control ad valorem taxes and limit wasteful governmental spending of general tax funds.¹⁴² Second, the court held that special assessments did not require approval by a supermajority of voters because special assessments were not a tax per se, and thus not included in the definition of "special taxes" in section 4.¹⁴³ The court stated that while both special assessments and taxes may specially benefit particular property, a special assessment may not exceed the benefit conferred, whereas a special tax need not so specifically benefit the taxed property.¹⁴⁴ *Malmstrom* represents a significant rein on the effect of Proposition 13, since many public

139. *Id.* at 986, 156 Cal. Rptr. at 784.

140. A later case, *County of Placer v. Corin*, resolved the related issue of whether Proposition 4, the enactment limiting state and local government appropriations and spending, applied to special assessments. 113 Cal. App. 3d 443, 170 Cal. Rptr. 232 (1980). See CAL. CONST. art. XIII B §§ 1-12 (West Supp. 1991), for full text of Proposition 4. The Court of Appeal for the Third District held that the spending limitation of Article XIII B did not apply to proceeds derived from special assessments. *Corin*, 113 Cal. App. at 449, 170 Cal. Rptr. at 236.

141. *Malmstrom*, 94 Cal. App. 3d at 981-82, 156 Cal. Rptr. at 781-82.

142. *Id.* at 980-81, 156 Cal. Rptr. at 780-81.

143. *Id.* at 983-85, 156 Cal. Rptr. at 782-83. *Accord*, *Trent Meredith, Inc. v. City of Oxnard*, 114 Cal. App. 3d 317, 170 Cal. Rptr. 685 (1981). In *Trent*, the Second District Court of Appeal agreed with the Fifth District's conclusion in *Malmstrom* that Proposition 13 did not affect special assessments because they were not taxes, special or otherwise. *Id.* at 323, 170 Cal. Rptr. at 688. Because Proposition 13 was inapplicable to special assessments, the Second District rejected the plaintiff's argument that *Malmstrom* defined the term "special tax" as used in section 4 of the amendment and refused to render any definition of "special taxes" in the case. *Id.* at 323, 328, 170 Cal. Rptr. at 688, 691.

144. *Malmstrom*, 94 Cal. App. 3d at 984, 156 Cal. Rptr. at 783.

improvement projects financed previously with general taxes may now be financed with special assessments.¹⁴⁵

Proposition 13 was further limited by the Second District Court of Appeal in *Solvang Municipal Improvement District v. Board of Supervisors of the County of Santa Barbara*.¹⁴⁶ In *Solvang*, the plaintiff, a special district, created a parking district prior to Proposition 13 which was financed by non-voted special assessments against the benefitted property.¹⁴⁷ The Santa Barbara Board of Supervisors refused to collect the assessments after Proposition 13, contending that the assessments were unconstitutional under the amendment's one percent limit on ad valorem taxes.¹⁴⁸ The court upheld the validity of special assessments, despite the fact that the assessments were measured by the assessed value of benefitted parcels.¹⁴⁹ Following the rationale of the *Malmstrom* decision, the *Solvang* court held that the one percent limit of section 1 did not apply to *any* special assessment, even if assessed on an ad valorem basis.¹⁵⁰ Hence, special assessments may be levied according to the assessed value of property, but they do not constitute an ad valorem property tax.¹⁵¹

Despite mild language to the contrary,¹⁵² the favorable decisions in *Malmstrom* and *Solvang* seemingly invited a switch by local governments from property taxes to special assessments for projects traditionally financed with general revenues, and California

145. See, e.g., CAL. GOV'T CODE §§ 50078-50078.20 (West 1983 & Supp. 1991) (statutes authorizing local governments to impose police and fire special assessments); *id.* §§ 53970-53979 (West 1983 & Supp. 1991) (statutes authorizing local governments to impose police and fire protection special taxes). See generally *Benefit Assessments: A Born Again Revenue Raiser*, CAL-TAX RESEARCH BULL. 1-8 (1981) (reporting on new enabling legislation for special assessments and increased use of special assessments after *Malmstrom*).

146. 112 Cal. App. 3d 545, 169 Cal. Rptr. 391 (1980).

147. *Id.* at 548, 169 Cal. Rptr. at 393.

148. *Id.*

149. *Id.* at 548, 557, 169 Cal. Rptr. at 393, 398.

150. *Id.* at 557, 169 Cal. Rptr. at 398. Special assessments may be levied on a variety of bases, including fixed and variable, as well as ad valorem. *Id.*

151. *Id.*

152. See, e.g., *id.* at 557, 169 Cal. Rptr. at 398 ("levies to meet general expenses of the taxing entity and to construct facilities to serve the general public . . . may not be transformed from general ad valorem taxes to special assessments by a mere change in the name of the levy").

courts have allowed municipalities to make this switch.¹⁵³ For example, in *J.W. Jones Cos. v. City of San Diego*,¹⁵⁴ the city created a system of “facility benefit assessments” (FBA) which were exacted from developers who applied for building permits to develop land in one of the city’s new communities.¹⁵⁵ Under this scheme, proceeds of the FBA were collected in a special fund for exclusive use in constructing “a broad spectrum of public works” including parks, transit and transportation, libraries, fire stations, school buildings, and police stations for the benefit of the assessed parcels.¹⁵⁶ The plaintiff, a landowner and developer, challenged the assessment system, arguing that the FBA did not directly benefit the assessed property and were thus special taxes under section 4 of Proposition 13,¹⁵⁷ and that undeveloped and developed parcels were treated differently.¹⁵⁸ The Court of Appeal for the Fourth District upheld the city’s financing scheme, stating that the FBA did not constitute special taxes and thus were not subject to the supermajority vote requirement of section 4 of Proposition 13, and that the system of assessing and placing liens on undeveloped properties only did not violate equal protection of the law.¹⁵⁹

The *J.W. Jones* court acknowledged that San Diego’s assessments did not fit within the traditional definition of special

153. Henke, *supra* note 9, at 283-85.

154. 157 Cal. App. 3d 745, 203 Cal. Rptr. 580 (1984).

