

Prop 10 and Tax Increases by Majority Vote

Summary: The Legislature may, by **majority vote**, place **tax increases** before the voters which go towards promoting, supporting, and improving early childhood development from the prenatal stage to five years of age. These revenues are **exempt** from the **Gann Limit** and **Prop 98**.

BACKGROUND: Since the passage of Prop 13, the Legislature has generally needed a 2/3 supermajority to pass any legislation which includes a tax increase. From subsection (a) of Section 3 of Article XIII A of the California Constitution:

Any change in state statute which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature...

This means, in most cases, the Legislature cannot, by majority vote:

- enact revenue-neutral tax reforms (“lower the rates, broaden the base”)
- close tax loopholes previously enacted by majority vote of the Legislature
- **place tax increases before the voters**

In addition, the Gann Limit (Article XIII B) places a ceiling on the state government’s total revenues from taxes, and Prop 98 automatically allocates about 40% of new General Fund revenues to education.

PROP 10 EXEMPTIONS: Prop 10, also known as the Children and Families First Act of 1998, exempts itself from both the supermajority requirement (Section 7 of Article XIII A) and Prop 98 and the Gann Limit (Section 13 of Article XIII B).

What this means is that the Legislature may, **by simple majority**, place amendments to Prop 10 on the ballot, like they could for any other voter-enacted statute, *even if these amendments include a tax increase*.

(over)



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Thank you to Dale Fountain (Enact Universal Healthcare for CA)

How to use the Prop 10 exemptions:

(a) Add sections to the statutory language created by Prop 10. These are **Division 108** (commencing with Section 130100) **of the Health and Safety Code** and **Article 3** (commencing with Section 30131) **of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code**

(b) Assign new revenues to the **California Children and Families First Trust Fund** created by Prop 10.

(c) Stay within the original intent of Prop 10. From Section 9 of Prop 10:

The provisions of this act shall be liberally construed to effectuate its purposes of promoting, supporting, and improving early childhood development from the prenatal stage to five years of age.

For example:

- health care (prenatal and ages 0-4)
- preschool/child care
- preventing asthma in young children (air quality)
- lead abatement
- playground equipment for children under 5

Q: Would these revenues be exempt from the Gann Limit and Prop 98?

A: Yes. Section 13 of Article XIII B exempts it from the Gann Limit. As voter-approved special fund revenues, they are exempt from Prop 98 as a matter of course.

Q: Can the money raised be spent on children 5 and up and their families?

A: Maybe not. Courts would need to weigh the voters' intent to limit the Legislature's ability to place tax increases on the ballot (Section 3 of Article XIII A) against their intent to exempt Prop 10 (Section 7 of Article XIII A), which has a broad but clearly defined scope (Section 9 of Prop 10, above).

If you did wish to test these limits in court, you would want to make the parts of your legislation which are clearly in-scope **severable** from the parts that are not.

Please contact Dave Marin at dave.marin@independentca.org with any further questions.