



9-1-2016

Proposition 55: Tax Extension to Fund Education and Healthcare

Anam Hasan

University of the Pacific, McGeorge School of Law

Melerie Michael

University of the Pacific, McGeorge School of Law

Follow this and additional works at: <http://scholarlycommons.pacific.edu/california-initiative-review>



Part of the [Legislation Commons](#)

Recommended Citation

Hasan, Anam and Michael, Melerie (2016) "Proposition 55: Tax Extension to Fund Education and Healthcare," *California Initiative Review (CIR)*: Vol. 2016, Article 6.

Available at: <http://scholarlycommons.pacific.edu/california-initiative-review/vol2016/iss1/6>

This Article 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 California Initiative Review (CIR) by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

**Proposition 55:
Tax Extension to Fund Education and Healthcare.**

Initiative Constitutional Amendment

Copyright © 2016 by the University of the Pacific, McGeorge School of Law

By

Anam Hasan

*J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2017
B.A., Political Science and minor in Professional Writing, University of California, Davis, 2010*

&

Melerie Michael

*J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2017
B.A., Political Science, University of California, Irvine, 2011*

I. EXECUTIVE SUMMARY

Proposition 55 seeks to extend the Proposition 30 income taxes for 12 years. The revenue generated from income taxes can only be used to fund K-12 public schools, community colleges, healthcare, and the “Rainy Day” Fund.

A “yes” vote extends Proposition 30’s personal income tax increases on incomes over \$250,000 for a period of 12 years to fund education and health care.

A “no” vote opposes extending Proposition 30’s personal tax increases on incomes over \$250,000 for a period of 12 years to fund education and health care.

II. LAW

A. Existing Law

1. *California’s Budget*

The California Constitution requires the State to annually spend a minimum percentage of the State’s General Fund on K-12 schools and community colleges. These are pulled from tax revenues generated and deposited into the General Fund.¹ The General Fund’s three main sources of tax revenues are from Californians’ personal income taxes, sales taxes, and corporate income taxes.² Personal income taxes consist of two-thirds of all of the General Fund’s revenues, and include taxes assessed on salaries, wages, interest income, and profits from sales of stocks and other assets. California has several marginal tax rates³ for personal income taxes.⁴ Property taxes are also collected by the State and distributed to local governments for purposes such as K-12 education and community colleges.⁵

¹ CAL. CONST. art. XVI, § 10.

² CAL. CONST. art. XVI, § 8.

³ A marginal tax rate is the amount of tax paid on an additional dollar of income. The marginal tax rate for an individual will increase as income rises. This method of taxation aims to fairly tax individuals based upon their earnings, with low income earners being taxed a lower rate than higher income earners. Tax payers are divided into tax brackets or ranges, which determine the rate applied to the taxable income of the tax filer. *Marginal Tax Rates*, LIBRARY OF ECONOMICS AND LIBERTY, available at <http://www.econlib.org/library/Enc/MarginalTaxRates.html> (last visited Oct. 6, 2016).

⁴ *2015 California Income Tax Brackets*, TAX BRACKETS, available at <https://www.tax-brackets.org/californiatable> (last visited Oct. 6, 2016).

⁵ *Understanding California’s Property Taxes*, LEGISLATIVE ANALYST’S OFFICE (Nov. 29, 2012), available at <http://www.lao.ca.gov/reports/2012/tax/property-tax-primer-112912.aspx>.

Over half of the State's budget is distributed to K-12 schools, community colleges, and public universities.⁶ In 2015, K-12 schools received approximately \$45,000 per pupil from the State's General Fund.⁷

The amount of funds from the budget allocated to education purposes is based on several factors including the health of the economy and student attendance in schools.⁸ Another quarter of the State's budget is allocated for health and human service programs, such as California's Medicaid Program (Medi-Cal).⁹

The Finance Director is responsible for calculating the revenues that fund public schools and community colleges for a single fiscal year.¹⁰ The Finance Director is the chief financial policy advisor to the Governor who also prepares the Governor's budget. The Finance Director issues guidelines and instructions for budget preparation to agencies and departments.¹¹ The Finance Director is required to submit to the Legislature estimates of the General Fund revenues and expenditures for the ensuing fiscal year and for the three fiscal years afterwards.¹² The Constitution prohibits the Legislature from crafting, and the Governor from signing, any budget bill that exceeds the General Fund revenues for that fiscal year.¹³ Moreover, projected expenditures cannot exceed projected revenues for the ensuing fiscal year.¹⁴

Incremental budgeting is the basic approach used to budget California's wealth. This process involves using the current department level of funding as a base amount to be adjusted by budget change proposals.¹⁵ State agencies submit proposals for budget changes to the Department of Finance for review and analysis.¹⁶

The Constitution also requires a portion of General Fund revenue to be set aside for debt payments and budget reserves in the Budget Stabilization Fund—commonly referred to as California's "Rainy Day" fund.¹⁷ The Rainy Fund, which was passed through the initiative

⁶ CAL. CONST. art. XVI, § 8.