155. *Id.* at 749-50, 203 Cal. Rptr. at 582-83. In the early 1960’s, San Diego had created a general plan to develop land in “planned urbanizing areas,” which included developing and new communities. *Id.* at 749-50, 203 Cal. Rptr. at 582. The *J.W. Jones* decision concerned the planned urbanizing area of North University City. *Id.* at 749, 203 Cal. Rptr. at 582. To finance the construction of public facilities within North University City, San Diego enacted an ordinance which authorized the city council to designate lands to be benefitted by public improvements and apportion the costs of the improvements among the parcels. *Id.* The ordinance conditioned the issuance of building permits upon the payment of “facility benefit assessments,” and gave the city a lien on the benefitted parcels until the FBA were paid. *Id.*

156. *Id.* at 749, 203 Cal. Rptr. at 583.

157. *Id.* at 756, 203 Cal. Rptr. at 588. Jones contended that some of the public facilities financed by the assessments were remote and therefore only indirectly benefitted the assessed parcels. *Id.*

158. *Id.* at 756-57, 203 Cal. Rptr. at 588-89. Jones argued that only owners of undeveloped property were required to bear the burden of paying for public facilities while owners of both undeveloped and developed properties derived benefit from the new facilities. *Id.*

159. *Id.* at 758, 203 Cal. Rptr. at 589.

assessments because the facility benefit assessments imposed a lien on parcels to pay for future improvements and because they were assessed on a unique basis.¹⁶⁰ However, the court stated that these anomalies did not prevent the city's levies from being valid special assessments rather than special taxes.¹⁶¹ The court also determined that the lien provision of the city's ordinance did not create a discriminatory classification between undeveloped and developed properties because the benefits to the developed properties were only incidental.¹⁶² As further justification for its holdings, the court indicated that the facility benefit assessments system was "necessary for the health and welfare of future residents of" the city.¹⁶³ A companion case to *J.W. Jones, City of San Diego v. Holodnak*,¹⁶⁴ upheld a similar FBA system for a wide variety of facilities and services¹⁶⁵ under the same rationale.¹⁶⁶ The court in *J.W. Jones* predicted the outcome of

160. *Id.* at 755, 203 Cal. Rptr. at 587. The *J.W. Jones* court stated that San Diego's ordinance and assessments were "distant cousins" to traditional public work financing arrangements, since the times for commencing and completing the public facilities were not fixed but rather were subject to adjustment depending on growth needs and economic conditions. *Id.* The court noted that San Diego's assessments were also unique in that they were apportioned amongst the parcels according to the number of "net equivalent dwelling units" attributable to each parcel at its highest potential development under current zoning, rather than on a front or square footage or ad valorem basis, as are traditional assessments. *Id.*

161. *Id.*

162. *Id.* at 757, 203 Cal. Rptr. at 588. The court in *J.W. Jones* stated, "The levy on undeveloped properties only has a reasonable basis. The incidental fallout of benefit to developed parcels does not result in such equality as to offend equal protection concepts." *Id.*

163. *Id.* at 757-58, 203 Cal. Rptr. at 588-89. The court found that the assessment system was the key to implementing San Diego's controlled growth plan, without which future growth would be jeopardized. *Id.* The court also noted that the assessment scheme was reasonable and valid, stating that "narrow strictures of general law concepts of financing public utilities . . . do not accommodate the dynamics of explosive growth in sunbelt cities." *Id.* at 756, 203 Cal. Rptr. at 589.

164. 157 Cal. App. 3d 759, 203 Cal. Rptr. 797 (1984).

165. The FBA system in *Holodnak* authorized San Diego to designate areas of benefit in the city's new North City West community to be assessed for public improvements and to apportion costs among according to benefit received. *Id.* at 761, 203 Cal. Rptr. at 798. The public facilities to be financed by the assessment system included water lines, community parks, a library, a park and ride facility, a fire station, and widening of a bridge. *Id.*

166. *Id.* at 762, 203 Cal. Rptr. at 799. The court adopted portions of the *J.W. Jones* opinion as it addressed the contentions raised in *Holodnak*. *Id.* The court also made its own findings of special benefit to North City West conferred by specific facilities financed by the FBA, and stated that San Diego's determination of special benefit was both supported by the record and conclusive. *Id.* at 762-63, 203 Cal. Rptr. at 799.

