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10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF STANISLAUS**

13 MICHAEL R. O'NEAL, RHONDA BIESEMEIER, )  
14 and DENNIS J. NASRAWI, )

15 Plaintiffs, )

16 v. )

17 STANISLAUS COUNTY EMPLOYEES' )  
18 RETIREMENT ASSOCIATION, and DOES 1-30, )

19 Defendants. )

CASE NO: 648469

PLAINTIFFS' REQUEST FOR  
JUDICIAL NOTICE OF (1) THE  
LEGISLATIVE HISTORY OF THE  
CALIFORNIA PENSION  
PROTECTION ACT OF 1992  
AND (2) THE TRUE MEANING OF  
"NEGATIVE AMORTIZATION"

Date: September 22, 2014

Time: 10:00 a.m.

Dept. 2

Judge: Hon. Leslie C. Nichols

Complaint Filed: November 30, 2009

Trial Date: October 27, 2014

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1 I

2 THE COURT MAY TAKE JUDICIAL NOTICE OF THE  
3 LEGISLATIVE HISTORY OF THE CALIFORNIA  
4 PENSION PROTECTION ACT OF 1992.

5 The plaintiffs request this court to take judicial notice of the history of the California Pension  
6 Protection Act of 1992, enacted by the passage of Proposition 162. That history is helpful to an  
7 understanding of the People’s purpose and intent in amending section 17 of article XVI of the  
8 California Constitution.

9 A. Authority for the Request

10 As a general rule, when courts interpret a statute or constitution, they attempt to determine  
11 legislative intent so as to effectuate the purpose of the law. (*Burden v. Snowden* (1992) 2 Cal.4th  
12 556, 562.) The courts first read the legislative provision, and do so in an ordinary way unless special  
13 definitions are provided. (*Hayward Area Planning Assn. v. Alameda County Transportation*  
14 *Authority* (1999) 72 Cal.App.4th 95, 104-105; *Professional Engineers v. Wilson* (1998) 61  
15 Cal.App.4th 1013, 1019-1020.) If the meaning of the words is clear, then the language controls.  
16 (*Hayward Area Planning Assn., supra; Professional Engineers, supra.*) But if the meaning of the  
17 words is not clear, courts can use interpretive aids. (*Hayward Area Planning Assn., supra;*  
18 *Professional Engineers, supra.*)

19 With respect to voter-approved enactments, the interpretive aids include “the ballot analysis,  
20 the official summary, and the arguments presented to the voters.” (*Hayward Area Planning Assn.,*  
21 *supra*, 72 Cal.App.4th at pp. 104-105; *Professional Engineers, supra*, 61 Cal.App.4th at pp. 1019-  
22 1020.) “California decisions have long recognized the propriety of resorting to such election  
23 brochure arguments as an aid in construing legislative measures and constitutional amendments  
24 adopted pursuant to a vote of the people. [Citations.]” (*White v. Davis* (1975) 13 Cal.3d 757, 775,  
25 fn. 11.) Such ballot materials represent “the only [available] ‘legislative history’” of a constitutional  
26 amendment adopted by vote of the people. (*Id.* at p. 775.)

27 The plaintiffs request the court to take judicial notice of that portion of the November 1992  
28 California Ballot Pamphlet which contains the “legislative” history of Proposition 162. (Exh. 1.)

It is well established that courts may take judicial notice of such historical documents. (*Main*

1 *San Gabriel Basin Watermaster v. State Water Resources Control Bd.* (1993) 12 Cal.App.4th 1371,  
2 1381 [granting a request for judicial notice because “there is ample precedent for an appellate  
3 court’s consideration of such documents”]; *Carlton Browne & Co. v. Superior Court* (1989) 210  
4 Cal.App.3d 35, 41, fn. 3.) The ballot pamphlet was not only before the voters; it was the *only*  
5 document provided to plaintiffs by LIS that was before all of the voters. The Supreme Court has  
6 consulted and relied upon legislative history provided by the Legislative Intent Service. (*People v.*  
7 *Brown* (1993) 6 Cal.4th 322, 334; *Commodore Home Systems, Inc. v. Superior Court* (1982) 32  
8 Cal.3d 211, 219.) And the Court of Appeal has held that the expense of obtaining such legislative  
9 history is a recoverable cost of litigation. (*Van de Kamp v. Gumbiner* (1990) 221 Cal.App.3d 1260,  
10 1291.)

11 **B. The Legislative History Is Relevant to the Plaintiffs’ Claims That**  
12 **StanCERA Breached Its Fiduciary Duty by Misusing Trust Fund**  
**Assets To Offset and Minimize County Employer Contributions.**

13 The purposes of the People are especially relevant to the claims of breach of fiduciary duty  
14 made by the plaintiffs in this case.

15 *First*, the intent and broad purpose of the People in enacting the California Pension  
16 Protection Act of 1992 is shown from its text. Section Two includes “Findings and Declarations”  
17 explaining the need for Proposition 162:

18 Section Two. Findings and Declarations. The People of the State of California  
19 hereby find and declare as follows:

20 (a) Retired citizens depend upon their pension benefits to meet basic necessities  
21 such as food and shelter during their retirement years. For many elderly citizens who  
22 are not eligible to participate in Social Security, pension benefits are their sole source  
23 of financial support and security.

24 (b) Teachers, firefighters, police officers and other local, school and state employees  
25 depend on promised pension benefits, which must be protected from political abuse  
26 and misappropriation.

27 (c) *Politicians have undermined the dignity and security of all citizens who depend*  
28 *on pension benefits for their retirement by repeatedly raiding their pension funds.*

(d) Political meddling has driven the federal Social Security system to the brink of  
bankruptcy. To protect the financial security of retired Californians, politicians must  
be prevented from meddling in or looting pension funds.

(e) *Raids by politicians on public pension funds will burden taxpayers with massive*  
*tax increases in the future.*

1  
2 (f) *To protect pension systems, retirement board trustees must be free from political meddling and intimidation.*

3 (g) The integrity of our public pension systems demands that safeguards be  
4 instituted to prevent political “packing” of retirement boards, and encroachment  
5 upon the sole and exclusive fiduciary powers or infringement upon the actuarial  
6 duties of those retirement boards.

7 (h) In order to protect pension benefits and to avoid the prospect of higher taxes, the  
8 People must act now to shield the pension funds of this state from abuse, plunder and  
9 political corruption.

10 (Exh. 1, italics added.)