⁷ *Education Budget*, CALIFORNIA DEPARTMENT OF EDUCATION (Aug. 29, 2016), <http://www.cde.ca.gov/fg/fr/eb/cefedbudget.asp> (last visited Oct. 6, 2016).

⁸ CAL. CONST. art. XVI, § 8.5 (a)(1)-(2)(c); *Proposition 98-How does it work?*, CITY COLLEGE OF SAN FRANCISCO, http://www.ccsf.edu/dam/Organizational_Assets/About_CCSF/Admin/Governmental_Relations/Proposition98_The_Tests.pdf (last visited Oct. 6, 2016).

⁹ *California State Spending Pie Chart*, USGOVERNMENTSPENDING, http://www.usgovernmentspending.com/California_state_spending_pie_chart (last visited Oct. 6, 2016).

¹⁰ CAL. CONST. art. XVI, § 21 (b).

¹¹ *California's Budget Process*, DEPARTMENT OF FINANCE, http://www.dof.ca.gov/budget/Budget_Process/index.html (last visited Oct. 6, 2016).

¹² CAL. CONST. art. IV, § 12.5 (a)-(b).

¹³ *California's Budget Process*, DEPARTMENT OF FINANCE, http://www.dof.ca.gov/budget/Budget_Process/index.html (last visited Oct. 6, 2016).

¹⁴ *Id.*

¹⁵ *Budget Practices and State Expenditures: Lessons for California*, PUBLIC POLICY INSTITUTE OF CALIFORNIA, http://www.ppic.org/content/pubs/report/R_307JCR.pdf (last visited October 15, 2016).

¹⁶ *Id.*

¹⁷ CAL. CONST. art. XVI, § 20.

process as Proposition 58 in 2004, and then amended by Proposition 2 in 2004, is a government fund to reduce the State debt, except during budget emergencies.¹⁸ Funds may only be used when the Governor declares a budget emergency and the Legislature authorizes spending from the Fund.¹⁹

The Budget Stabilization Act requires the Controller to deposit 1.5 percent of estimated general revenue funds annually into the reserves for that fiscal year.²⁰ It also requires the Controller to deposit an amount equal to the revenues gained from capital gains-related taxes from businesses that are in excess of the 8 percent of general fund revenues.²¹ When the State is able to collect enough of the general fund revenues for the year, extra money will go to the reserve. In addition to storing funds during low economic times, the Rainy Day Fund is used by the Finance Director to assess whether additional tax increases are needed to stabilize the budget and to complement the State budget when revenues are low.²² Additionally, the Rainy Day Fund reserves money for public schools and imposes a cap on the amount of funding school districts may have in their own reserves.²³

2. *Proposition 30 (2012)*

Proposition 30, an initiative led by Governor Jerry Brown in 2012, amended the California Constitution by increasing the sales tax and retroactively applying an increase in income tax on California's top income earners (i.e. individuals with a taxable income of over \$250,000). Passed with 55.4% of the votes, Proposition 30 raised the sales tax from 7.25% to 7.5% with an expiration of 4 years.²⁴ It also raised income taxes starting in 2012, with an expiration date seven years out. Proposition 30 was passed in November 2012, but the tax increase was retroactively applied to the entire year of 2012.

¹⁸ *Id.*

¹⁹ CAL. CONST. art. XVI, § 22(a); *The State of State Tax Policy*, TAX POLICY CENTER, <http://www.taxpolicycenter.org/briefing-book/what-are-state-rainy-day-funds-and-how-do-they-work> (last visited Oct. 6, 2016).

²⁰ CAL. CONST., art. XVI, § 20.

²¹ Capital gains-related taxes are tax revenues from the sale of property or an investment.

²² CAL. CONST., art. XVI, § 20; CAL. CONST., art. XIII.

²³ CAL. CONST. art IV, § 12; *Proposition 2 - Rainy Day Budget Stabilization Act*, BALLOTPEdia, [https://ballotpedia.org/California_Proposition_2_Rainy_Day_Budget_Stabilization_Fund_Act_\(2014\)](https://ballotpedia.org/California_Proposition_2_Rainy_Day_Budget_Stabilization_Fund_Act_(2014)) (last visited Oct. 6, 2016).

²⁴ Sales tax is imposed on all retailers at the rate of ¼ percent of gross receipts on any retailer from the sale of all tangible personal property sold until January 1, 2017. CAL. CONST., art. XIII, § 36(f)(1)(A).

Proposition 30 created the following income tax brackets:²⁵

Between 250,000 and 300,000	10.3%
Between 300,000 and 500,000	11.3%
Between 500,000 and 1,000,000	12.3%
Over 1,000,000	13.3%

Proposition 30 amended the California Constitution to have all funds generated by Proposition 30 deposited in a newly created account, the Education Protection Account (EdPA), within the General Fund.²⁶ Proposition 30 allocated 89 percent of the funds in EdPA to K-12 schools and 11 percent to community colleges.²⁷ After looking at the General Fund account, the Finance Director will determine how much of the funds in EdPA will be used to fund the required amount to education,²⁸ the Controller will then transfer the funds during the last ten days of each quarter of the fiscal year.²⁹ Through the EdPA, the Controller distributes revenue from the incremental taxes³⁰ Proposition 30 established (as explained above).³¹ Proposition 30 also established a base of funding by requiring that no school district will receive less than \$200 in EdPA funds per student, and no community college district will receive less than \$100 per full-time student.³²

Section 36 (e)(6) of Proposition 30 provided a wide decision-making latitude to school districts and community colleges when determining how EdPA funds should be used. These districts must comply with all necessary open meeting requirements when making these decisions and are subject to annual audit.³³ The language of Proposition 30 expressly prohibited the funds to be used to pay for any costs incurred by the Legislature, the Governor, or any state agency.³⁴ Additionally, the funds cannot be used for salaries or benefits of school administrators or any other administrative costs.³⁵ Trackprop30.ca.gov, maintained by the Controller's Office, is a website that was created for transparency on how the revenues from Proposition 30 are being

²⁵ CAL. CONST., art. XIII, § 36(f)(2)(A); figures double for joint filers.

²⁶ Cal. Proposition 30 at § 4 (2012), adding CAL. CONST., art. XIII, § 36(e).

²⁷ CAL. CONST., art. XIII, § 36(e)(3).

²⁸ CAL. CONST., art. XIII, § 36(e)(2).

²⁹ CAL. CONST., art. XIII, § 36(f)(1)(C).

³⁰ Incremental taxes are taxes that increase in increments based on income levels. The intent behind this type of tax is to reduce the tax burden on individuals in lower income levels or lower tax brackets. *Incremental Tax*, INVESTOPEdia, <http://www.investopedia.com/terms/i/incremental-tax.asp> (last visited Oct. 6, 2016); *Incremental Tax*, ACCOUNTING TOOLS, <http://www.accountingtools.com/incremental-tax> (last visited Oct. 6, 2016).

³¹ CAL. CONST., art. XIII, § 36(e)(1).

³² CAL. CONST., art. XIII, § 36(e)(3).

³³ CAL. CONST., art. XIII, § 36(e)(6)-(7).

³⁴ CAL. CONST., art. XIII, § 36(e)(5).

³⁵ CAL. CONST., art. XIII, § 36(e)(6).

directed.³⁶ The website posts how much money each district receives and the annual audit is also posted.³⁷

During the campaign for Proposition 30, Governor Brown estimated Proposition 30 would generate \$9 billion in revenues, while the Legislative Analyst's Office (“LAO”) estimated \$6.8 billion in revenues would be generated.³⁸ Below is a chart that indicates the funding from Proposition 30 to K-12 and community colleges.³⁹

Fiscal Year	Amount K-12k Received (\$)	Amount Community Colleges Received (\$)
2012-2013	6,509,460,000	804,540,000
2013-2014	6,284,238,630	776,703,510
2014-2015	7,753,846,430	958,340,570

After Proposition 30’s sales tax increases expire in 2016 and income taxes expire in 2018, the LAO reports that the State will continue to bring in sufficient revenue to meet its expenditures. The Governor’s Office, on the other hand, has stated that if Proposition 30’s income tax increases are not extended, the State may face a \$4.3 billion deficit in the coming years.⁴⁰ The Governor’s office argues his estimates show the State will have less money for government services.⁴¹ If the State has less money for government services, then this could result in spending cuts. If California’s economy were to face a recession, the deficit could be even larger and may require additional sources of funding for education.⁴² Moreover, this gap in funding for the State may fluctuate depending on other economic factors such as the stock market. Income taxes make up the revenue for the general fund and within the income taxes are capital gains and stocks, so when the stock market drops, less money will be generated. In any case, Governor Brown said he is prepared to propose a budget that could address either situation, regardless if Proposition 30’s income taxes continue.⁴³

³⁶ *How Does Prop 30 Funding Work?*, TRACK PROP 30, <http://trackprop30.ca.gov>.