Holodnak and future cases by strongly hinting that it desired to actively assist local governments to finance municipal growth.¹⁶⁷ Other cases have also extended the use of special assessments to finance operating expenses of local government, such as maintenance of flood control facilities¹⁶⁸ and road maintenance.¹⁶⁹

The impact of these decisions has been to broaden the authority of the California Legislature to enact several bills authorizing local agencies to use special benefit assessments to augment their other revenue sources.¹⁷⁰ General law cities requiring enabling statutes in order to impose special assessments¹⁷¹ have especially benefitted from the courts' tolerance of the use of special assessments since the California Legislature has interpreted relevant decisions as validating legislative action.¹⁷² Specifically, the state legislature has authorized the use of special benefit assessments to

167. *J.W. Jones*, 157 Cal. App. 3d at 758, 203 Cal. Rptr. at 589. Specifically, the *J.W. Jones* court stated: "The vision of San Diego's future as sketched in the general plan is attainable only through the comprehensive financing scheme contemplated by the FBA. We view the precedents of yesterday's case law, not as barriers to growth, but as the guidelines to accomplish the needs of tomorrow." *Id.* The most questionable improvements financed by the FBA in *Holodnak*, the park and ride facility and bridge widening, were easily approved by the court. *Holodnak*, 157 Cal. App. at 763, 203 Cal. Rptr. at 799. The court found benefit to the assessed properties conferred by the park and ride facility, stating that the properties would benefit from a decrease in traffic and pollution, even though the facility was open to everyone. *Id.* Likewise, the court found that the assessed properties would be benefitted by widening of a bridge spanning the city's major interstate highway since ingress and egress to the new development would be expanded. *Id.*

168. *See American River Flood Control Dist. v. Sayre*, 136 Cal. App. 3d 342, 356, 186 Cal. Rptr. 202, 207 (1982) (special assessment for operating and maintenance costs of flood control district held valid).

169. *See City Council of the City of San Jose v. South*, 146 Cal. App. 3d 320, 332 335, 194 Cal. Rptr. 110, 118, 120 (1983) (special assessment for maintenance of landscaped median islands and their appurtenant areas held valid).

170. ASSEMBLY RESEARCH REPORT, *supra* note 3, at 251.

171. Local general law governments may impose special assessments only if specifically authorized by the state legislature. ASSEMBLY RESEARCH REPORT, *supra* note 3, at 247. *See supra* note 3 (discussing the legal structure of local government in California).

172. ASSEMBLY RESEARCH REPORT, *supra* note 3, at 251; *Benefit Assessments: A Born Again Revenue Raiser*, CAL-TAX RESEARCH BULL. 1-8 (1981).

finance fire and police protection services,¹⁷³ flood control,¹⁷⁴ drainage and water management services,¹⁷⁵ and street lighting services.¹⁷⁶

While the expanded use of special benefit assessments can be attributed to a willingness on the part of California courts to limit the application of Proposition 13, that is only a partial explanation. Another factor which accounts for the favorable judicial response is that the formation of special assessment districts is not subject to broad judicial review.¹⁷⁷ Although a special assessment must particularly benefit the assessed property,¹⁷⁸ courts give great deference to a local governing body's finding of benefit because the creation of an assessment district is an exercise of a municipality's sovereign taxing power.¹⁷⁹ Thus, so long as some special benefit to the assessed property can be demonstrated, the courts will probably uphold a local government's formation of a special assessment district.¹⁸⁰

173. See CAL. GOV'T CODE §§ 50078-50078.20 (West 1983 & Supp. 1991) (statutes authorizing local governments to impose police and fire special assessments).

174. See CAL. GOV'T CODE § 54710.5 (West Supp. 1991) (statute authorizing local governments to impose assessments for flood control services).

175. See *id.* (statute authorizing local governments to impose assessments for drainage and water management services).

176. See CAL. STS. & HIGH. CODE § 18165 (West Supp. 1991) (statute authorizing cities to impose assessments for street lighting).

177. See *Dawson v. Town of Los Altos Hills*, 16 Cal. 3d 676, 684, 547 P.2d 1377, 1382, 129 Cal. Rptr. 97, 102 (1976) (stating that "the scope of judicial review of such actions is quite narrow . . ."). In *Dawson*, the supreme court indicated that the local rulemaking body "is the ultimate authority which is empowered to finally determine what lands are benefitted and what amount of benefits shall be assessed against the several parcels benefitted. . . . [Special assessments are] of a particularly legislative character, and the appropriate scope of review is firmly rooted in that consideration." *Id.* at 684-85, 547 P.2d at 1382, 129 Cal. Rptr. at 102.

178. See *supra* notes 122-132 and accompanying text (defining "special assessment").

179. See, e.g., *White v. County of San Diego*, 26 Cal. 3d 897, 904, 608 P.2d 728, 731, 163 Cal. Rptr. 640, 644 (1980). In *White*, the supreme court stated that a special assessment will not be set aside unless the "absence of benefit clearly appears from the record," and that the local government's "determination of benefit is conclusive." *Id.* See *supra* notes 127-130 and accompanying text (discussing homerule taxing authority of counties and cities and legislative enactments authorizing the imposition of special assessments and the formation of assessments districts).

180. But see *Harrison v. Board of Supervisors*, 44 Cal. App. 3d 852, 858, 118 Cal. Rptr. 828, 831-32 (1975) (property not benefitted from storm sewers). Cf. *City of Sacramento v. Drew*, 207 Cal. App. 3d 1287, 1294, 255 Cal. Rptr. 704, 708 (1989) (public schools were not "of a local nature" within the meaning of the Municipal Improvement Act of 1913).

B. Governmental Regulatory and Service Fees

Local governments collect a multitude of fees for everything from building permits to garbage services to dog licenses.¹⁸¹ The authority to collect such fees is derived from the state constitution or a specific legislative enactment.¹⁸² Technically, governmental fees are not taxes, so long as they do not exceed the value of the benefit conferred or the service rendered.¹⁸³ These fees also are not assessed upon the value of property.¹⁸⁴ Thus, Proposition 13 seemingly does not affect the power of municipalities to raise revenues through use of such fees.¹⁸⁵ However, because of the increased interest in nontaxing alternatives after Proposition 13 was enacted,¹⁸⁶ California courts have considered the application of the amendment's provisions to a variety of governmental fees.¹⁸⁷

181. See, e.g., CALIFORNIA COMM'N ON GOV'T REFORM, FINAL REPORT 118 (Jan. 1979) (listing numerous new or increased county license, permit, and service fees in the year following the approval of Proposition 13).