11 Section Three includes a statement of the People’s “Purpose and Intent” in enacting the  
12 California Pension Protection Act of 1992:

13 Section Three. Purpose and Intent. The People of the State of California hereby  
14 declare that their purpose and intent in enacting this measure is as follows:

15 (a) *To protect pension funds so that retirees and employees will continue to be able  
16 to enjoy a basic level of dignity and security in their retirement years.*

17 (b) To give voters the right to approve changes in the composition of retirement  
18 boards containing elected retirees or employee members.

19 (c) *To protect the taxpayers of this state against future tax increases which will be  
20 required if state and local politicians are permitted to divert public pension funds to  
21 other uses.*

22 (d) *To ensure that the assets of public pension systems are used exclusively for the  
23 purpose of efficiently and promptly providing benefits and services to participants  
24 of these systems, and not for other purposes.*

25 (e) To give the sole and exclusive power over the management and investment of  
26 public pension funds to the retirement boards elected or appointed for that purpose,  
27 to strictly limit the Legislature’s power over such funds, and *to prohibit* the Governor  
28 or *any executive or legislative body of any political subdivision of this state from  
tampering with public pension funds.*

(f) To ensure that all actuarial determinations necessary to safeguard the competency  
of public pension funds are made under the sole and exclusive direction of the  
responsible retirement boards.

(g) *To affirm the legal principle that a retirement board’s duty to its participants  
and their beneficiaries takes precedence over any other duty.*

(Exh. 1, italics added.)

Section Five provides an express rule of liberal interpretation: “The provisions of this act  
shall be liberally interpreted to effect their purposes.” (Exh. 1.)

The available interpretative aids—the ballot analysis, the official summary, and the

1 arguments—show that the central purpose of Proposition 162 was to prevent governmental entities  
2 from manipulating public pension funds to reduce employer contributions. As the Court of Appeal  
3 held in *Westly v. Board of Administration* (2003) 105 Cal.App.4th 1095, 1111: “In keeping with the  
4 foregoing” findings, declarations, and statements of purpose and intent, “*the thrust of the ballot*  
5 *arguments in favor of [a]rticle XVI, section 17[,] is to prevent the Legislature [and local*  
6 *governmental entities] from ‘raiding’ pension funds.”* (Italics added.) “The summary argument in  
7 favor states that [a]rticle XVI, section 17[,] would ‘stop politicians from raiding the pensions of . . .  
8 public employees.’ [Citation.] The claims address the means by which the Legislature on previous  
9 occasions had altered its contributions to the retirement system. [¶] The full argument in favor of  
10 the initiative warns that politicians would continue to raid the pension funds of retirees unless  
11 [a]rticle XVI, section 17[,] was passed. It complains it was ‘not right’ to allow politicians to  
12 ‘balance their budgets on the backs of seniors and retirees.’ [Citation.] [¶] . . . . The rebuttal  
13 argument states the proposition’s opponents are ‘trying to mislead the voters.’ ‘The central purpose  
14 of this measure is to STOP POLITICIANS FROM USING PUBLIC PENSION FUNDS TO BAIL  
15 THEM OUT WHEN THEY FAIL TO KEEP GOVERNMENT SPENDING UNDER CONTROL.’  
16 [Citation.]” (*Ibid.*)

17 In short, the California Pension Protection Act of 1992 was intended to prevent public  
18 pension systems from being administered for the benefit of public employers rather than the  
19 employee beneficiaries. It must be liberally construed to accomplish that purpose.

20 The undisputed facts of this case reveal numerous, old-fashioned, pre-1992 raids on the  
21 plaintiffs’ pension trust fund. A majority of the board of trustees of StanCERA are County officials  
22 and appointees. (Gov. Code, § 31520.1.) The board used trust fund assets to offset and reduce the  
23 annual, actuarially-required employer contributions of the County of Stanislaus by approximately  
24 \$50 million. During these raids, and in part as a result of these raids, the funded ratio of the  
25 plaintiffs’ trust fund declined from 106 percent to 59 percent. The raids will impose additional  
26 burdens on future taxpayers. Most significantly, the legislative history of the California Pension  
27 Protection Act of 1992 shows that the People amended the California Constitution for the specific  
28 purpose of preventing such raids.



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II

**THE COURT MUST TAKE JUDICIAL NOTICE OF THE TRUE  
MEANING OF “NEGATIVE AMORTIZATION.”**

**A. Authority for the Request**

All courts are required to take judicial notice of “[t]he true signification of all English words and phrases and of all legal expressions.” (Evid. Code, § 451, subd. (e).)

**B. The Meaning of “Negative Amortization” Is Relevant to the Plaintiffs’  
Causes of Action Alleging the Illegality of “Negative Amortization.”**

In their third cause of action, plaintiffs contend that StanCERA breached its fiduciary duty, and violated Government Code section 31453.5, by imprudently adopting a schedule of “negative amortization” of the County’s unfunded liability. The true meaning of “negative amortization” is therefore relevant to their claims.

The true significance and meaning of the word “amortization,” as used in English and Government Code section 31453.5 is “[t]he act or result of gradually extinguishing a debt, such as a mortgage, usu[ally] by contributing payments of principal each time a periodic interest payment is due.” (Black’s Law Dictionary (9th ed. 2009) p. 99.)

The true significance and English meaning of “negative amortization” is “[a]n increase in a loan’s principal balance caused by . . . payments insufficient to pay accruing interest.” (Black’s Law Dictionary (9th ed. 2009) p. 99.)

In short, “negative amortization” is the opposite of “amortization.”

