

## Commentary on California Local Finance Reform: Should the Local Tax Vote Rules Be Reversed?

*At the local level, a general tax requires majority voter approval. But if a city commits a tax increase to a particular purpose, it's a special tax and requires two-thirds voter approval. Shouldn't it be the other way around?*

It's now a matter of historical trivia, but when Proposition 13 established the requirement for two-thirds of voters to approve a "special tax," it was not explicit about just what a special tax was. In addition to its property tax limitation components, Section 4 of the landmark 1978 measure stipulated: "Cities, counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such city, county or special district." But nowhere in the measure was "special tax" defined. Proposition 13's proponents argued that by "special" they meant "everything." But it took a court decision to clarify the meaning of the words: a tax imposed for specific purposes (*City and County of San Francisco v. Farrell*, 1982).

In subsequent years, initiative measures and protracted court battles created further uncertainty as to voter approval requirements for local taxes. Then, in 1996, the voters of California passed Proposition 218, the most obstreperous of Proposition 13's progeny, which placed this definition into the California Constitution and established the requirement for majority voter approval of any new or increased general tax. New or increased local general taxes require majority approval; new or increased special taxes, legally restricted for a particular purpose, require two-thirds voter approval.

Although they've been used in American government for hundreds of years, supermajority vote requirements hand an extra power and weight to the votes of those who are not in the majority opinion. But these higher vote margins have generally been used only in extraordinary circumstances: for example, the US Senate's cloture rule in effect since 1917 used for the first time in 1919 to end filibuster on the Treaty of Versailles. Local general obligation bonds in California have required two-thirds voter approval since the adoption of the 1879 state constitution under the theory that debt obligations placed on future generations should require a higher approval threshold.

A popularly held opinion these days is that California has gone too far with the use of supermajority vote requirements, most (but not all) brought to us by Proposition 13 and its follow-ons. At a July 2009 summit of more than 600 city, county and school officials, the two-thirds supermajority vote for local taxes and bonds was voted among the top three things needing reform.

To many an observer it seems illogical to require a local government to face the "penalty" of achieving a higher vote threshold if it accedes to earmarking the revenues from a proposed tax. Shouldn't a government get a break if it is are willing to do that? But of course, these laws were not written from that perspective; their primary purpose is tax limitation. So the logic of taxpayer advocates is straight forward: the higher vote threshold is there to counteract the greater willingness of voters to approve an earmarked tax.

But from the standpoint of good governance, the constitutional bias toward general taxes is also compelling. General taxes allow a local government to be more flexible and responsive in responding to the varying and evolving needs of its constituents. Too much earmarking creates complexity,

balkanization, inefficient use of limited tax dollars, and irresponsible services.

But should the vote requirement be swapped: a two-thirds supermajority vote for general taxes? It sounds nifty on its face to simply swap the requirement but certainly, anyone suggesting a higher vote requirement for general taxes has not really considered the implications of the notion.

What if the vote requirement were swapped: two-thirds for general taxes, majority for special taxes? Here's what local finance and governance would look like:

1. Local general tax measures would never be seen again. General taxes would be too difficult to pass at two-thirds approval. Any proposal for a local tax increase, extension or revision would be a majority vote special tax increase. There would be more of them and more would pass.
2. Local budgets would become increasingly balkanized. General funds would shrink. Special funds would proliferate. The choices for city councils and county boards of supervisors would shrink. The overall total spending of whole departments and programs would go on autopilot.
3. When economic downturns arrive, local governments would have less general tax resources and ability to respond. Programs would be reduced not based on a careful discernment of priorities but on how much their particular special revenue sources will produce.
4. As our society and technology has changed we have seen new ways of doing business (electronic, internet, etc.), new billing practices, new industries and activities. Many of our old tax laws have become outdated, unable to accommodate these changes in their tax regimen. Revisions have been needed in business license taxes, utility user taxes, and sales taxes – all of which are imposed as general taxes in nearly every case. Revisions to these tax ordinances usually require a vote under the provisions of Proposition 218. As general taxes, such a revision would now require two-thirds supermajority approval. Alternatively, the city/county could choose to earmark the revenue, pulling it out of the general fund and further balkanizing the agency's finance and governance.

This just won't work. It may seem illogical to some to impose a higher vote requirement on an earmarked tax, but it is even more nonsensical to impose a higher vote requirement on a general purpose tax.

*Michael Coleman*