182. ASSEMBLY RESEARCH REPORT, *supra* note 3, at 250.

183. See *Mills v. County of Trinity*, 108 Cal. App. 3d 656, 660, 166 Cal. Rptr. 674, 678 (1980) ("In narrower contexts, the word [tax] has been construed to exclude charges to particular individuals which do not exceed the value of the governmental benefit conferred upon or the services rendered to the individuals . . .").

184. Ordinarily, governmental fees are levied upon individuals and business entities. See generally, Bauman & Ethier, *Development Exactions and Impact Fees: A Survey of American Practices*, 50 L. CONTEMP. PROB. 51 (1987), for a thorough discussion of governmental fees and the issues raised by use of such fees.

185. CAL. CONST. art. XIII A §§ 1-6 (West Supp. 1991) (using the term "tax" rather than another descriptive term, such as "levy," "charge," or "fee").

186. User fees have increased from \$2,817 million in fiscal year 1971-72 to \$11,135 million in fiscal year 1982-83, an increase of 295 percent. ASSEMBLY RESEARCH REPORT, *supra* note 3, at 252. In fiscal year 1982-83, user fees accounted for almost 41% of all city revenues and 19% of all county revenues. *Id.* at 256.

187. See, e.g., *Alamo Rent-A-Car, Inc. v. Board of Supervisors*, 221 Cal. App. 3d 198, 205-06, 272 Cal. Rptr. 19, 24 (1990) (airport access fee upheld); *Bixel Assoc. v. City of Los Angeles*, 216 Cal. App. 3d 1208, 1220, 265 Cal. Rptr. 347, 355 (1989) (fire hydrant fee struck down); *San Diego Gas & Elec. Co. v. San Diego County Air Pollution Control Dist.*, 203 Cal. App. 3d 1132, 1135, 250 Cal. Rptr. 420, 421 (1988) (pollution permit fee upheld); *Beaumont Investors V. Beaumont-Cherry Valley Water Dist.*, 165 Cal. App. 3d 227, 238, 211 Cal. Rptr. 567, 573 (1985) (water connection fee struck down); *Trent Meredith, Inc. v. City of Oxnard*, 114 Cal. App. 3d 317, 325, 170 Cal. Rptr. 685, 689 (1981) (school impact fee upheld); *Mills v. County of Trinity*, 108 Cal. App. 3d 656, 663, 166 Cal. Rptr. 674, 678 (1980) (new and increased fees for county services upheld).

There are two typical legal issues involved in challenges to the imposition of governmental fees.¹⁸⁸ The first is whether the fee is authorized by state law.¹⁸⁹ Without specific enabling or constitutional authority, the fee will be struck down.¹⁹⁰ The second issue is whether the fee is really a tax.¹⁹¹ A local government's authority to impose fees derives from the its police power to regulate municipal activities for the public's health, safety, or general welfare,¹⁹² while the taxing authority of local governments is restricted to the express purpose of raising general revenue.¹⁹³ Legislation implementing Proposition 13 expressly excludes from the definition of "special tax" any fee which does not exceed the reasonable cost of providing the regulatory activity or service for which the fee is charged and which is not levied for general revenue purposes.¹⁹⁴ Thus, a fee which is not reasonably equivalent to the cost of the regulatory activity or service, or which is deposited into the general treasury rather than a special fund may be deemed a tax and therefore prohibited by Proposition 13.¹⁹⁵

California courts have reached varying conclusions regarding the use of governmental fees to generate nontaxing alternative sources of revenue.¹⁹⁶ The Third District Court of Appeal expressed the generally accepted rule regarding the validity of regulatory fees under Proposition 13 in *Mills v. County of Trinity*.¹⁹⁷ In *Mills*, the plaintiff challenged a county resolution

188. Bauman & Ethier, *supra* note 184, at 54.

189. *Id.*

190. *Id.*

191. *Id.*

192. See CAL. CONST. art. XI § 7 (West Supp. 1991) (home rule taxing authority provision for counties and cities).

193. Bauman & Ethier, *supra* note 184, at 54.

194. CAL. GOV'T CODE §§ 50075-50076 (West Supp. 1991). See *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.*, 165 Cal. App. 227, 234, 211 Cal. Rptr. 567, 570 (1985) (discussing sections 50075 and 50076 of the Government Code).

195. Bauman & Ethier, *supra* note 184, at 54.

196. See *supra* note 187, for a list of cases involving the use of governmental regulatory and service fees.

197. 108 Cal. App. 3d 656, 166 Cal. Rptr. 674 (1980). The issue of whether Proposition 4, the enactment limiting government appropriations and spending, applied to governmental fees was discussed in *Trend Homes, Inc. v. Central Unified School District*, 220 Cal. App. 3d 102, 269 Cal. Rptr. 349 (1990). See CAL. CONST. art. XIII B §§ 1-12 (West Supp. 1991), for the full text of

providing both increased and new fees for processing land use applications¹⁹⁸ as prohibited by the special tax provision of Proposition 13.¹⁹⁹ The court upheld the resolution, concluding that land use regulatory fees do not constitute special taxes under section 4, when the fees charged to particular applicants do not exceed the reasonable cost of the regulatory activities.²⁰⁰ The court refused to give an expansive reading of the term “tax” as used in Proposition 13’s special tax provision,²⁰¹ indicating that state voters did not intend to put local governments in a “fiscal straitjacket.”²⁰²

A different analysis was utilized by the Court of Appeal for the Second District in *Trent Meredith, Inc. v. City of Oxnard*.²⁰³ The court upheld an ordinance requiring developers to either pay fees or dedicate land to local school districts as a precondition to issuance of a building permit.²⁰⁴ The plaintiff, a subdivider, claimed the ordinance was unconstitutional because the development requirements constituted special taxes under section

Proposition 13. In *Trend Homes*, the Fifth District Court of Appeal held that if a fee is not a special tax within the meaning of Article XIII A, Proposition 4 is not applicable. *Id.* at 115, 269 Cal. Rptr. at 356.