Dated: July 2, 2014

**LAW OFFICE OF MICHAEL A. CONGER**

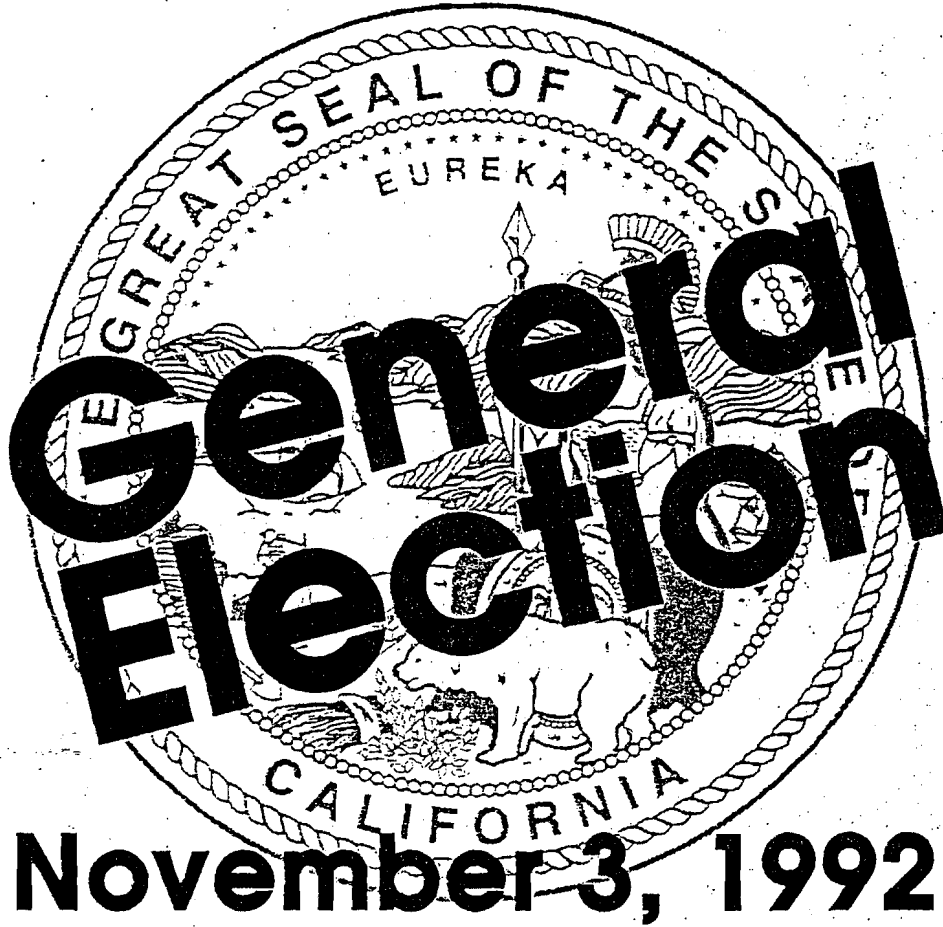
By: 

Michael A. Conger  
Attorney for Plaintiffs

# **EXHIBIT 1**

# California

## BALLOT PAMPHLET



# November 3, 1992

### CERTIFICATE OF CORRECTNESS

I, March Fong Eu, Secretary of State of the State of California, do hereby certify that the foregoing measures will be submitted to the electors of the State of California at the GENERAL ELECTION to be held throughout the State on November 3, 1992, and that this pamphlet has been correctly prepared in accordance with law.



Witness my hand and the Great Seal of the State in Sacramento, California, this 10th day of August 1992.

*March Fong Eu*

MARCH FONG EU  
Secretary of State





## Secretary of State

SACRAMENTO 95814

Dear Californians:

This is your California Ballot Pamphlet for the November 3, 1992, General Election. It contains the ballot title and a short summary provided by the Attorney General, the Legislative Analyst's analysis and an overview of the state bond debt, the pro and con arguments and rebuttals, and the complete texts for Propositions 155 through 167. It also contains the legislative votes cast for and against each measure proposed by the Legislature. Should any other measures be added to the ballot at a later date, materials relating to them will be sent in a supplemental ballot pamphlet. This election, at the suggestion of the California Commission on Campaign Financing, a private, non-profit organization, we are also including summary information regarding the measures. Statements from political parties about their philosophies and purposes are also included.

Many rights and responsibilities go along with citizenship. Voting is one of the most important, as it is the foundation on which our democratic system is built. Read carefully all of the measures and information about them contained in this pamphlet. Legislative propositions and citizen-sponsored initiatives are designed specifically to give you, the electorate, the opportunity to influence the laws which regulate us all.

Take advantage of this opportunity and exercise your rights by voting on November 3, 1992.

Please note that Proposition 155 is the first proposition for this election. To avoid confusion with past measures, the Legislature passed a law which requires propositions to be numbered consecutively starting with the next number after those used in the November 1982 General Election. This numbering scheme runs in twenty-year cycles.



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November 3, 1992 Ballot Measures—Continued