³⁷ *Id.*

³⁸ *California Proposition 30, Sales and Income Tax Increase (2012)*, BALLOTPEDIA, [https://ballotpedia.org/California_Proposition_30,_Sales_and_Income_Tax_Increase_\(2012\)](https://ballotpedia.org/California_Proposition_30,_Sales_and_Income_Tax_Increase_(2012)).

³⁹ TRACK PROP 30, *supra* note 36.

⁴⁰ Chris Megerian, *Can Gov. Jerry Brown keep the promises he made with Proposition 30?*, L.A. TIMES, (July 3, 2016) <http://www.latimes.com/politics/la-pol-sac-jerry-brown-budget-proposition-30-20160703-snap-story.html>.

⁴¹ Liam Dillon, *If Proposition 55 passes, the state budget will rely even more on California’s Highest earners*, L.A. TIMES (October 10, 2016), <http://www.latimes.com/politics/la-pol-ca-income-tax-proposition-55-20161010-snap-story.html>.

⁴² *Id.*

⁴³ *Id.*

B. Proposed Law

Proposition 55 is a tax initiative, extending only Proposition 30's personal income taxes on high income earners for an additional 12 years. Proposition 55 will continue funding education and begin funding health care by amending Proposition 30's language to extend allocation of revenues to the EdPA fund until the 2030-31 fiscal year.⁴⁴ Proposition 55 also seeks to add new language to the California Constitution to raise revenues to fund health care in California. The estimated increase in revenue for Proposition 55 is expected to range between \$4 billion–\$9 billion each year.⁴⁵ Proposition 55 makes no other changes to the income tax brackets that are taxed at the higher rate.⁴⁶

Under Proposition 55, after collection of income taxes, the Finance Director will estimate the revenues generated by Proposition 55's income tax along with all other General Fund revenues to meet the following two things: the minimum requirement for funding education in California,⁴⁷ and to meet the workload budget⁴⁸ for the year. As was required by Proposition 30, these funds will be deposited into the EdPA to disburse funds to schools based on the same allocation percentages as Proposition 30.⁴⁹

Next, once the minimum funding requirements have been met, the Financial Director will identify either the remaining amount or excess of funds that were transferred into the EdPA. The Controller will take fifty percent of the excess amount from the EdPA and allocate it to the California Department of Health Care Services (DHCS) on a quarterly basis to fund health care programs and services. This DHCS allocation is conditioned on it being used only for critical, emergency, acute and preventative health care services to children and families. The money may also go to other health plans that manage the Medi-Cal services. The funding for health care cannot be used to supplant any existing State funds for the state's share of payments for these

⁴⁴ *Proposition 55: Tax Extension to Fund Education and Healthcare Initiative Constitutional Amendment*, LEGISLATIVE ANALYST'S OFFICE (Aug. 30, 2016) <http://www.lao.ca.gov/ballot/2016/Prop55-110816.pdf>; Proposition 55 amends section 36 subdivision (e)(1) to Article XIII of the California Constitution by extending the allocations to Education Protection Account from the general funds until fiscal year 2030-31.

⁴⁵ LEGISLATIVE ANALYST'S OFFICE, *supra* note 44.

⁴⁶ CAL. CONST., art. XIII, § 36.

⁴⁷ Proposition 98 required that, at a minimum, the State is required to spend about forty percent of the State's budget on public school and community college education funding. City College of San Francisco, Proposition 98—How Does It Work? 1, http://www.ccsf.edu/dam/Organizational_Assets/About_CCSF/Admin/Governmental_Relations/Proposition98_The_Tests.pdf; PROPOSITION 55 (2016)

⁴⁸ The Workload Budget means the budget year of currently authorized services, adjusted for changes in enrollment, caseload, population, and other considerations. Department of Finance, Finance Glossary of Accounting and Budgeting Terms 23, <http://www.dof.ca.gov/fisa/bag/documents/GlossaryofBudgetTerms.pdf>.

⁴⁹ See *Education Protection Account*, CALIFORNIA DEPARTMENT OF EDUCATION, <http://www.cde.ca.gov/fg/aa/pa/epa.asp> (the funds will continue to be distributed as required under section 36 of Article 13 of California's constitution).

programs.⁵⁰ This DHCS money will also be matched by the federal government to provide California with additional funds from Medicaid. The LAO suggests that approximately \$2 billion will be allocated per year to health care costs.⁵¹

As stated in Proposition 30, community college districts, county offices of education, school districts, or charter schools have discretion in determining how funds will be spent.⁵² Next, meetings must still be open to the public and accessible through the internet. Proposition 55 funds cannot be used for salaries or benefits of administrators or any other administrative costs. Finally, community college districts, county offices of education, school districts, and charter schools will continue to be subject to audits.⁵³

Governor Jerry Brown requested that half of the revenues that are generated that do not go to education or health care costs should be allocated to the Rainy Day Fund.⁵⁴ However, based on the plain language of the Proposition, it appears Governor Brown's suggestion was not taken into consideration. The Proposition only mentions in the "Findings" section the importance of "maintaining the state's Rainy Day Fund" because it will "stabilize the budget, avoid boom and bust cycles of the past, and protect [c]hildren, seniors, and disabled Californians from cuts in school and healthcare funding during" recessions.⁵⁵ Based on a plain reading of the Proposition, there is no mechanism that guarantees revenues from Proposition 55 will be allocated to the Rainy Day reserves.