198. *Mills*, 108 Cal. App. 3d at 658, 166 Cal. Rptr. at 675.

199. *Id.* at 658-59, 166 Cal. Rptr. at 675. See CAL. CONST. art. XIII A § 4 (West Supp. 1991) (provision restricting the imposition of special taxes).

200. *Id.* at 663, 166 Cal. Rptr. at 678. See *Alamo Rent-A-Car, Inc. v. Board of Supervisors*, 221 Cal. App. 3d 198, 208, 272 Cal. Rptr. 19, 25 (1990) (stating that governmental regulatory fees should be comprised of a “fair and reasonable” approximation of the overall benefit derived from the activity being regulated).

201. The *Mills* court utilized the rules of construction used to interpret constitutional provisions expressed in *Amador Valley Joint Union High School Dist. v. State Board of Equalization*, 22 Cal. 3d 208, 244-45, 583 P.2d 1281, 1300, 149 Cal. Rptr. 239, 258 (1978), which requires the court to interpret enactments so as to give full effect to the framers’ objectives. *Mills*, 108 Cal. App. 3d at 659, 166 Cal. Rptr. at 676.

202. *Id.* at 660, 166 Cal. Rptr. at 676. The trial court in *Mills* had construed the term “tax” broadly to include “all charges, however labeled, which are to exact money for the support of government or for public purposes.” *Id.* The court of appeal rejected this construction since such an interpretation would render a county powerless to raise charges for proprietary functions. *Id.* The court reasoned that such a “draconian result” was probably never intended by the electorate. *Id.*

203. 114 Cal. App. 3d 317, 170 Cal. Rptr. 685 (1981).

204. *Id.* at 321, 170 Cal. Rptr. at 687.

4 of Proposition 13.²⁰⁵ The court held that the restrictions of Proposition 13 did not apply to the development fee and dedication requirements.²⁰⁶ First, the court stated that the development requirements did not constitute ad valorem taxes because they were not assessed according to property values.²⁰⁷ Second, because the court determined that the ordinance was an appropriate exercise of police power, to relieve conditions of overcrowding of local school facilities caused by new development,²⁰⁸ the court stated that it was unnecessary to decide whether the ordinance requirements constituted a special tax.²⁰⁹

The Second District Court of Appeal, however, later decided a case on the "special tax" definition issue in *California Building Industry Association v. Government Board of the Newhall School District of Los Angeles County*.²¹⁰ In this case, defendant school districts levied taxes under the special tax provision of Proposition 13, after the resolution authorizing the taxes received the requisite two-thirds voter majority approval.²¹¹ Plaintiff builders challenged the taxes, contending that the levies were actually "development fees" subject to statutory monetary limits.²¹² The court adopted the definition of "special taxes" expressed in *City and County of San Francisco v. Farrell*,²¹³ and held that the school district's levies did not fall within the *Farrell* meaning.²¹⁴ The court concluded that the levies were more like development fees and

205. *Id.* at 321, 170 Cal. Rptr. at 687. The ordinance had been enacted by the City of Oxnard without voter approval, and the plaintiff claimed that it thus violated the two-thirds voter majority approval requirement of section 4.

206. *Id.* at 328, 170 Cal. Rptr. at 691.

207. *Id.* at 325, 170 Cal. Rptr. at 689. The *Trent* court reasoned that the development requirements imposed by the city were not ad valorem taxes because the requirements were "not imposed upon the land in the subdivision as such but [are] imposed on the privilege of subdividing land." *Id.*

208. *Id.* at 325-28, 170 Cal. Rptr. at 698-91.

209. *Id.* at 325-28, 170 Cal. Rptr. at 689-91.

210. 206 Cal. App. 3d 212, 253 Cal. Rptr. 497 (1988).

211. *Id.* at 220, 253 Cal. Rptr. at 500.

212. *Id.* at 226, 253 Cal. Rptr. at 504.

213. *City and County of San Francisco v. Farrell*, 32 Cal. 3d 47, 57, 648 P.2d 935, 940, 184 Cal. Rptr. 713, 718 (1982). See *supra* notes 102-113 and accompanying text (discussing the *Farrell* decision).