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		PRO	CON
<p><b>161</b>  <b>PHYSICIAN-ASSISTED DEATH, TERMINAL CONDITION</b>                      Initiative Statute                      Put on the Ballot by Petition Signatures</p>	<p>Establishes right of mentally competent adult to request willing physician to assist in dying in the event terminal condition is diagnosed. Declares "not suicide." Physician not liable. Prohibits effect on insurance.</p>	<p>Allows mentally competent adults diagnosed as terminally ill by two physicians to request physician assistance in ending their life in a painless, humane and dignified manner. Act is totally voluntary for physicians and patients. It is not suicide. Insurance policies unaffected. Contains strong safeguards against abuse, including witnessed revocable directive.</p>	<p>Don't be fooled by claims of "strong safeguards." Read Prop. 161 and you'll see it <b>LACKS REAL SAFEGUARDS</b>. Even those who favor the idea of physician-assisted suicide oppose this flawed initiative.  <b>WARNING!</b> No witnesses present. No family notification. No waiting period. No counseling. No residency requirements. <b>NO on 161.</b></p>
<p><b>162</b>  <b>PUBLIC EMPLOYEES RETIREMENT SYSTEMS</b>                      Initiative Constitutional Amendment                      Put on the Ballot by Petition Signatures</p>	<p>Grants boards of public employee retirement systems sole authority over investments and administration, including actuarial services. Restricts changes to boards. Gives precedence to duty to participants and beneficiaries.</p>	<p>Prop. 162 protects pension funds. It will stop politicians from raiding the pensions of firefighters, police, teachers and other public employees. Retired workers depend on their pensions to survive. Every time a pension fund is raided by politicians, taxpayers are threatened with huge tax increases to pay back the money.</p>	<p>Proposition 162 doesn't protect pensions, it saves bureaucrats from answering to taxpayers and elected representatives. It endangers retirement funds by stopping independent reviews by outside experts. It could force taxpayers to overpay into the retirement system, and might even require tax increases. Voting no on 162 protects pensions and taxpayers.</p>
<p><b>163</b>  <b>ENDS TAXATION OF CERTAIN FOOD PRODUCTS</b>                      Initiative Constitutional Amendment and Statute                      Put on the Ballot by Petition Signatures</p>	<p>Prohibits sales or use taxes on food products exempt from taxation. Exempts candy, bottled water, and snack foods from sales and use taxation.</p>	<p>Proposition 163 is the measure that dumps the tax on food and bottled water. It amends the California State Constitution to prohibit forever state government or local governments from imposing sales or use taxes on bottled water, candy, and food products, which are exempt from such taxation under existing statutes.</p>	<p>No argument against Proposition 163 was filed.</p>
<p><b>164</b>  <b>CONGRESSIONAL TERM LIMITS</b>                      Initiative Statute                      Put on the Ballot by Petition Signatures</p>	<p>For seats in U.S. Congress, denies ballot access to persons who have already held such office for specified period. Does not count pre-1993 service. Does not restrict "write-in" candidates.</p>	<p>Congress needs new blood, fresh ideas. Currently, incumbents' first priority is reelection to keep their \$129,500 salaries and million dollar pensions. Term limits will end the corrupt seniority system and restore California's clout in Congress.                      Preserve your right to vote. <b>STOP THE CAREER POLITICIANS.</b> Join the term limits fight: 1-800-YES-4-164.</p>	<p>No matter how you feel about term limits, vote <b>NO</b> on Proposition 164. It's not about Congressional reform; it's about destroying California clout in Congress. Proposition 164 won't make government more responsive. It will just give Californians the short end of the stick. <b>Vote NO on Proposition 164.</b></p>
<p><b>165</b>  <b>BUDGET PROCESS, WELFARE PROCEDURAL AND SUBSTANTIVE CHANGES</b>                      Initiative Constitutional Amendment and Statute                      Put on the Ballot by Petition Signatures</p>	<p>Grants Governor constitutional power to reduce certain expenditures to balance budget during "fiscal emergency." Amends statutes to reduce certain benefits in specified welfare programs.</p>	<p>Docks politicians' pay when budget unbalanced. Limits welfare to new residents to amount receivable in home state. Cuts welfare while encouraging work. Provides incentives for teenage welfare mothers to stay in school, disincentives to have more children once on welfare. Gives Governor budget-balancing authority similar to 44 other states.</p>	<p>Why would promoters call 165 welfare reform since it doesn't touch fraud or deal with job creation and training?                      Because language hidden in 165 gives one person—the Governor—unprecedented power to cut education, environmental protections and health care.                      Promoters would rather talk about welfare than hidden consequences in 165.</p>
<p><b>166</b>  <b>BASIC HEALTH CARE COVERAGE</b>                      Initiative Statute                      Put on the Ballot by Petition Signatures</p>	<p>Requires employers to provide health care coverage for most employees and dependents. Implements as federal law permits. Limits employee contributions. Specifies benefits. Provides employer tax credits. Establishes administrative bodies. Appropriates money.</p>	<p>Eliminate insurance company "red-tape" and patient hassles. Prop. 166 provides health insurance coverage to working Californians and their children. Guarantees currently insured workers will not lose health insurance. Reforms insurance company practices to prevent loss of coverage when someone is sick. Provides cost savings to individuals and small business.</p>	<p>Consumers Union, AARP, workers, small businesses and nurses oppose Prop. 166 because it's not real health care reform. Because 166 doesn't control costs, employers will reduce hours, wages and benefits. Many will lose their jobs. 166 may cost taxpayers billions. There are meaningful solutions that deserve your support. Prop. 166 doesn't.</p>
<p><b>167</b>  <b>STATE TAXES</b>                      Initiative Statute                      Put on the Ballot by Petition Signatures</p>	<p>Increases taxes on top personal income taxpayers, corporations, banks, insurance companies, and oil producers. Repeals 1991 sales tax increases. Provides for renters' tax credits. Changes business-owned real property reappraisal rule.</p>	<p>Proposition 167 closes special interest loopholes and taxes the super-rich and big corporations. It uses the resulting revenues to repeal recent sales tax increases on consumers and income tax increases on renters. 167 also restores funds for schools and other services slashed during the state budget crisis.</p>	<p>Proposition 167 includes more than one dozen tax increases! It would hurt middle-income families and small businesses the hardest. It would result in higher auto and other insurance premiums, rents and gasoline prices. Studies show it would drive businesses and more than 100,000 jobs <b>OUT</b> of California.</p>

November 3, 1992 Ballot Measures—Continued

ARGUMENT SIGNERS		WHO TO CONTACT FOR MORE INFORMATION	
FOR	AGAINST	FOR	AGAINST
<p>Warren L. Bostick M.D., Past President, California Medical Association</p> <p>Mae Ziskin Ph.D., Former President, California Psychological Association</p> <p>Douglas I. Norris Senior Minister, First United Methodist Church, Palo Alto, CA</p>	<p>Mary Foley President, California Nurses Association</p> <p>Jo Ann Siemsen President, California State Hospice Association</p> <p>Pamela Kushner M.D., Family Physician</p>	<p>Californians Against Human Suffering 5750 Wilshire Boulevard, Suite 561 Los Angeles, CA 90036 (213) 937-5706</p>	<p>No on 161 Committee 1007 7th Street, 2nd Floor Sacramento, CA 95814 (916) 448-8161</p>
<p>Charles Carbonaro Chairman, CA State Legislative Committee, American Association of Retired Persons (AARP)</p> <p>Peter J. Kanelos Executive Director, REsponsible VOTers for Lower Taxes (REVOLT)</p> <p>Clifford F. Haskell Retired Firefighter</p>	<p>Larry McCarthy President, California Taxpayers Association</p> <p>Richard L. Gann President, Paul Gann's Citizen Committee</p>	<p>MaryAlice Keaton Californians for Pension Protection 1717 I Street, Suite B Sacramento, CA 95814 (916) 444-2485</p>	<p>California Taxpayers Association 921 11th Street, Suite 800 Sacramento, CA 95814 (916) 441-0490</p>
<p>Richard E. Floyd Member of the Assembly, 53rd District</p> <p>Peter Jensen Executive Director, California Bottled Water Association</p> <p>Jackie Speier Member of the Assembly, 19th District</p>	<p>No argument against Proposition 163 was filed.</p>	<p>"Yes on Prop. 163" Paul Kinney or Bill Mashburn 910 2nd Street Sacramento, CA 95814 (916) 444-5277</p>	<p>Not provided</p>
<p>Peter F. Schabarum Chairman, Citizens for Term Limits</p> <p>Martyn B. Hopper State Director, National Federation of Independent Business</p> <p>Alan Heslop Ph.D., Professor of Government</p>	<p>Daniel Lowenstein Former Chair, Fair Political Practices Commission (FPPC)</p> <p>Eva Skinner Former Member, Board of Directors, American Association of Retired Persons (AARP)</p> <p>Jean Claybrook President, Public Citizen</p>	<p>"Yes on Prop. 164" 20675 S. Western Avenue, Suite 204 Torrance, CA 90501-1809 (800) YES-4-164</p>	<p>Not provided</p>
<p>Pete Wilson Governor, State of California</p> <p>Joel Fox President, Howard Jarvis Taxpayers Association</p> <p>Maureen DiMarco Secretary of Child Development and Education, State of California</p>	<p>Robyn C. Prud'homme-Bauer President, League of Women Voters of California</p> <p>Reverend Les L. Sauer Executive Committee, California Council of Churches</p> <p>John F. Allard Board Member, National Council of Senior Citizens</p>	<p>United California Taxpayers 1121 L Street, Suite 501 Sacramento, CA 95814 (916) 558-3335</p>	<p>No on 165 Committee 915 L Street, Suite C #111 Sacramento, CA 95814 (916) 449-9633</p>
<p>Richard F. Corlin M.D., President, California Medical Association</p>	<p>Mary E. Foley R.N., President, California Nurses Association</p> <p>Martyn B. Hopper State Director, National Federation of Independent Business/California</p> <p>Lewis K. Uhler President, The National Tax-Limitation Committee</p>	<p>Patty Blomberg Affordable Basic Care Initiative Committee 1201 K Street, Suite 1050 Sacramento, CA 95814 (916) 444-9587</p>	<p>No on 166 Information Center 915 L Street, Suite C240 Sacramento, CA 95814 (800) 446-6166 (800) 44NO-166</p>
<p>Lenny Goldberg Executive Director, California Tax Reform Association</p> <p>Howard Owens President, Congress of California Seniors</p> <p>Dan Terry President, California Professional Firefighters</p>	<p>Jane A. Armstrong State Vice Chairman, Alliance of California Taxpayers and Involved Voters (ACTIV)</p> <p>Lynne Choy Uyeda President, Federation of Minority Business Associations</p> <p>Larry Lutz Former Chair, California Commission on Aging</p>	<p>Lenny Goldberg California Tax Reform Association 926 J Street, Suite 710 Sacramento, CA 95814 (916) 446-4300</p>	<p>Vigo C. Nielsen Californians for Jobs, not More Taxes A Coalition of Taxpayers and Business 591 Redwood Highway, Suite 4000 Mill Valley, CA 94941 (415) 389-6800</p>



