

***CALIFORNIA
INITIATIVE REVIEW***

October 2012

Initiatives at a Glance



Proposition 30: The Schools and Local Public Safety Protection Act of 2012

Current Law

Section 17041 of the Revenue and Taxation Code is a California statute addressing tax brackets and annual computation for personal income tax. California currently employs six different personal income tax brackets and the current maximum rate for individuals is 9.3%. In California, the state sales tax, referred to as the “Statewide Base Sales and Use Tax Rate,” is currently 7.25%. However, different cities and counties impose additional sales taxes, raising the state average to a little over 8%. In June of 2011, the state transferred responsibility for administrating about \$6.3 billion of funds to local governments, in the “2011 Realignment Legislation.” This Legislation was passed to fund various criminal justice, public safety, mental health, and social services programs for 2011 to 2012, and ongoing funds for these programs annually thereafter.

Proposed Law

The Schools and Local Public Safety Protection Act of 2012, proposed by Governor Brown, increases personal income tax on annual earnings over \$250,000 for seven years. The top income earners would face a 1%, 2% and 3% increase in taxes, resulting in rates of 10.3%, 11.3%, and 12.3%, respectively. Proposition 30 also increases California sales and use tax by 1/4 cent for every dollar for four years, starting January 1, 2013, continuing to January 1, 2017. Additionally, Proposition 30 establishes the Education Protection Account, which collects the temporary revenues from the increases in taxes, to then be used for the support of school districts, county offices of education, charter schools, and community college districts. Finally, Proposition 30 would ensure that \$6.3 billion of existing revenue continues to be allotted to local governments to help fund public safety.

Policy Considerations

Yes	No
<ul style="list-style-type: none"> • Personal income tax rates increase for the top 1% of Californians • The sales tax rate increases .25% • K-12 schools and community colleges receive desperately needed funding. • Local governments continue to manage \$6.3 billion for safety programs. • Results in a balancing of the 2012-2013 state budget accepted by the Legislature and the Governor. • After seven years, the personal income tax increase expires and after four years, the sales tax increase expires. 	<ul style="list-style-type: none"> • Personal income tax brackets remain the same. • California sales tax does not increase. • The \$6.3 billion allotted to local budgets under the 2011 Realignment Legislation reverts back to state control. • \$6 billion in cuts must be taken from the 2012-2013 state budget, largely from education. •

Proposition 31: Government Performance and Accountability Act

- ☞ Establishes standards for government programs according to enumerated goals, and requires review of all programs according to annually established performance benchmarks.
- ☞ Requires that California switch from its current annual budget cycle to a two-year budget cycle in which a biennial budget is created in the first half of the Legislature’s two year session and the second year is used to review the performance of State programs.
- ☞ Requires the Legislature to publish all legislation, with amendments, for three days prior to passage.
- ☞ Allows the Governor to cut spending by executive order during a fiscal emergency, provided that the Legislature has not acted within established deadlines, and the spending is not required by the Constitution or federal law.
- ☞ Requires any reduction in revenues or increase in spending greater than \$25 million to be accompanied by offsetting spending cuts or revenue increases.
- ☞ Provides for the creation of Community Strategic Action Plans, whereby local governments will be encouraged to voluntarily collaborate on issues related to goals established in Proposition 31.

Policy Considerations

YES on Prop 31	NO on Prop 31
<ul style="list-style-type: none"> • Will make California government more accountable and transparent by providing for more rigorous performance review of State programs. • Changes budget process to allow the State to more effectively prevent financial difficulties and allows the government to more effectively deal with fiscal emergencies. • Will allow local governments to take more control over carrying out State goals by removing State barriers to local action and creating incentives for collaborative local action. 	<ul style="list-style-type: none"> • Creates a confusing and unwieldy system of government performance review. • Gives the Governor unilateral authority to cut virtually any State spending item whenever he declares a fiscal emergency. • Allows local governments to exempt themselves from important State regulations. • Creates incentives to transfer suburban tax revenue to urban governments. • Requirements for offsetting spending cuts apply even when the State budget is in surplus and such offsetting provisions are unnecessary.

Proposition 32
Political Contributions by Payroll Deduction. Contributions to Candidates.
Initiative Statute.