214. *California Bldg.*, 206 Cal. App. 3d at 235, 253 Cal. Rptr. at 510-11.

should be considered as such.²¹⁵ Thus, the court invalidated the fees because they exceeded statutory monetary limits.²¹⁶

In *Beaumont Investors v. Beaumont-Cherry Valley Water District*,²¹⁷ the Fourth District Court of Appeal considered whether a facilities fee enacted by a water district constituted a special tax under Proposition 13.²¹⁸ The court held that the fee fell under the ambit of section 4 since the fee exceeded the reasonable cost of constructing the water system.²¹⁹ The fee was therefore invalid since it had not been approved by a two-thirds vote of the district's qualified voters.²²⁰ In support of its conclusion, the court stated that the purpose of Proposition 13 was to impose a "broad constitutional restriction" on the power of local agencies to impose special taxes.²²¹ Thus, any agency which sought to avoid the special tax limitations of section 4 through use

215. *Id.* at 237, 253 Cal. Rptr. at 511. To support its conclusion that the school district's levies constituted development fees rather than special taxes, the court in *California Bldg.* stated that development fees are distinguishable from taxes because fees are voluntary, whereas taxes are compulsory. *Id.* at 236, 253 Cal. Rptr. at 510. The court also noted that development fees, unlike "special taxes" under section 4, are not intended to replace lost property tax revenues. *Id.* at 236, 253 Cal. Rptr. at 511.

216. *Id.* at 233, 253 Cal. Rptr. at 509. The defendants were required to comply with the financial limitations of California Government Code sections 53080 and 65995 because school districts have no independent taxing authority under the California Constitution. *Id.* The school districts' authority to impose development fees derived solely from legislative enactments since, as the court held, section 4 of Proposition 13 was not a self-executing grant of taxing authority. *Id.* at 226-33, 253 Cal. Rptr. at 504-08.

217. 165 Cal. App. 3d 227, 211 Cal. Rptr. 567 (1985).

218. *Id.* at 230, 211 Cal. Rptr. at 568. In *Beaumont*, defendant water district charged the plaintiff developer a \$750 per unit facilities fee to help pay for the construction of new water systems facilities necessitated by development. *Id.* at 231, 211 Cal. Rptr. at 568. The developer then brought suit, contending that the fee fell within the purview of section 4 of Proposition 13, which requires a two-thirds majority vote approval before a new special tax may be imposed. *Id.* at 232, 211 Cal. Rptr. at 569.

219. *Id.* at 238, 211 Cal. Rptr. at 573. The court in *Beaumont* explained that in order for a governmental fee to be exempt from Proposition 13, the fee must reasonably relate to the cost of the service for which it is imposed. *Id.* at 234, 211 Cal. Rptr. at 570. See CAL. GOV'T CODE §§ 50075-50076 (West Supp. 1991) (authorizing cities, counties, and special districts to impose special taxes and specifically excluding from the definition of "special tax" any fee "which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes").

220. *Beaumont*, 165 Cal. App. 3d at 238, 211 Cal. Rptr. at 573.

221. *Id.* at 235, 211 Cal. Rptr. at 571 (quoting *Amador Valley Joint Union High School Dist. v. State Board of Equalization*, 22 Cal. 3d 208, 248, 583 P.2d 1281, 1301, 149 Cal. Rptr. 239, 259 (1978)).

of "facilities fees" must bear the burden of proving that the assessment does not amount to a "special tax," a task the water district could not accomplish.²²²

The Fourth District Court of Appeal elaborated on the showing necessary to prove that a regulatory fee was not a special tax in *San Diego Gas & Electric Co. v. San Diego City Air Pollution Control District*.²²³ The court stated that the local taxing agency should prove the estimated costs of the regulatory activity or service and the basis for determining the manner in which the costs are apportioned, so that the charges bear a reasonable relationship to the benefits from the regulatory activity.²²⁴ Once the requisite showing is made, a regulatory fee may be upheld.²²⁵ The court further noted that the imposition of fees was a reasonable way to achieve Proposition 13's goals of effective property tax relief, since the fees shifted the burden of costs from the taxpaying public to those who directly benefit from conducting the regulatory activity.²²⁶

The courts have been fairly strict in requiring a documented showing that a regulatory fee is not a special tax. For example, in *Bixel Associates v. City of Los Angeles*,²²⁷ the Court of Appeal for the Second District struck down Los Angeles' development fee because the city had not met its burden of showing that a valid

222. *Beaumont*, 165 Cal. App. 3d at 235-38, 211 Cal. Rptr. at 571-73. The court distinguished a factually similar special assessment case, *J.W. Jones Cos. v. Holodnak*, 157 Cal. App. 3d 745, 403 Cal. Rptr. 580 (1984), stating that in *J.W. Jones* the City of San Diego had worked up a detailed and sophisticated study and plan before imposing development charges, whereas the Beaumont Water District had not made an informed decision. *Id.* at 236-38, 211 Cal. Rptr. at 271-73.

223. 203 Cal. App. 3d 1132, 250 Cal. Rptr. 420 (1988). *SDG & E* involved a challenge to a county air pollution control district's method of apportioning costs of permit programs among agencies required to obtain operating permits. *Id.* at 1135, 250 Cal. Rptr. at 421. The court held that the district could properly recover actual costs of operation by apportioning them among all monitored polluting agencies based on an emissions fee schedule. *Id.* at 1148-49, 250 Cal. Rptr. at 430-31.

224. *Id.* at 1146, 250 Cal. Rptr. at 429.

225. *Id.* at 1147-48, 250 Cal. Rptr. at 430.

226. *Id.* at 1148-49, 250 Cal. Rptr. at 430.