**Public Employees' Retirement Systems.  
Initiative Constitutional Amendment.**

Official Title and Summary Prepared by the Attorney General.

**PUBLIC EMPLOYEES' RETIREMENT SYSTEMS.  
INITIATIVE CONSTITUTIONAL AMENDMENT.**

- Grants the board of a public employee retirement system sole and exclusive authority over investment decisions and administration of the system.
- Requires board to administer system so as to assure prompt delivery of benefits to participants and beneficiaries.
- Provides that board's duty to participants and beneficiaries takes precedence over any other duty.
- Grants board sole and exclusive power to provide for actuarial services.
- Prohibits changing number, terms, and method of selection or removal of members of board without approval of voters of the jurisdiction in which participants of the retirement system are employed.

**Summary of Legislative Analyst's**

**Estimate of Net State and Local Government Fiscal Impact:**

- Unknown fiscal effect from giving public pension boards complete authority over assets and administration of the systems.
- Potential costs to employers as a result of public pension system giving highest priority to providing benefits to members and their beneficiaries.
- Annual savings of \$1 million to \$3 million to the state's Public Employees' Retirement System for actuarial services.





## Analysis by the Legislative Analyst

### Background

Public pension systems in California provide retirement benefits to a wide range of state and local government employees—such as teachers, firefighters, and police officers. The largest of these pension systems are the state's Public Employees' Retirement System (PERS) and the State Teachers' Retirement System (STRS). In addition, there are over 100 other public retirement systems that serve counties, cities, special districts, and the University of California.

Funds for payment of retirement benefits under these public retirement systems come from assets held in trust by each system's governing board. These assets include contributions from employees and employers, plus income earned on the investment of these contributions. The members of many public retirement systems elect some members of their governing boards. The State Constitution requires each board to use fund assets to: (1) provide benefits to members of the system and their beneficiaries, (2) minimize employer contributions, and (3) pay reasonable administrative costs.

The Constitution specifies the general authority and responsibilities of public pension systems. Within these limits, the Legislature can change various administrative functions and activities of public pension systems. For example, recent legislation removed the actuarial function from the PERS Board and placed this function under a State Actuary appointed by the Governor and confirmed by the Legislature. (A primary function of the actuary is to determine the employer's annual contribution rate.) In addition, recent legislation also allowed the use of certain PERS assets to offset employer contribution costs.

### Proposal

This measure makes several changes to constitutional provisions related to public retirement systems:

- It gives the board of each public pension system complete authority for administration of the system's assets and for the actuarial function. (This would have the effect of returning the PERS actuarial function to the PERS Board.)
- Each board must continue to provide benefits to members of the system and their beneficiaries, minimize employer contributions, and pay reasonable administrative costs. The measure, however, specifies that each board is to give *highest* priority to providing benefits to members and their beneficiaries.
- The measure specifies that the Legislature cannot

change terms and conditions of board membership (for boards with elected employee members) unless a majority of the persons registered to vote in the jurisdiction of the retirement system approves the change. For example, a change in a county retirement system's board membership would require a countywide vote.

### Fiscal Effect

The measure could have the following fiscal impacts on state and local governments.

**Administration of Assets.** Giving complete authority for administration of public retirement system assets to the governing boards could reduce oversight of these activities by state or local government. This would have an unknown effect on the costs of the systems.

**Actuarial Responsibilities.** The boards of most public retirement systems have the responsibility for the actuarial function. As noted above, the responsibility for this service for PERS was recently transferred to an actuary appointed by the Governor. By returning the function to PERS, this measure would have two fiscal effects. First, there would be annual savings in the range of \$1 million to \$3 million, as it appears that PERS can now perform the task at less cost than an outside actuary. These savings would be realized by all the public employers in the PERS system. Second, there would be an unknown effect on the cost of employer contributions resulting from potentially different assumptions by an actuary responsible to the PERS Board, rather than the Governor.

**Board Responsibility to Pension Members.** The requirement that pension system boards give highest priority to providing benefits to members and their beneficiaries could result in higher costs to employers. As discussed above, providing benefits is currently one of three basic, and equal, responsibilities of the pension boards. Placing benefits as the highest priority could result in higher costs to employers if board decisions increase benefits without equal consideration to the cost for those benefits. These potential costs are unknown, and are dependent on future decisions of pension system boards.

**Vote on Legislative Changes.** The provision requiring a vote within the jurisdiction of a pension system to approve legislative changes to the pension system board could result in increased election-related costs. The average annual costs for these elections, however, probably would not be significant.

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For text of Proposition 162 see page 70

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## Public Employees' Retirement Systems. Initiative Constitutional Amendment.

