

(H.J.R. 6)

CONSTITUTIONAL AMENDMENT A

JOINT RESOLUTION ON SEVERANCE TAX

2012 GENERAL SESSION

SENATE: 26-1-2
HOUSE: 54-17-4

BALLOT TITLE

FOR

AGAINST

Shall the Utah Constitution be amended to require a portion of the revenue from all of the state's severance taxes, excluding severance tax revenue used for Indian tribes, to be deposited into the permanent state trust fund beginning July 1, 2016?

IMPARTIAL ANALYSIS

CURRENT PROVISIONS OF THE UTAH STATE CONSTITUTION

Constitutional Amendment A requires a portion of the state's severance tax revenue to be deposited into an existing permanent state trust fund beginning July 1, 2016. The severance tax revenue subject to deposit into the trust fund does not include severance tax revenue that state law designates for use by Indian tribes.

Permanent state trust fund

There currently exists a permanent state trust fund, which was established under a 2001 amendment to the Utah Constitution. As provided in the Utah Constitution, money deposited into the trust fund may not be removed from the fund unless approved by the governor and three-fourths of the Senate and House of Representatives. Money in the trust fund is required to be invested for the benefit of the people of the state. Income earned on money in the fund is required to be deposited into the state's General Fund to be used for general state purposes, as determined by the Legislature.

Severance tax

Under current Utah law, the state imposes and collects a tax, called a severance tax, on those who remove oil, gas, or minerals from land within the state. The tax is based on the amount of oil, gas, or minerals removed. Some of the severance tax revenue generated from oil and gas removed from Indian lands is set aside to be used for the benefit of Indian tribes in the state. The remainder of severance tax revenue is placed in the state's General Fund to be used for general state purposes.

The total amount of severance tax revenue over the past ten years, not including the revenue used for Indian tribes averages about \$70 million annually. State law currently requires annual severance tax revenue exceeding a threshold of about \$105 million to be deposited into the permanent state trust fund. In 2009, about \$23 million of severance tax revenue was deposited into the trust fund under that requirement and a lower threshold then in effect.

Currently the use of severance tax revenue is governed by statute enacted by the Legislature. The Utah Constitution does not mention severance taxes or specify how revenue from severance taxes is to be used.

EFFECT OF CONSTITUTIONAL AMENDMENT A

Constitutional Amendment A requires a portion of the state's annual severance tax revenue, excluding severance tax revenue used for Indian tribes, to be deposited into the permanent state trust fund beginning July 1, 2016. The portion to be deposited into the trust fund is 25% of the first \$50 million of annual severance tax revenue, 50% of the next \$50 million, and 75% of all severance tax revenue over \$100 million. By requiring that portion of severance tax revenue to be

CONSTITUTIONAL AMENDMENT A (CONTINUED)

deposited into the permanent state trust fund rather than into the state's General Fund, the Amendment restricts the ability of the Legislature to determine how that portion of the state's annual severance tax revenue is to be used.

EFFECTIVE DATE

If approved by voters, Constitutional Amendment A becomes effective January 1, 2013.

FISCAL IMPACT

Under Constitutional Amendment A, some severance tax revenue that would have been deposited into the state's General Fund will be deposited instead into the permanent state trust fund. Total General Fund revenue is therefore reduced in any fiscal year by the amount of severance tax revenue deposited into the permanent state trust fund during that year. Once that revenue is in the permanent state trust fund, it is invested to generate income. Any income generated is required to be deposited into the state's General Fund. The income deposited into the General Fund, therefore, acts to offset any reduction to the General Fund that results from severance tax revenue being deposited into the permanent state trust fund.

Based on current estimates of future annual severance tax revenue and assuming that the amount remains constant, approximately \$36 million of severance tax revenue will be deposited annually into the permanent state trust fund beginning July 1, 2016. That \$36 million annual deposit into the permanent state trust fund will result in an annual decrease of that amount to the state's General Fund. The amount of that annual decrease will diminish over time as income on trust fund money increases. By 2044, the decrease in General Fund revenue resulting from annual severance tax revenue deposits into the permanent state trust fund will be eliminated, because income on trust fund money being deposited into the General Fund will equal or exceed the amount of severance tax revenue being deposited into the permanent state trust. These calculations are based on an assumed 3.5% annual rate of return on money in the permanent state trust fund.