227. 216 Cal. App. 3d 1208, 265 Cal. Rptr. 347 (1989). *Bixel* involved an ordinance which specified that fees collected from developers were to be deposited into a "Fire Hydrant Installation and Main Replacement Fund" to finance the cost of initial installation and upgrades of fire hydrants and the improvements or replacements of existing water mains. *Id.* at 1214, 265 Cal. Rptr. at 350.

method had been used for determining that the fees charged reasonably reflected the burden posed by the development.²²⁸ The *Bixel* court refused to hear policy arguments supporting the city's decision to impose a fire hydrant fee, pointedly stating that the case was not about "the obvious need for the funding by the City of sophisticated fire protection in the post-Proposition 13 era" but only about determining the constitutionality of the fee.²²⁹

Thus far, the California Supreme Court has not clarified the scope of Proposition 13 with regard to governmental regulatory and service fees.²³⁰ The existing cases indicate that the courts have been somewhat less tolerant of the use of governmental fees than of special benefit assessments.²³¹ One reason for the courts' stricter approach may be the fact that the wide range of governmental fees requires closer scrutiny than the narrow class of levies constituting special assessments. However, the cases also indicate that the courts have been less consistent in their analysis of such fees under Proposition 13.²³² These differing decisions are to be expected in the absence of firm guidance by the supreme court, but the cases also reflect the courts' differing views of Proposition 13.²³³ The courts' uncertainty can best be explained

228. *Id.* at 1219-20, 265 Cal. Rptr. at 354-55.

229. *Id.* at 1220, 265 Cal. Rptr. at 358.

230. In *Russ Bldg. Partnership v. City and County of San Francisco*, 44 Cal. 3d 839, 750 P.2d 324, 244 Cal. Rptr. 682 (1988), the supreme court did address a related issue. In *Russ Bldg.*, plaintiff developers challenged the retroactive application of a transit fee ordinance to new office buildings. *Id.* at 845, 750 P.2d at 326, 244 Cal. Rptr. at 685. The court held that the fee did not impair the developers' vested rights, even though the developers had been issued building permits, had begun construction, and had made a substantial financial commitment to their projects almost two years before the ordinance was enacted. *Id.* at 846, 750 P.2d at 327, 244 Cal. Rptr. at 685.

231. See *supra* notes 196-233 and accompanying text (discussing court decisions reaching differing conclusions as to the validity of certain governmental fees after Proposition 13).

232. See *supra* notes 196-233 and accompanying text (discussing court decisions reaching differing conclusions based on differing rationales).

233. Compare *Mills v. County of Trinity*, 108 Cal. App. 3d 656, 660, 166 Cal. Rptr. 674, 676 (3d Dist. 1980) (court chose to interpret special tax provision of Proposition 13 narrowly and upheld regulatory fees, stating that Proposition 13 was not intended to put local governments in a "fiscal straitjacket") with *Bixel Assoc. v. City of Los Angeles*, 216 Cal. App. 3d 1208, 1220, 265 Cal. Rptr. 347, 355 (2d Dist. 1988) (court struck down development fees and refused to hear policy arguments in support thereof, stating that the case was not about the "obvious need for the funding by [Los Angeles] of sophisticated fire protection in the post-Proposition 13 era").

by a brief consideration of the current status and future of Proposition 13 and a summary of the California courts' role in shaping the amendment, discussed below.

IV. PROPOSITION 13 TODAY AND IN THE FUTURE

After surviving an initial challenge to its constitutionality²³⁴ and several severe tests thereafter,²³⁵ Proposition 13 is still not safe from attack.²³⁶ In 1989, the Supreme Court of the United States in *Allegheny Pittsburgh Coal Co. v. County Commission*²³⁷ struck down a West Virginia taxing scheme similar to Proposition 13 as violative of the equal protection clause of the fourteenth amendment.²³⁸ In *Allegheny*, the plaintiffs, various coal companies, challenged the Webster County assessor's method of property value appraisal,²³⁹ contending that the method of appraisal resulted in recently sold properties having higher appraised values than properties that had not recently been sold.²⁴⁰ The Supreme Court of the United States accepted the coal companies' argument that the method of appraisal created an unconstitutional discriminatory classification between new purchasers and existing landowners.²⁴¹ The Court reasoned that using the selling price of property to fix assessments was not rationally related to the county's objective of establishing accurate, current property values, since this method resulted in dramatic and

234. See *Amador Valley Joint Union High School Dist. v. State Board of Equalization*, 22 Cal. 3d 208, 219, 249, 583 P.2d 1281, 1283, 1302, 149 Cal. Rptr. 239, 241, 259 (1978) (upholding the validity of Proposition 13).

235. See *supra* notes 64-119 and accompanying text (discussing relevant Proposition 13 court decisions).

236. See generally Glennon, *Taxation and Equal Protection*, 58 GEO. WASH. L. REV. 261, 293 (1989) (discussing the constitutionality of Proposition 13 after the Supreme Court of the United States' decision in *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 109 S. Ct. 633 (1989)).

237. 109 S. Ct. 633 (1989).

238. *Id.* at 637.

239. In Webster County, an appraisal of value was made each time property ownership changed. *Id.* at 635. The appraisal value was the sales price of property, determined by the declared consideration in the deed to the property. *Id.*

240. *Id.* at 635-37.

241. *Id.* at 637.

unequal differences in valuation of comparable properties.²⁴² While the Court did not state that all assessment schemes which use more than one method of assessing property in the same class are invalid, the Court indicated that such schemes must ensure that general adjustments of comparable property are “accurate enough over a short period of time to equalize the differences in proportion between the assessments of a class of property holders.”²⁴³ Because the Webster County assessor’s adjustments were neither prompt nor substantial enough to eliminate the disparity in appraisals of comparable properties, the county’s assessment scheme was struck down.²⁴⁴

The *Allegheny* decision left open the question of the constitutionality of Proposition 13, since the Court declined to decide whether the Webster County assessment scheme might be constitutional if it were the law of a state rather than a single county.²⁴⁵ Whether the Court was indicating its approval of Proposition 13 or inviting a challenge to the amendment is arguable.²⁴⁶ Numerous renewed challenges to the constitutionality of Proposition 13 have been filed since *Allegheny*,²⁴⁷ however, several California courts of appeal have affirmed the validity of the amendment.²⁴⁸

242. *Id.* at 637-39.