Although the Proposition does not explicitly provide for a Rainy Day reserve to account for low economic times, the initiative does expressly provide for a suspension of funds in cases of a budget emergency.⁵⁶

⁵⁰ The Federal government is required to provide the State with a share of the payments for health care programs. Cal. Proposition 55 (2016)

⁵¹ LEGISLATIVE ANALYST'S OFFICE, *supra* note 44.

⁵² CAL. CONST., art. XIII § 36(e)(6)-(7).

⁵³ Cal. Proposition 55 (2016).

⁵⁴ *Proposition 55: Extends Personal Income Tax Increase on High-Income Earners*, CALTAX, [http://www.caltax.org/action/Proposition%2055%20Income%20Tax%20Increase%20\(website\).pdf](http://www.caltax.org/action/Proposition%2055%20Income%20Tax%20Increase%20(website).pdf) (last visited Oct. 18, 2016); CAL. SEC'Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY NOVEMBER 8, 2016, at 44, available at <http://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf> ["NOVEMBER 2016 VOTER GUIDE"].

⁵⁵ Cal. Proposition 55 at § 2 (2016) ("California has seen massive budget swings over the past 15 years, with deep deficit and devastating cuts after the Dot-Com bust and the Great Recession. Maintaining the state's rainy day fund will stabilize the budget, avoid the boom and bust cycles of the past, and protect our children, seniors, and disabled Californians from cuts in school and healthcare funding during future economic downturns.")

⁵⁶ Cal. Proposition 55 at § 4 (2016), *adding* CAL. CONST. art. XIII, § 36(e)(2)(G) ("The allocation provided for in subparagraph (F) [referring to allocation of excess funds to health care programs] may be suspended by statute during a fiscal year in which a budget emergency has been declared, provided, however, that the allocation shall not be reduced beyond the proportional reducing in overall General Fund expenditures for that year.").

III. PATH TO THE BALLOT/HISTORICAL BACKGROUND

When Governor Brown led the charge on Proposition 30, he said the income tax increases were necessary because of the recession and he also stated it would be temporary.⁵⁷ However, supporters of Proposition 30 believed that Proposition 30's income taxes needed to be extended longer than what Proposition 30 enacted in order to continue supporting California's education system.⁵⁸

After Proposition 55 was drafted, and Governor Brown became aware of the initiative, Brown asked the authors to ensure that the language of the proposition allowed an allocation to the Rainy Day funds.⁵⁹ He said that because the language would preclude revenues for the Rainy Day fund, Californians would be voting on a proposition that had a "fatal flaw."⁶⁰

IV. DRAFTING ISSUES

The healthcare and Rainy Day fund formulas are ambiguous in the language of Proposition 55, giving broad discretion to the Finance Director to decide how funds will be distributed.⁶¹ In one portion of the proposed law, the language expressly dictates how the Finance Director must allocate funds to education. In June of each fiscal year, the Finance Director must determine how much money, if any, is needed from EdPA to fund K-12 schools and community colleges. When determining this amount, Proposition 55 expressly directs the Finance Director to ensure the amount meets the minimum education requirement, and the workload budget.⁶² Proposition 55 uses the same definition of workload budget as section 13308.05 of the Government Code.⁶³

But when it comes to the allocation of funds to health care, the language in effect gives broad discretion to the Finance Director. The remainder of the revenues generated are used to fund healthcare.⁶⁴ The Proposition explicitly states that at least fifty percent—up to \$2 billion—of the excess will be transferred to DHCS. However, the language does not specify how much money should be allocated to health care programs from the EdPA.⁶⁵ Since the language in Proposition 55 does not indicate how much of the funds should be delegated to healthcare, in effect the Finance Director is given broad discretion to determine how much of the funds from EdPA will be transferred to DHCS in order to fund healthcare.

⁵⁷ Chris Megerian, *supra* note 40.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Cal. Proposition 30 at § 4 (2012), *adding* CAL. CONST., art. XIII, § 36(e)(2)(F).

⁶² Cal. Proposition 55 § 4 (2016), *adding* CAL. CONST. art. XIII, § 36(e)(1)(E).

⁶³ Cal. Proposition 55 § 4 (2016), *adding* CAL. CONST. art. XIII, § 36(e)(1)(E)(ii).

⁶⁴ Cal. Proposition 55 § 4 (2016), *adding* CAL. CONST. art. XIII, § 36(f).

⁶⁵ *Id.*

Similarly, although the Rainy Day fund is mentioned in the measure under Section 2 of the Proposition called “Findings,” the language does not specify the amount of funding, if any, generated from Proposition 55 that will be placed into the reserves. The language also does not bar revenue generated by Proposition 55 to be used for the Rainy Day fund. Due to the lack of explicit language restricting the Finance Director’s calculation of fund allocations to the reserves from the EdPA, the Finance Director has broad discretion in distributing small percentages in the workload budget to the reserves as well.⁶⁶

V. CONSTITUTIONAL CONSIDERATIONS

First, California, along with several other states, allows the people to propose laws and constitutional amendments using the ballot initiative process in each election cycle.⁶⁷ Article IX, Section 1 of the California Constitution “vests the legislative power of the State within the California Legislature, but reserves to the people, the power to create laws using the Initiative.”⁶⁸

Second, the California Constitution also vests authority to tax with the California Legislature.⁶⁹ After passage of Proposition 98 and the Budget Stabilization Act, tax revenues were specifically raised and allocated for public schools and community colleges.⁷⁰ However, in order for the Legislature to increase taxes, the increase must be passed by a two-thirds vote in both houses of the Legislature.⁷¹ In contrast, raising taxes through the initiative process is easier to accomplish, as it requires only majority vote.⁷²

Finally, raising taxes through the initiative process is easier to accomplish procedurally since the initiative would not require the high vote threshold that is required in the Legislature. The Legislature requires two-thirds majority to pass any tax increase.⁷³ Passing an initiative only requires more than fifty percent of the votes.⁷⁴

⁶⁶ Supporters originally had language that precluded funds from being distributed to the rainy day reserve, and instead, changed the language to allow the Finance Director discretion in allocating funds for the reserves from the workload budget. This is already being done with Proposition 30; *see* e-mail from Ryan Miller, Legislative Analyst at LAO regarding prop 55 language amendment on October 18, 2016 (on file with the *California Initiative Review*).

⁶⁷ *Ballot Initiatives*, STATE OF CALIFORNIA DEPARTMENT OF JUSTICE, <https://oag.ca.gov/initiatives> (last visited Oct. 6, 2016); Fred Silva, *The California Initiative Process: Background and Perspective*, PUBLIC POLICY INSTITUTE OF CALIFORNIA 36-40 (Nov. 2000), http://www.ppic.org/content/pubs/op/OP_1100FSOP.pdf.

⁶⁸ CAL. CONST. art. IX, § 1.

⁶⁹ CAL. CONST. art. XIII, § 2; CAL. CONST. art. XVI, § 20.

⁷⁰ CAL. CONST. art. IV, § 12; *Proposition 2 - Rainy Day Budget Stabilization Act*, BALLOTPEDIA, [https://ballotpedia.org/California_Proposition_2,_Rainy_Day_Budget_Stabilization_Fund_Act_\(2014\)](https://ballotpedia.org/California_Proposition_2,_Rainy_Day_Budget_Stabilization_Fund_Act_(2014)) (last visited Oct. 6, 2016).

⁷¹ CAL. CONST., art. XIII, § 3.

⁷² *Easy Voter Guide*, LEAGUE OF WOMEN VOTERS CALIFORNIA EDUCATION FUND, <http://www.easylvoterguide.org/wp-content/pdf/FastFacts-BallotMeasures.pdf> (last visited October 17, 2016).

⁷³ CAL. CONST. art. XIII, § 2(d).

⁷⁴ *Easy Voter Guide*, *supra* note 72, at 1.

VI. PUBLIC POLICY ISSUES

A. Proponents Arguments

1. *Schools Would Face Large Cuts Without Proposition 30's Income Taxes*

California families and students cannot afford to go back to a pre-Proposition 30 era, before the \$4 billion in revenue that was earmarked for school and community college uses.⁷⁵ Without the extension, thousands of teachers will be laid off, classrooms will be overcrowded inhibiting student access to teachers, schools will experience a loss of arts and music programs, and tuition hikes in community colleges will be likely.⁷⁶

Class sizes in California's public schools are 80 percent larger than the national average, while the number of individuals who are training to be teachers has decreased by 50 percent within the last five years.⁷⁷

2. *No New Taxes*

Proponents argue that Proposition 55 will only extend Proposition 30's personal income tax increases on the wealthiest 2% of Californians, making above \$250,000 each year.⁷⁸ It does not extend the sales tax and does not impose any new tax on anyone, but the wealthy which is the same group of Californians that were taxed under Proposition 30.⁷⁹ This tax revenue will be expected to bring in \$ 11 billion annually through 2030 if the Proposition is passed, according to the LAO.⁸⁰