### Argument in Favor of Proposition 162

Do you believe politicians should be able to raid the pension funds of retirees?

That's exactly what they have done—and will continue to do—unless we pass PROPOSITION 162.

A YES vote on PROPOSITION 162 will prevent politicians from raiding the pension funds of firefighters, police officers and other active and retired public employees.

It's not right to allow politicians to balance their budgets on the backs of seniors and retirees. For many retirees who have worked hard all of their lives, their only source of dignity and security is the pension they earned. They depend on those pensions to survive.

It is morally wrong and unfair to take that away from them. But politicians keep doing it.

And let's face it—if the politicians are allowed to raid public pension funds today, private pension funds will be next. The big difference is that taxpayers are ultimately responsible for public pensions. And that means taxpayers will be socked if huge future tax increases are

needed to pay back *tomorrow* the funds politicians loot from public pension funds *today*.

That's why senior citizens, taxpayer groups and active and retired people throughout California are united in support of PROPOSITION 162.

Is it any wonder that more than 1.2 MILLION of our neighbors signed petitions to place PROPOSITION 162 on the ballot?

The politicians won't do the right thing, but we can! Vote YES on PROPOSITION 162.

**CHARLES CARBONARO**  
*Chairman, California State Legislative Committee  
American Association of Retired Persons (AARP)*

**PETER J. KANELOS**  
*Executive Director,  
Responsible Voters for Lower Taxes (REVOLT)*

**CLIFFORD F. HASKELL**  
*Retired Firefighter*

### Rebuttal to Argument in Favor of Proposition 162

**PROPOSITION 162 DOESN'T PROVIDE  
ADDITIONAL PROTECTION AGAINST PENSION  
RAIDS.**

The California Constitution already protects public pensions. And the idea that only "politicians" raid pensions is ludicrous: State retirement boards took nearly a billion dollars out of state pension investments in the 1980s, to fund a special reserve account. Proposition 162 does nothing to stop these bureaucrats from conducting their own "raids."

**PROPOSITION 162 IS TOO RISKY.**

The state pension board has already been caught making bad investments: they have invested millions in junk bonds and speculated in risky real estate ventures. Proposition 162 would give these boards even more independence. That's a risk we are simply not prepared to take.

**PROPOSITION 162 ENDS TAXPAYER OVERSIGHT.**

Pension boards currently have to balance the interests

of taxpayers with those of retirees. This is only fair, since nearly \$5 billion a year in tax dollars go toward public pension funds. Proposition 162 destroys this balance, and instead requires pension boards to make increased benefits their number one priority, regardless of taxpayer cost. Next, Proposition 162 takes away nearly all authority of the executive and legislative branches to oversee pension board decisions. So taxpayers would have no way to keep these boards accountable for their actions.

**REJECT THE SLICK CLAIMS BEHIND  
PROPOSITION 162. PROTECT PENSIONS AND  
TAXPAYERS BY VOTING NO ON 162.**

**RICHARD GANN**  
*President, Paul Gann Citizens Committee*

**LARRY MCCARTHY**  
*President, California Taxpayers Association*

# Public Employees' Retirement Systems. Initiative Constitutional Amendment.

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## Argument Against Proposition 162

Proposition 162 doesn't protect pensions, it protects the bureaucrats who have failed to curb rampant fraud and abuse in state and local government retirement systems.

Voting NO on Proposition 162 is the only way to PROTECT PENSIONS AND TAXPAYERS.

State auditors in 1990 found pension abuse in 75% of cities studied—including one case where a former city manager was collecting a \$139,000 annual pension when his top salary was only \$89,000. The Legislature quickly authorized state pension officials to hire six new auditors—but more than a year later, NOT ONE NEW AUDITOR HAD BEEN HIRED.

STATE RETIREMENT BOARD MEMBERS INVESTED IN JUNK BONDS, ACCEPTED TRAVEL JUNKETS AND WERE WINED AND DINED BY SPECIAL INTERESTS, AND FAILED TO SPOT OUTRAGEOUS FRAUD.

Proposition 162 would give the bureaucrats at the heart of this scandal more independence and more power—and make it harder for taxpayers to ensure these retirement funds are properly managed.

PROPOSITION 162 ENDS TAXPAYER OVERSIGHT OF STATE RETIREMENT BOARDS. Last year, in the middle of a recession and a budget crisis, the PERS board voted to pay its top bureaucrat \$110,000 a year. The State Controller blocked this pay increase, but would have no authority to stop other outrageous salary hikes if Proposition 162 becomes law.

Proposition 162 would end the mandatory use of outside independent experts—called actuaries—to review the amount of money taxpayers pay into the state retirement system. Proposition 162 would take away this independent voice in determining taxpayer contributions to the nation's largest pension fund. THAT'S JUST TOO RISKY.

And Proposition 162 also dictates that retirement

boards alone would have absolute authority to determine the amount of money taxpayers must contribute to state, school and local government retirement funds each year. Retirement boards would be able to demand from taxpayers excessive contributions when the retirement system is overfunded. And in future budget crises, retirement costs could soar while vital public services are cut to the bone.

BY TAKING MORE TAX DOLLARS THAN NECESSARY, RETIREMENT BOARDS COULD FORCE MORE TAX INCREASES ON CALIFORNIA.

The interests of taxpayers and state and local government retirees are balanced carefully under current law. But Proposition 162 upsets that balance, and the taxpayers end up losing.

Proposition 162 requires retirement boards to make providing or increasing benefits their number one priority, regardless of the costs to the taxpayers. A majority of contributions to the pension fund comes from the taxpayers each year. PROPOSITION 162 WOULD REQUIRE A PENSION BOARD TO DISREGARD THE INTERESTS OF TAXPAYERS.

Bureaucrats have long employed scare tactics to get more money from the taxpayers, and Proposition 162 is based upon a colossal and phony claim that public pension funds are at risk. They are not. State and local government pensions are already protected by California's Constitution. And this initiative does not change any existing constitutional protections of retirement funds.

Vote no on Proposition 162.

LARRY MCCARTHY  
President, California Taxpayers' Association

RICHARD L. GANN  
President, Paul Gann's Citizens Committee

## Rebuttal to Argument Against Proposition 162

Opponents of Proposition 162 are trying to mislead the voters.

The central purpose of this measure is to STOP POLITICIANS FROM USING PUBLIC PENSION FUNDS TO BAIL THEM OUT WHEN THEY FAIL TO KEEP GOVERNMENT SPENDING UNDER CONTROL. Pension funds should be used to provide promised benefits for retired workers, not as a slush fund for politicians.