ARGUMENT FOR

The bipartisan supporters of Constitutional Amendment A believe Utah's natural resources belong to all generations, not just ours. A vote FOR Constitutional Amendment A is a vote FOR investing a portion of our natural-resource revenues for future generations.

Utah collects severance taxes on oil, gas, and minerals extracted from our lands. States like Wyoming and New Mexico do the same. For decades they've invested a portion of those revenues. Today they each have funds worth billions. By comparison, Utah's trust fund amounts to \$120 million—barely more than a year's worth of severance taxes.

Today, rather than add to our investment fund, we spend what we collect each year. This is unwise on two counts:

1. Revenues rise and fall sharply as commodity prices and extraction activities fluctuate. Spending all of our severance tax receipts when revenues are up leads to program cutbacks when revenues decline.
2. Severance taxes come from non-renewable resources. One day, non-renewable resources and associated revenues will shrink and ultimately disappear. At that point, if we haven't invested any severance tax revenues for them, future generations will do without.

When 66% of voters approved a similar amendment in 2008, our goal in doing so was to increase our investments for future generations. Unfortunately, that is not happening. The 2008 amendment allowed Utah to invest severance tax revenues into the Permanent State Trust Fund. An associated statute required that combined severance taxes in excess of \$98.6 million annually be invested in the trust fund. Once invested, fund earnings could be used, but principal could be spent only in case of emergency, with concurrence of three-fourths of both House and Senate, plus the Governor.

Undoing the intent of the voters in 2008, the 2011 Legislature increased the total allocated for annual spending to \$104.6 million. As a result, we spend everything and invest nothing. It only took a simple majority to enact this 2011 formula change. The same could readily happen again without Constitutional Amendment A.

CONSTITUTIONAL AMENDMENT A (CONTINUED)

ARGUMENT FOR (CONTINUED)

In keeping with the will of the voters, Constitutional Amendment A does the following:

- Invests a set portion of all severance taxes directly into the trust fund. Earnings will benefit each future generation increasingly.
- Establishes a base investment formula that can't be changed by a simple majority of the Legislature.
- Delays the effective date of the investment formula until FY 2017 to allow phased implementation.
- Continues the trust fund's role as a very secure reserve, backing up our rainy day funds, which can be tapped only in case of emergency with supermajority approval.

One day Utah's severance taxes will be gone. We owe it to the generation that will experience this decrease in revenue to start planning today. Join us in voting for Constitutional Amendment A to save some of our severance tax dollars. If we truly are the best-managed state in the union, it is time to invest in our children's future.

Representative Jim Nielson
Sponsor

Senator Lyle Hillyard
Senate Sponsor

ARGUMENT AGAINST

Utah typically sets aside part of the revenue generated from natural resource extraction for future use. The amount of these funds, which are deposited into the Permanent Trust Fund, will grow substantially as oil and gas prices rise in coming years.

Utah also has boosted its Rainy Day Funds by tens of millions of dollars every year that a budget surplus exists. The success of Utah's planning for the future was evident during the recession. The balance of the Rainy Day Funds never dropped below \$209 million –50% of its all-time record high. This provided a financial cushion to the state.

This recent experience illustrates that Utah already embraces a prudent approach to budgeting. This approach allows lawmakers to balance pressing current needs with concern for the future, and to quickly make adjustments as conditions change.

Constitutional Amendment A would upset this balance, permanently reducing Utah's ability to address economic downturns. Should this measure be approved, the next time the state faces an unforeseen downturn it could be forced to either raise taxes or make deeper cuts in critical services affecting neighborhood schools, universities, state parks, courts, and the Utah Highway Patrol.

The current constitutional language – approved by voters in 2008 – allows public officials to assess existing conditions, listen to the views of their constituents, and make careful decisions about the appropriate balance between Utah's current and future needs.

Vote NO on Constitutional Amendment A. Utah will benefit from maintaining flexibility as it faces the economic challenges of the future.

Representative David Litvack
Minority Leader, Utah House of Representatives

CONSTITUTIONAL AMENDMENT A (CONTINUED)

COMPLETE TEXT CONSTITUTIONAL AMENDMENT A

JOINT RESOLUTION ON SEVERANCE TAX 2012 GENERAL SESSION

UTAH CONSTITUTION SECTIONS AFFECTED:

AMENDS:

ARTICLE XIII, SECTION 5

ARTICLE XXII, SECTION 4

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

Section 1. It is proposed to amend Utah Constitution Article XIII, Section 5, to read:

Article XIII, Section 5. [Use and amount of taxes and expenditures.]

- (1) The Legislature shall provide by statute for an annual tax sufficient, with other revenues, to defray the estimated ordinary expenses of the State for each fiscal year.
- (2) (a) For any fiscal year, the Legislature may not make an appropriation or authorize an expenditure if the State's expenditure exceeds the total tax provided for by statute and applicable to the particular appropriation or expenditure.
(b) Subsection (2)(a) does not apply to an appropriation or expenditure to suppress insurrection, defend the State, or assist in defending the United States in time of war.
- (3) For any debt of the State, the Legislature shall provide by statute for an annual tax sufficient to pay:
 - (a) the annual interest; and
 - (b) the principal within 20 years after the final passage of the statute creating the debt.
- (4) Except as provided in Article X, Section 5, Subsection (5)(a), the Legislature may not impose a tax for the purpose of a political subdivision of the State, but may by statute authorize political subdivisions of the State to assess and collect taxes for their own purposes.
- (5) All revenue from taxes on intangible property or from a tax on income shall be used to support the systems of public education and higher education as defined in Article X, Section 2.
- (6) Proceeds from fees, taxes, and other charges related to the operation of motor vehicles on public highways and proceeds from an excise tax on liquid motor fuel used to propel those motor vehicles shall be used for:
 - (a) statutory refunds and adjustments and costs of collection and administration;
 - (b) the construction, maintenance, and repair of State and local roads, including payment for property taken for or damaged by rights-of-way and for associated administrative costs;
 - (c) driver education;
 - (d) enforcement of state motor vehicle and traffic laws; and
 - (e) the payment of the principal of and interest on any obligation of the State or a city or county, issued for any of the purposes set forth in Subsection (6)(b) and to which any of the fees, taxes, or other charges described in this Subsection (6) have been pledged, including any paid to the State or a city or county, as provided by statute.
- (7) Fees and taxes on tangible personal property imposed under Section 2, Subsection (6) of this article are not subject to Subsection (6) of this Section 5 and shall be distributed to the taxing districts in which the property is located in the same proportion as that in which the revenue collected from real property tax is distributed.
- (8) A political subdivision of the State may share its tax and other revenues with another political subdivision of the State as provided by statute.
- (9) Beginning July 1, 2016, the aggregate annual revenue from all severance taxes, as those taxes are defined by statute, except revenue that by statute is used for purposes related to any federally recognized Indian tribe, shall be deposited annually into the permanent State trust fund under Article XXII, Section 4, as follows:
 - (a) 25% of the first \$50,000,000 of aggregate annual revenue;
 - (b) 50% of the next \$50,000,000 of aggregate annual revenue; and
 - (c) 75% of the aggregate annual revenue that exceeds \$100,000,000.

Section 2. It is proposed to amend Utah Constitution Article XXII, Section 4, to read:

Article XXII, Section 4. [State trust fund -- Principal to be held in perpetuity -- Use of income.]

- (1) There is established a permanent state trust fund consisting of:
 - (a) as provided by statute or appropriation, funds that the state receives relating to the November 1998 settlement agreement with leading tobacco manufacturers;
 - (b) money or other assets given to the fund under any provision of law; [and]

CONSTITUTIONAL AMENDMENT A (CONTINUED)

(c) severance tax revenue, as provided in Article XIII, Section 5, Subsection (9); and

~~[(e)]~~ *(d) other funds and assets that the trust fund receives by bequest or private donation.*

(2) Except as provided in Subsection (4), the state treasurer shall, as provided by statute, hold all trust funds and assets in trust and invest them for the benefit of the people of the state in perpetuity.

(3) The income from the state trust fund shall be deposited into the General Fund.

(4) With the concurrence of the governor and three-fourths of each house of the Legislature, funds or assets in the trust fund may be removed from the fund for deposit into the General Fund.

Section 3. **Submittal to voters.**

The lieutenant governor is directed to submit this proposed amendment to the voters of the state at the next regular general election in the manner provided by law.

Section 4. **Effective date.**

If the amendment proposed by this joint resolution is approved by a majority of those voting on it at the next regular general election, the amendment shall take effect on January 1, 2013.