243. *Id.* at 638.

244. *Id.* at 638-39.

245. *Id.* at 638 n.4. Specifically, the Court stated:

We need not and do not decide today whether the Webster County assessment method would stand on a different footing if it were the law of a State, generally applied, instead of the aberrational enforcement policy it appears to be. [Proposition 13] is grounded on the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of the property.

Id. See Glennon, *supra* note 236, at 301 (discussing the probability of success of an equal protection challenge to Proposition 13 and stating that a court could distinguish *Allegheny* if California government authorities came forward with a legitimate state interest justifying its policy of appraisal).

246. Glennon, *supra* note 236, at 294.

247. See ASSEMBLY RESEARCH REPORT, *supra* note 3, at 26-33 (discussing challenges to Proposition 13 filed after the decision in *Allegheny*).

248. See, e.g., *City of Rancho Cucamonga v. Mackzum*, 279 Cal. Rptr. 220 (Ct. App. 4th Dist. Mar. 20, 1991) (No. E007876) (claim that legislation implementing Proposition 13 violates equal protection of the laws struck down); *R.H. Macy Co. v. Contra Costa County*, 226 Cal. App. 3d 352, 357, 370, 276 Cal. Rptr. 530, 533, 541 (1991) (claim that change in ownership provision of Proposition 13 violates the equal protection, right to travel, and interstate commerce clauses of the

While the ultimate validity of Proposition 13 is unclear after the Supreme Court of the United States' decision in *Allegheny*, local taxing jurisdictions in the meantime will have to continue finding adequate financing for local government activities. California courts have taken an active role in moderating the harsh fiscal impact of Proposition 13 by limiting the application of the amendment's key provisions.²⁴⁹ Because Proposition 13 was ambiguous in a number of particulars,²⁵⁰ the courts have had ample opportunity to give an expansive reading to the amendment, yet for the most part cases have been decided in favor of greater freedom by local governments to impose assessments.²⁵¹ This response by the courts cannot be unintended. The Proposition 13 court decisions reflect a conscious desire on the part of California courts to make Proposition 13 an effective scheme of property tax relief, but without crippling the ability of local governments to carry out municipal functions.²⁵² As a result of the courts' actions in shaping Proposition 13, some local governments' budgets have not suffered as dramatically as the authors of the amendment might have anticipated.²⁵³

United States Constitution struck down); *Nordlinger v. Lynch*, 225 Cal. App. 3d 1259, 1265, 1282, 275 Cal. Rptr. 684, 686, 698 (1991) (claim that acquisition value assessment method of Proposition 13 is unconstitutional after the *Allegheny* decision struck down).

249. See *supra* notes 64-119 and accompanying text (discussing relevant Proposition 13 court decisions).

250. *Amador Valley Joint Union High School Dist. v. State Board of Equalization*, 22 Cal. 3d 208, 245, 583 P.2d 1281, 1301, 149 Cal. Rptr. 239, 257 (1978).

251. See *Kroll*, *supra* note 9, at 29.

252. See *id.* at 29-31 (describing the loopholes of Proposition 13 and the ability of local governments to find ways around the amendment's tax limitations).

253. *Id.* at 29. Because the courts have narrowly interpreted all disputed sections of the measure, the impact of Proposition 13 on local governments is much less severe than expected. *Id.* The response of the courts led Proposition 13 co-author Howard Jarvis to state, "The court doesn't know what a tax is." *Id.*

CONCLUSION

California courts have tempered the effect of the taxing restrictions of Proposition 13 by allowing local governments to develop nontaxing sources of revenue.²⁵⁴ The most effective source of nontaxing revenue is special benefit assessments. The courts have shown great tolerance for allowing special assessments to finance an expanded variety of municipal improvements and services.²⁵⁵ To a lesser extent, the courts have also allowed the use of governmental regulatory and service fees.²⁵⁶ While the validity of the use of these fees is not as predictable as the use of special assessments, governmental fees remain a viable source of nontaxing revenues, as evidence by the sheer number of these fees.²⁵⁷

While most local governments still regard Proposition 13 as a "dirty word,"²⁵⁸ California courts have kept the amendment from becoming a "fiscal straitjacket"²⁵⁹ to local governments.²⁶⁰ By taking an active role in shaping the provisions and application of Proposition 13, the courts have ensured that local taxing jurisdictions can find alternative sources of revenue despite the severe loss of property tax funds.

Julie K. Koyama

254. See *supra* notes 120-233 and accompanying text (discussing court decisions impacting the use and effectiveness of nontaxing sources of revenue).

255. See *supra* notes 120-180 and accompanying text (discussing the effect of court decisions broadening the use of special assessments).

256. See *supra* notes 181-233 and accompanying text (discussing the use and effectiveness of governmental fees to generate revenues).

257. See generally Bauman & Ethier, *supra* note 184, for a complete analysis of the use of governmental fees on geographical and purpose bases.

258. Kroll, *supra* note 9, at 28.

259. *Mills v. County of Trinity*, 108 Cal. App. 3d 656, 660, 166 Cal. Rptr. 674, 676 (1980).

260. See *supra* notes 250-253 and accompanying text (describing the role of California courts in shaping Proposition 13).