Proposition 162 has nothing to do with auditors who investigate alleged pension abuse. In fact, state pension officials were unable to hire more auditors because the politicians delayed funding for the positions.

Nor does Proposition 162 have anything to do with retirement benefit levels. Only legislative bodies elected by voters and voters themselves have the power to set benefit levels.

PROPOSITION 162 does have something to do with taxes. It prevents taxpayers from being gouged in the future to pay back pension money looted by politicians.

Seniors and taxpayer groups who have carefully read Proposition 162 agree that *the real issues are protecting pension funds and taxpayer dollars.*

Pension fund security is crucial to retired workers who are struggling to pay for food, shelter and health care.

And preventing pension raids is crucial to all taxpayers to avoid future tax increases that would be needed to pay back the money taken by politicians.

Because politicians have repeatedly tried to loot hundreds of millions of dollars from public pension systems, Proposition 162 is needed to KEEP POLITICIANS' HANDS OUT OF THE TILL.

Vote Yes on Proposition 162.

DERRELL KELCH  
President, California Seniors Coalition

PETER J. KANELOS  
Executive Director,  
Responsible VOTer for Lower Taxes (REVOLT)



STATEMENT OF WITNESSES

I declare under penalty of perjury under the laws of California that the person who signed or acknowledged this document is personally known to me (or proved to me on the basis of satisfactory evidence) to be the declarant of this Directive; that he or she signed and acknowledged this Directive in my presence, that he or she appears to be of sound mind and under no duress, fraud, or undue influence; that I am not the attending physician, an employee of the attending physician, a health care provider, an employee of a health care provider, the operator of a community care facility, or an employee of an operator of a community care facility.

I further declare under penalty of perjury under the laws of California that I am not related to the declarant by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law, and have no claim nor anticipate making a claim against any portion of the estate of the declarant upon his or her death.

Dated: \_\_\_\_\_
Witness's Signature: \_\_\_\_\_
Print Name: \_\_\_\_\_
Residence Address: \_\_\_\_\_
Dated: \_\_\_\_\_
Witness's Signature: \_\_\_\_\_
Print Name: \_\_\_\_\_
Residence Address: \_\_\_\_\_

STATEMENT OF PATIENT ADVOCATE OR OMBUDSMAN

(If you are a patient in a skilled nursing facility, one of the witnesses must be a Patient Advocate or Ombudsman. The following statement is required only if you are a patient in a skilled nursing facility, a health care facility that provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. The Patient Advocate or Ombudsman must sign the "Statement of Witnesses" above AND must also sign the following statement.)

I further declare under penalty of perjury under the laws of California that I am a Patient Advocate or Ombudsman as designated by the State Department of Aging and that I am serving as a witness as required by Section 2525.4 of the California Civil Code.

Signed: \_\_\_\_\_

SEC. 2. PENAL CODE AMENDMENT

Section 401 of the Penal Code is amended to read:

401. Suicide, aiding, advising or encouraging. Every person who deliberately aids, or advises, or encourages another to commit suicide, is guilty of a felony. Death resulting from a request for aid-in-dying pursuant to Title 10.5 (commencing with Section 2525) of Division 3 of Part 4 of the Civil Code shall not constitute suicide, nor is a licensed physician who lawfully administers aid-in-dying or a health care provider or licensed health care professional acting under the direction of a physician, liable under this section. Death resulting from aid-in-dying pursuant to a Directive in accordance with the Death With Dignity Act does not, for any purpose, constitute a homicide.

SEC. 3. AMENDMENT OF INITIATIVE

This Act may be amended only by a statute passed by a two-thirds vote of each house of the legislature and signed by the Governor.

Proposition 162: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure expressly amends the Constitution by amending a section thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

The California Pension Protection Act of 1992

Section One. Title. This act shall be known and may be cited as "The California Pension Protection Act of 1992."

Section Two. Findings and Declarations. The People of the State of California hereby find and declare as follows:

(a) Retired citizens depend upon their pension benefits to meet basic necessities such as food and shelter during their retirement years. For many elderly citizens who are not eligible to participate in Social Security, pension benefits are their sole source of financial support and security.

(b) Teachers, firefighters, police officers and other local, school and state employees depend on promised pension benefits, which must be protected from political abuse and misappropriation.

(c) Politicians have undermined the dignity and security of all citizens who depend on pension benefits for their retirement by repeatedly raiding their pension funds.

(d) Political meddling has driven the federal Social Security system to the brink of bankruptcy. To protect the financial security of retired Californians, politicians must be prevented from meddling in or looting pension funds.

(e) Raids by politicians on public pension funds will burden taxpayers with massive tax increases in the future.

(f) To protect pension systems, retirement board trustees must be free from political meddling and intimidation.

(g) The integrity of our public pension systems demands that safeguards be instituted to prevent political "packing" of retirement boards, and encroachment upon the sole and exclusive fiduciary powers or infringement upon the actuarial duties of those retirement boards.

(h) In order to protect pension benefits and to avoid the prospect of higher taxes, the People must act now to shield the pension funds of this state from abuse, plunder and political corruption.

Section Three. Purpose and Intent. The People of the State of California hereby declare that their purpose and intent in enacting this measure is as follows:

(a) To protect pension funds so that retirees and employees will continue to be able to enjoy a basic level of dignity and security in their retirement years.

(b) To give voters the right to approve changes in the composition of retirement boards containing elected retirees or employee members.

(c) To protect the taxpayers of this state against future tax increases which will be required if state and local politicians are permitted to divert public pension funds to other uses.

(d) To ensure that the assets of public pension systems are used exclusively for

the purpose of efficiently and promptly providing benefits and services to participants of these systems, and not for other purposes.

(e) To give the sole and exclusive power over the management and investment of public pension funds to the retirement boards elected or appointed for that purpose, to strictly limit the Legislature's power over such funds, and to prohibit the Governor or any executive or legislative body of any political subdivision of this state from tampering with public pension funds.

(f) To ensure that all actuarial determinations necessary to safeguard the competency of public pension funds are made under the sole and exclusive direction of the responsible retirement boards.

(g) To affirm the legal principle that a retirement board's duty to its participants and their beneficiaries takes precedence over any other duty.

Section Four. Section 17 of Article XVI of the California Constitution is hereby amended to read as follows:

SEC. 17. The State shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association, or corporation, except that the State and each political subdivision, district, municipality, and public agency thereof is hereby authorized to acquire and hold shares of the capital stock of any mutual water company or corporation when the stock is so acquired or held for the purpose of furnishing a supply of water for public, municipal or governmental purposes; and the holding of the stock shall entitle the holder thereof to all of the rights, powers and privileges, and shall subject the holder to the obligations and liabilities conferred or imposed by law upon other holders of stock in the mutual water company or corporation in which the stock is so held.