If passed, Proposition 32 would create two new prohibitions on corporations and unions. Proposition 32 would create a new prohibition on corporations and unions by disallowing them from making any contributions to candidates or candidate-controlled committees. The prohibition would extend to both state and federal candidates. In addition, government contractors would be prohibited from making candidate contributions if that candidate, when elected, could play a role in awarding them a government contract.

Union dues are usually paid through the payroll deduction system, and these dues are typically used for collective bargaining activities. A portion of union members' dues may be used to contribute to candidates and candidate-controlled committees as identified by union leaders. Currently, corporations already need express written consent from employees if they wish to make payroll deductions that are not authorized by state or federal law, or collective bargaining agreements.

Proponents Arguments	Opponents Arguments
<ul style="list-style-type: none"> • Limiting the influence of special interests on politics is a good thing • Prop 32 helps to protect the political rights of union members and employees • Minimizing influence by well-funded few will help give voice to many 	<ul style="list-style-type: none"> • Not an even-handed measure: will impact unions more than corporations • Unions will be left without funding for political activity • Amounts to an attack on labor in an effort to reduce the campaign resources of primarily Democratic candidates

Even if Proposition 32 is approved, it implicates several First Amendment issues. *Citizens United*, a Supreme Court case, gave corporations the right to make independent political expenditures because it was deemed a form of political free speech. There will likely be a legal challenge to Proposition 32's ban on certain types of contributions under this U.S. Supreme Court precedent.

The proposed changes to the law would still permit voluntary contributions to a union's PAC, but only if the union employee provides annual written consent to the union and the funds are not taken by automatic payroll deduction.

If Proposition 32 does not pass, unions will be able to continue the practice of using automatic payroll deductions in order to make political contributions. Corporations and government contractors will also be free to use automatic payroll deductions for political contributions.

Proposition 33: Automobile Insurance Discount Act

Current Law

California Insurance Code Section 1861.02 provides that automobile insurance rates and premiums must be determined by the following factors in decreasing order of importance: (1) the insured’s driving record; (2) the number of miles he or she has driven annually; (3) the number of years of driving experience the insured has had; and (4) other optional factors the insurance commissioner may adopt by regulation. There are currently sixteen optional rating factors adopted by regulation. Among these factors, “persistency” or proof of continuous coverage may be used as an optional rating factor; however, its use is limited to the number of years the customer has been continuously insured with his or her current insurer.

Proposed Changes to the Law

The 2012 Automobile Insurance Discount Act will enact Insurance Code Section 1861.023, which would allow insurance providers to offer a persistency discount to customers who have maintained automobile insurance coverage for the previous five years with any automobile insurance provider. Consumers with lapses in coverage will still be eligible for the discount if the lapse was: (1) not more than 90 days in the past five years for any reason; (2) for no more than 18 months in the last five years due to loss of employment resulting from layoff or furlough; or (3) due to active military duty. Additionally, children residing with a parent may qualify for the discount based on either parent’s eligibility. Finally, customers unable to prove continuous coverage may be offered a proportional discount, which is determined by the number of whole years in the immediate preceding five years in which the customers was insured.

Policy Considerations

Yes	No
<ul style="list-style-type: none"> • Rewards consumers for maintaining insurance in accordance with California insurance laws • New discount available for those with continuous automobile insurance coverage • Consumers may switch insurance carriers and retain eligibility for the discount • Provides no penalties for lapses less than 90 days for any reason • Provides no penalties for lapses less than 18 months if due to consumer being unemployed 	<ul style="list-style-type: none"> • New adult drivers will be subjected to additional surcharges for lack of insurance coverage • Minor drivers subjected to parents' insurance record • Mercury Insurance company executives are primary backers and have duty to maximize company profits • Mercury, more than other insurance companies have the most to gain because of unique market position • No price control on insurance rate caps; companies allowed to increase rates after continuous coverage discount is applied

Proposition 34 Death Penalty. Initiative Statute.

Proposition 34 would end the death penalty in California, and would replace it with life in prison without the possibility of parole.

Background

California is one of the 33 states that currently allow the death penalty. While the death penalty has been authorized by the California Penal Code since 1872, it was temporarily declared unconstitutional by the California Supreme Court in 1972 and was not practiced during a nationwide moratorium in the mid-1970s. Executions in California resumed in 1978, and only 13 executions have occurred since then. At the end of 2011, however, there were 725 inmates awaiting appeal or execution on death row.

Changes to the Law

If approved, Proposition 34 would end the death penalty in California, and would replace it with life in prison without the possibility of parole. This change would apply to new convictions and also retroactively to inmates currently on death row, which amounts to around 725 people. Victim payment requirements would also change. Persons found guilty of murder would be required to work while in prison, which would codify existing practice. However, their wages would be applied to any victim restitution fines or orders against them, whether the court ordered it or not. Finally, Proposition 34 would create a \$100 million fund to be distributed to law enforcement agencies to help solve more homicide and rape cases.

Policy Considerations

Proponents Arguments	Opponents Arguments
<ul style="list-style-type: none"> • No executions of innocent people • Reducing the cost of death penalty litigation and special housing for death row inmates will save the State a considerable amount of money • Providing \$100 million to law enforcement will serve justice • Death penalty in California is broken beyond repair 	<ul style="list-style-type: none"> • Death Penalty is only given to the most heinous murders, who would now evade justice • Financial savings are overestimated • There are ways to make the death penalty more viable and affordable short of abolition • Murderers are likely to kill again and the death penalty is a general and specific deterrent

Proposition 35: Californians Against Sexual Exploitation Act (“CASE ACT”)

Proposition 35 is a series of statutory amendments proposed by Californians Against Slavery and Safer California Foundation. The measure would amend several sections of the State’s Penal and Evidence Codes.

Proposition 35 would:

- Expand the definition of human trafficking.
- Increase the number of years a person can be imprisoned for a human trafficking crime.
- Increase the fines that a convicted party could pay. The higher fines could result in a more significant revenue stream for those victim services.
- Require criminals convicted under human trafficking laws to register as sex offenders.
- Expand current sex offender registration requirements by mandating that all currently registered sex offenders, as well as those who register after the proposition passes, provide all of their internet identifiers to local law enforcement.
- Make the related Peace Officer Standards and Training (“POST”), already available for use by law enforcement, mandatory.

<p style="text-align: center;">Opponents Proposition 35:</p>	<p style="text-align: center;">Proponents Proposition 35:</p>
<ul style="list-style-type: none"> • The Proposition’s overly broad and vague definition of human trafficking will cause confusion about who to prosecute. Several opponents feel that it is a voter “bait and switch” that targets the crime of prostitution under the guise of targeting human trafficking. • Confusion about who to prosecute could result in an increase of prosecutions, leading to an increase in prison populations. A serious issue since California is under Federal Court order to reduce its prison population. • Changes to the evidence code could affect a defendant’s right to a fair trial by hindering their ability to present their case in court. • There could be increased costs associated with the expanded population of who needs to register as a sex offender, as well as increased costs associated with the additional registration requirements for all registered sex offenders. • Additional costs could be incurred to defend the law in court against challenges under the State’s Single Subject Rule, Freedom of Speech issues, and Constitutional challenges for overly broad and vague language. 	<ul style="list-style-type: none"> • Is designed to combat human trafficking on multiple fronts by increasing the penalties for those convicted, increasing awareness through expanded education and increasing victim’s services. • Will also increase the requirements for all registered sex offender, not just those convicted of a human trafficking crime. • Aggressively changes how California handles human trafficking; no other state boasts similarly aggressive laws. • Would align California’s human trafficking laws much more closely to federal law. • The measure will further protect the children of California from being exploited.

Proposition 36: The Three Strikes Reform Act

Current Law

- California’s Three Strikes law, which passed as a voter initiative in 1994, imposes a life sentence on an offender with two or more “strikes” who commits *any* subsequent felony, including shoplifting or drug possession.
- California law classifies a “strike” as any “violent” or “serious” felony, which includes first-degree burglary, selling hard drugs like cocaine or heroin, robbery, assault with a deadly weapon, arson, and a host of other offenses.
- Those life sentences do not offer a chance of parole for twenty-five years.
- Defendants with one previous “strike” who are convicted of a second felony, which does not have to be violent or serious, receive a sentence double what that person otherwise would have received.

Proposed Changes

- In lieu of a life sentence, an offender with two or more strikes would receive twice the usual sentence for a subsequent non-violent or non-serious felony.
- For a prisoner already serving a life sentence for a subsequent non-violent or non-serious felony, Proposition 36 would allow a judge to reduce the sentence if the judge determined the inmate did not pose a danger to the public. The inmate still must serve twice the usual sentence for that non-violent or non-serious felony. About 3,000 current inmates would be eligible for a sentence reduction.
- Proposition 36 would leave the current Three Strikes law in place where the offender has a previous conviction for rape, murder, child molestation or the offender’s current offense is for certain sex and drug offenses or crimes that involve firearms or other deadly weapons.
- Proposition 36 leaves in place double sentences for offenders with one strike who commit a second felony.

Policy Arguments

Yes on Proposition 36	No on Proposition 36
<ul style="list-style-type: none"> • Will realign Three Strikes with what voters intended by locking up violent or dangerous repeat felons, not every felon who subsequently broke the law. • Will leave in place double sentences for subsequent non-violent and non-serious felonies. • Will help California reduce its prison population. • Will save California about \$70 million annually in correctional spending. 	<ul style="list-style-type: none"> • Will prevent career criminals from going free and thus save lives, property and money that otherwise would be affected by repeat felons receiving parole and then committing additional crimes. • Will maintain the drop in crime that Proposition 36 opponents attribute to the original Three Strikes. • Will reject reforms funded by out-of-state money.

Proposition 37

The California Right to Know Genetically Engineered Food Act

- Requires that raw or processed foods sold at retail in California must be clearly labeled “Genetically Engineered,” “Partially Produced with Genetic Engineering,” or “May be Partially Produced with Genetic Engineering” if such foods were produced entirely or in part through genetic engineering
- Prohibits processed foods or foods produced with genetically engineered (GE) ingredients as “natural”
- The following are exempt from labeling, regardless of whether or not they contain GE ingredients:
 - Foods consisting of or derived entirely from animals fed or injected with GE material but not GE themselves
 - A raw agricultural commodity or food that is unintentionally produced with GE material
 - Any processed food that contains only minimal amounts (at least 0.5 percent) of GE ingredients (0 percent after 2019)
 - Alcoholic beverages
 - Certified organic food
 - Food that is sold for immediate human consumption such as in a restaurant
 - Medical food

Policy Considerations

YES on Prop 37

- Promotes transparency by providing consumers the right to know what is in their food
- Encourages accurate food labeling
- Will allow families to protect their health more easily since they will gain access to information about foods that some scientists and medical doctors say are linked to allergies and other significant health risks
- Provides greater legal certainty for businesses
- More than forty developed and developing nations with over 40% of the world’s population already label GE foods, including the entire European Union, Japan, Brazil, Australia, and China

NO on Prop 37

- “Deceptive, deeply flawed food labeling scheme” that would increase food costs by billions
- Adds more government bureaucracy
- Invites frivolous lawsuits without providing any health or safety benefits
- It’s full of arbitrary, politically motivated special-interest loopholes and exemptions
- Conflicts with science and implies that there is something inherently inferior or harmful about GE ingredients
- Overwhelming scientific evidence has shown that foods with GE ingredients are safe, and that requiring special labels is both unnecessary and misleading

Proposition 38: Tax for Education and Early Childhood Programs

Changes to Existing Law:

- Initiative Statute designed to increase funding for education and early childhood programs.
- Increases personal income taxes on most wage-earning Californians, even in lower tax brackets.
- Results in \$10 Billion in additional funding annually for schools
- Funds are then directed to school districts, with an eye towards improving students academic performance, increasing graduation rates, and college preparedness.
- School districts are also awarded extra funds for low-income students.
- Districts must provide forums for the public to provide input on how the funds should be expended, and publish district budgets online.
- Some funds collected go towards starting a new California Early Head Start Program, to provide pre-kindergarten education for low-income families.

Yes on Proposition 38	No on Proposition 38
<ul style="list-style-type: none"> • Supporters include the California Parents and Teachers Association, school district, education advocates, and the Advancement Project. • CA is ranked 47th in the nation in per pupil spending and has the largest average class size. • The money raised from Proposition 38 can only be used for education. The governor and the legislature cannot change where Proposition 38 funds are allocated. • Funds will be distributed on a per pupil basis, so every school will benefit. • Supporters believe Proposition 38 will “make schools a priority again” and “California has been shortchanging our schools for tool long.” 	<ul style="list-style-type: none"> • Opponents include the California Republican Party and the California Democratic Party. • Opponents argue that proposition 38 does nothing to remedy the state deficit. • Increase in taxes on most Californians, including those in the low income brackets. • Concerned that the taxes would affect small businesses, which tend to pay income taxes instead of corporate taxes. • Proposition 30 proponents argue that by having two competing tax initiatives on the ballot, support is divided and neither proposition will pass in November.

Proposition 39 Clean Energy Jobs Act

Current Law

Business that operate or sell goods both inside and outside of California (multistate businesses) must apportion their income to determine the amount taxable by the state. Businesses are currently allowed to choose between two different apportionment formulas. This choice is made each year on their annual income tax return. This allows businesses to choose the method that results in the lowest California taxes. Businesses that operate solely within California are taxed on all of their income and are therefore not affected by the apportionment formulas.

Proposed Change

Proposition 39 would require all multistate businesses to use the same formula, regardless of the impact on their taxes. This would result in an estimated increase in revenues to the state of one billion dollars annually. Proposition 39 would utilize approximately one half of the annual revenue increase for the first five years to create a clean energy jobs fund. Money from this fund would be used to retrofit public schools and other buildings to make them more energy efficient. It would also provide training in clean energy related jobs for members of workforce development programs such as YouthBuild and the California Conservation Corps.

Drafting Issues – Single Subject Rule

The California Constitution requires that initiatives submitted to voters contain only one subject per proposition. Proposition 39 contains both change in taxation of businesses as a funding mechanism for creating clean energy jobs through retrofitting public buildings. There could be a valid challenge to Proposition 39 under the single subject rule. In the past, the courts have been lenient in interpreting the single subject rule; if the provisions are reasonable related they pass the test. It is unclear if Proposition 39 would pass this test as both provisions relate to California’s business economy.

Policy Considerations

Proponents Arguments	Opponents Arguments
The current tax system has a loophole that was created in 2009 allowing multistate businesses to choose the most advantageous tax rate, thus costing California over \$1 billion a year	Budget decisions should be made by the legislature because legislators are in a better position to make budgeting decisions
This loophole encourages companies to provide fewer jobs in California; closing the loophole will create 40,000 jobs.	Proposition 39 doesn’t focus on California’s real economic problems, it just raises taxes on businesses
Proposition 39 will advance clean energy technology and fund energy efficiency projects.	Proposition 39 will create a hostile business environment, which will discourage employers from operating in California
Proposition 39 will help fund public schools, which are in dire need of funding	While changing the tax code may be a good idea, all additional tax revenue should go toward reducing the state deficit and balancing the budget, instead of toward things like renewable energy
	Some version of the three-factor formula has been in place since 1966, so Proposition 39 is misleading; or, the current system was implemented in 2011 and changing the system after one year would create uncertainty regarding the results of the changes

Proposition 40 – Referendum on State Senate Districts

- Proposition 40 is actually a Referendum – A Referendum is different from a normal initiative because a Referendum seeks an answer from voters about whether they approve of an **existing law**. If voters vote “**YES**”, it indicates that they approve of the current law and no change occurs. If voters vote “**NO**”, it indicates that voters do not approve of the current law and the current law will be eliminated.
- Voters are being asked whether they approve or disapprove of the State Senate District boundaries approved by the Citizens Redistricting Commission after the 2010 census. The Citizens Redistricting Commission was created by Proposition 11, passed by the voters in 2008.
- New State Senate Districts were approved by the Commission in August of 2011 with the intention of using them in the November 2012 election. The Commission was required to draw districts that were relatively equal in population and as geographically compact as possible.
- In a court challenge brought by the authors of Proposition 40, the California Supreme Court decided that the new maps will be used in the November 2012 election whether Proposition 40 passes or fails. When the Supreme Court announced that decision, the authors of Proposition 40 officially said they were no longer seeking a “No” vote, since their intention had been to prevent the districts from being used in 2012.

Policy Considerations

YES on Prop 40	NO on Prop 40
<ul style="list-style-type: none"> ➤ The Commission-drawn Senate Districts will be used by the state until the Commission draws new boundaries based on the next federal census in 2020. ➤ There will be no cost to the state. 	<ul style="list-style-type: none"> ➤ The Commission-drawn Senate Districts will be rejected. They will still be used in the November 2012 election and Senators elected to those Districts will serve until 2016. ➤ The California Supreme Court will appoint “special masters” to draw new Senate Districts which will be used beginning with the 2014 elections. ➤ There will be a one-time cost of \$1,000,000 to the state to hire new special masters and implement the new maps.