3. *There is Strict Accountability*

The initiative requires strict accountability. Although community college districts, county offices of education, school districts, or charter schools have discretion to determine how funds will be spent in classrooms, they must relate to any non-administrative costs only.⁸¹ Use of

⁷⁵ *Don't let gains of Prop 30 slip away*, CALIFORNIA FEDERATION OF TEACHERS, <http://cft.org/news-publications/president-blog/1226-don-t-let-gains-of-prop-30-slip-away.html> (last visited October 17, 2016).

⁷⁶ *Yes on Prop 55: The Children's Education and Health Care Protection Act*, CALIFORNIA TEACHERS ASSOCIATION <http://www.cta.org/CEHCP> (last visited October 17, 2016).

⁷⁷ Cal. Proposition 55 at § 2(g) (2016).

⁷⁸ Cal. Proposition 55 at § 2(k) (2016); YES ON 55: HELP OUR CHILDREN THRIVE, <http://www.protectingcalifornia.com/> (last visited Sept. 20, 2016).

⁷⁹ Cal. Proposition 55 at § 2(k) (2016); Christopher Cadelago, *Another Proposition 30 income tax increase now aiming for 2016*, THE SACRAMENTO BEE (Sept. 21, 2015 2:23 PM), <http://www.sacbee.com/news/politics-government/capitol-alert/article35998542.html>.

⁸⁰ CALIFORNIA FEDERATION OF TEACHERS, *supra* note 75; LEGISLATIVE ANALYST'S OFFICE, *supra* note 44.

⁸¹ Cal. Proposition 55 at § 2(m) (2016).

Proposition 55 funds will also be subject to strict transparency, with audits and disclosure requirements.⁸² Local school districts will also be required to post annual accounting online so the public continues to have access to information regarding how schools are spending the funds.⁸³

4. *Improves Access to Healthcare*

Proposition 55 tax revenues will generate at most \$2 billion annually to fund health care programs for low-income communities. Currently, California's health care is underfunded, ranking 48th in the country in health care spending.⁸⁴ This reduces access to health care, which leads to increased rates of serious illness and higher long term medical expenses.⁸⁵

Moreover, because federal health care spending will match every dollar California spends on health care, by allocating Proposition 55 revenues for health care services, communities will have better access to critical, emergency, and acute care.⁸⁶

B. Opponent's Arguments

1. *Proposition 55 Hurts Small Businesses*

The Howard Jarvis Taxpayer Association's President, Jon Coupal, stated that the initiative hurts small businesses because 80 percent of small businesses pay their income taxes through their personal taxes,⁸⁷ incurring personal losses as opposed to business losses. Additionally, capital gains will continue to be taxed as ordinary income, which will be taxed under Proposition 55's income tax brackets.⁸⁸ As a result, businesses large and small will continue to feel the effects of the income tax increases.

2. *Extending Proposition 30's Taxes is Not Temporary*

When Proposition 30 was considered, Governor Brown said the taxes would be temporary. Extending the income tax increase by 12 years no longer makes the tax increase

⁸² Cal. Proposition 55 at § 4 (2016), *adding* CAL. CONST., art. XIII, § 36(e)(6).

⁸³ *Id.*

⁸⁴ Cal. Proposition 55 at § 2(i) (2016).

⁸⁵ *Id.*

⁸⁶ YES ON 55: HELP OUR CHILDREN THRIVE, *supra* note 78; NOVEMBER 2016 VOTER GUIDE, *supra* note 55, at 44.

⁸⁷ David Kersten, *Prop 30 had Significant Negative Impact on California Sole Proprietorships, Resulted in Billions in Lost Revenue and Business Activity*, KERSTEN INSTITUTE FOR GOVERNANCE & PUBLIC POLICY (August 8, 2016), <http://www.kersteninstitute.org/blog/prop-30-had-significant-negative-impact-on-california-sole-proprietorships-resulted-in-billions-in-lost-tax-revenue-and-business-activity>; *see also* email by David Kersten regarding small businesses on October 5, 2016 (on file with the *California Initiative Review*).

⁸⁸ CALTAX, *supra* note 54.

under Proposition 30 temporary.⁸⁹ California Taxpayer Association (Cal Tax), an organization established to guard against unnecessary taxation and to promote government efficiency, states that the highest income tax rate proposed by this measure is the highest in the nation.⁹⁰

3. *Extension of Proposition 30's Income Tax is Unnecessary*

Opponents say education, healthcare, and the State government can be funded without extending income taxes.⁹¹ Opponents cite to the 2.7 billion in surplus as well as the 9.4 billion in the reserves.⁹² As a result of the budget surplus and amount of money in budget reserves, after Proposition 30 phases out, the budget will continue to be sufficient.⁹³

The California Chamber of Commerce (Cal Chamber) has voted to oppose this measure.⁹⁴ Cal Chamber did not oppose Proposition 30 because of the economic situation and the temporary nature of the initiative.⁹⁵ However, they oppose extending the taxes under Proposition 55 because California has a balanced budget, and therefore, a balanced budget by the Governor, and the \$3 billion in reserves.⁹⁶ There is no need for the income tax extension especially since Proposition 30's income taxes still has a few more years to generate revenues for the State.⁹⁷

Cal Tax has also stated that there is enough time to extend Proposition 30, because the budget has already generated an excess in revenue.⁹⁸ Additionally, Cal Tax does not like the reliance on a volatile source of revenue.⁹⁹ Having funding for education tied to income taxes is not steady because income taxes are related to the stock markets and capital gains. When the market crashes, the funding will be low and when the market is doing well, the funding will be high. The revenues would be tied to the economy and therefore reliant on a source that can fluctuate.¹⁰⁰

4. *Proposition 55 Only Favors Special Interests*

⁸⁹ Chris Megerian, *supra* note 40...

⁹⁰ *Id.*

⁹¹ NOVEMBER 2016 VOTER GUIDE, *supra* note 54, at 44.

⁹² *Id.*

⁹³ Jessica Calefati, *State's revenue will be healthy without Prop. 30 taxes, Gov. Jerry Brown's finance Department says*, THE MERCURY NEWS, (May 17, 2015), http://www.mercurynews.com/california/ci_28135540/states-revenue-will-be-healthy-without-prop-30.

⁹⁴ *Cal Chamber Board Takes Positions on Proposed Initiatives*, CALCHAMBER ADVOCACY, (May 23, 2016) <http://advocacy.calchamber.com/2016/05/23/calchamber-board-takes-positions-on-proposed-initiatives/>.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ CALTAX, *supra* note 54.

¹⁰⁰ *Id.*

The Kersten Institute for Governance and Public Policy is a non-partisan private organization dedicated to providing knowledge and evidence to those in government and citizens. The Kersten Institute, sponsor of the opposition PAC, claims the Proposition favors special interests. The special interests –the State’s public employee unions – want the money for themselves and this is bad for the economy.¹⁰¹ This initiative is a money grab of \$8 billion for the special interests.¹⁰²

Moreover, opponents state that this measure allows money to be transferred to each school district with no accountability.¹⁰³ The language of Proposition 55 states that the money cannot be used for salaries and benefits for school administrators or any other administrative costs.¹⁰⁴ Proponents of this measure state that the money can be used to hire quality teachers and school employees, and to reduce class size.¹⁰⁵ The money must also be tracked on the website, trackprop30.sco.ca.gov, so Californians know how the money is being spent.¹⁰⁶ Opponents claim that there is a loophole that could allow the money being transferred from EdPA to be used to pay for pensions and to fund exorbitant public employee compensation.¹⁰⁷

VII. CONCLUSION

Proposition 55 extends Proposition 30’s income taxes on the wealthiest income earners in California without extending the previous sales tax in order to continue funding education. The Proposition also requires a portion of the revenues to be allocated to California’s health care funding, but most of the revenues will be provided to public schools. Supporters argue the revenues generated by Proposition 30 need to be extended for California’s schools and community colleges, because without the tax extension, schools would be negatively impacted financially if Proposition 30’s revenues were discontinued. Opponents, on the other hand, question the need for the revenues since they believe enough money has been raised by Proposition 30 to fund schools. They argue that the taxes favor special interests instead. Moreover, they argue Proposition 55’s taxes will not be limited to California’s wealthiest because small business owners will be taxed under this law, if passed. All that being said, a “yes” would extend Proposition 30 income taxes, while a “no” vote would allow Proposition 30’s income taxes to sunset in 2018.

¹⁰¹ NO ON PROP 55, <http://www.opposeprop55.com/> (last visited Aug. 20, 2016).

¹⁰² *Id.*

¹⁰³ *Statements By Prop. 55 Opponents*, NO ON PROP 55, <http://www.opposeprop55.com/statements-by-prop-55-opponents.html>.

¹⁰⁴ Cal. Proposition 55 at § 2(m) (2016).

¹⁰⁵ *Fact Sheet*, YES ON 55: HELP OUR CHILDREN THRIVE, (last visited Sept. 20, 2016)

<http://www.protectingcalifornia.com/toolkit/file/Prop.-55-Fact-Sheet-Two-Page-Updated-8.16.16.pdf>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