Notwithstanding any other provisions of law or this Constitution to the contrary in this section and Section 6 of Article XVI, the Legislature may authorize the retirement board of a public pension or retirement system shall have plenary authority and fiduciary responsibility for investment of moneys and administration of any public pension or retirement the system, subject to all of the following:

(a) The retirement board of a public pension or retirement system shall have the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system. The retirement board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries. The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system.

(b) The fiduciary members of the retirement board of the a public pension or retirement system shall discharge his or her their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty.

(c) The fiduciary members of the retirement board of a public pension or retirement system shall discharge his or her duties with respect to the system with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

(d) The fiduciary members of the retirement board of a public pension or retirement system shall diversify the investments of the system so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so.

(e) The retirement board of a public pension or retirement system, consistent with the exclusive fiduciary responsibilities vested in it, shall have the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the public pension or retirement system.

(f) With regard to the retirement board of a public pension or retirement system which includes in its composition elected employee members, the number, terms, and method of selection or removal of members of the retirement board which were required by law or otherwise in effect on July 1, 1991, shall not be changed, amended, or modified by the Legislature unless the change, amendment, or modification enacted by the Legislature is ratified by a majority vote of the electors of the jurisdiction in which the participants of the system are or were, prior to retirement, employed.

(g) The Legislature may by statute continue to prohibit certain investments by a retirement board where it is in the public interest to do so, and provided that the prohibition satisfies the standards of fiduciary care and loyalty required of a retirement board pursuant to this section.

(h) As used in this section, the term "retirement board" shall mean the board of administration, board of trustees, board of directors, or other governing body or board of a public employees' pension or retirement system; provided, however, that the term "retirement board" shall not be interpreted to mean or include a governing body or board created after July 1, 1991 which does not administer pension or retirement benefits, or the elected legislative body of a jurisdiction which employs participants in a public employees' pension or retirement system.

Section Five. Liberal Interpretation. The provisions of this act shall be liberally interpreted to effect their purposes.

Section Six. Conflicting Law. In the event that this measure and another measure or measures relating to the public pension and retirement systems of this state, or any of them, shall appear on the statewide general election ballot on November 3, 1992, the provisions of these measures shall be deemed to be in conflict. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety and the provisions of the other measure or measures shall be null and void. In the event that the other measure or measures shall receive a greater number of affirmative votes, the provisions of this measure shall take effect to the extent permitted by law.

Section Seven. Severability. If any provision of this act shall be found or held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, such invalidity or unconstitutionality shall not affect the remaining provisions of this measure, and to this end the provisions of this measure are severable.

Section Eight. Effective Date. This act shall take effect immediately upon certification of the official canvass by the Secretary of State.

### Proposition 163: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure expressly amends the Constitution by adding a section thereto, and amends a section of the Revenue and Taxation Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added printed in *italic type* to indicate that they are new.

#### PROPOSED LAW

SECTION 1. Section 34 is added to Article XIII of the California Constitution, to read:

*SEC. 34. Neither the State of California nor any of its political subdivisions shall levy or collect a sales or use tax on the sale of, or the storage, use or other consumption in this State of food products for human consumption except as provided by statute as of the effective date of this section.*

SEC. 2. Section 6359 of the Revenue and Taxation Code, as amended by Chapter 88 of the Statutes of 1991, is amended to read:

6359. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of food products for human consumption.

(b) For the purposes of this section, "food products" include all of the following:

(1) Cereals and cereal products, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, ~~other than candy or gum, confectionery, coffee and coffee substitutes, tea, and cocoa and cocoa products; other than candy or confectionery.~~

(2) Milk and milk products, milkshakes, malted milks, and any other similar type beverages which are composed at least in part of milk or a milk product and which require the use of milk or a milk product in their preparation.

(3) All fruit juices, vegetable juices, and other beverages, whether liquid or frozen, ~~except including bottled water, but excluding spirituous, malt or vinous liquors or carbonated beverages.~~

(c) For purposes of this section, "food products" do not include any of the following:

(1) Medicines, medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts.

(2) Snack foods. For purposes of this section, "snack foods" means cookies, crackers (excluding soda, graham, and arrowroot crackers), potato chips, snack cakes or pies, corn or tortilla chips, pretzels, granola snacks, popped popcorn, fabricated chips, and fabricated snacks. "Snack foods" include only items that are sold in a condition suitable for consumption without further processing such as cooking, heating, or thawing.

(d) None of the exemptions provided for in this section apply to any of the following:

(1) When the food products are served as meals on or off the premises of the retailer.

(2) When the food products are furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware whether provided by the retailer or by a person with whom the retailer contracts to furnish, prepare, or serve food products to others.

(3) When the food products are ordinarily sold for immediate consumption on or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the location, even though such products are sold on a "take out" or "to go" order and are actually packaged or wrapped and taken from the premises of the retailer.

(4) When the food products are sold for consumption within a place, the entrance to which is subject to an admission charge, except for national and state parks and monuments, marinas, campgrounds, and recreational vehicle parks.

(5) When the food products are sold through a vending machine.

(6) When the food products sold are furnished in a form suitable for consumption on the seller's premises, and both of the following apply:

(A) Over 80 percent of the seller's gross receipts are from the sale of food products.

(B) Over 80 percent of the seller's retail sales of food products are sales subject to tax pursuant to paragraph (1), (2), (3), or (7).

(7) When the food products are sold as hot prepared food products.

(e) "Hot prepared food products," for the purposes of paragraph (7) of subdivision (d), include a combination of hot and cold food items or components where a single price has been established for the combination and the food products are sold in such combination, such as a hot meal, a hot specialty dish or serving, or a hot sandwich or a hot pizza, including any cold components or side items. Paragraph (7) of subdivision (d) shall not apply to a sale for a separate price of bakery goods or beverages (other than bouillon, consommé, or soup), or where the food product is purchased cold or frozen; "hot prepared food products" means those products, items, or components which have been prepared for sale in a heated condition and which are sold at any temperature which is higher than the air temperature of the room or place where they are sold.

(f) The amendments to this section by the act adding this subdivision shall become operative on July 15, 1991.

SEC. 3. Section 2 of this act shall take effect December 1, 1992. Section 1 of this act shall take effect January 1, 1993.

SEC. 4. The provisions of Section 1 of this act shall supersede all provisions of this Constitution and laws enacted thereunder in conflict therewith.

SEC. 5. If any provision of this measure, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable.