

**Proposition 15:
The California Schools and Local Communities Act
of 2020**

Initiative Constitutional Amendment

By

Mo Roeckl-Navazio

*J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2022
B.S., Public Health, Northern Arizona University, 2019*

&

Alexander Lee

*J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2022
B.A., Political Science (with distinction), University of California, San Diego, 2014*

I. EXECUTIVE SUMMARY

Proposition 15 is a proposed constitutional amendment that would reassess property taxes on commercial and industrial properties every three years based on the property's fair market value.¹ Proposition 15 would create what is commonly referred to as a "split roll" tax assessment where commercial and industrial properties are assessed differently than residential properties.² This additional tax revenue will be distributed to schools and local communities. Schools will receive 40% of the revenue, and the remaining 60% will be distributed to local communities.³ Any entity that receives these revenues must disclose to the public how much money was received and what it was spent on.⁴

A "Yes" vote on Proposition 15 means supporting an increase in property taxes on commercial and industrial properties valued at \$3 million or more by changing their tax assessment to be based on the property's fair market value.⁵

A "No" vote on Proposition 15 means opposing an increase in property taxes on commercial and industrial properties valued at \$3 million or more and retaining the tax rates imposed on commercial and industrial properties that were enacted in Proposition 13 (1973).⁶

II. THE LAW

A. Current law

1. Proposition 13

Proposition 13 was passed by nearly a two to one vote margin on June 6, 1978. Proposition 13 was passed after nearly a decade of property taxes rapidly increasing on taxpayers and the Legislature's subsequent inability to pass legislation to curtail the rise. Proposition 13 had four major components to it. First, it shifts the assessment method from market valuation to an acquisition method – meaning the property tax rates would be set at the time in which the property was acquired.⁷ Second, the tax is limited to no more than 1 percent of the purchase price, with an annual adjustment to the rate of inflation or 2

¹ Cal. Proposition 15 §2 (2020) available at <https://vig.cdn.sos.ca.gov/2020/general/pdf/topl-prop15.pdf>

² Alexi Koseff, Prop. 13 Fight Looming Over How California Taxes Business Properties, Sacramento Bee (Feb. 7, 2018) <https://www.sacbee.com/news/politics-government/capitol-alert/article198755304.html>

³ LEGISLATIVE ANALYST'S OFFICE, Proposition 15, at 2 (November 3, 2020), available at <https://lao.ca.gov/ballot/2020/Prop15-110320.pdf>.

⁴ Cal. Proposition 15, *supra* note 1, (2020).

⁵ CAL SEC'Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY NOVEMBER 3, 2020, available at <https://voterguide.sos.ca.gov/propositions/15/> ["NOVEMBER 2020 VOTER GUIDE"]

⁶ *Id.*

⁷ Cal. Const. art. XIII § 1.

percent.⁸ Third, it requires the Legislature to have a two-thirds vote when passing a tax increase.⁹ Lastly, it limits cities, counties, and special districts by requiring the same two-thirds threshold of qualified electors when imposing local taxes.¹⁰

2. Proposition 98 and 111

Proposition 98 (1988) created a mandatory minimum school funding threshold by requiring a minimum of 40% of the State's General Fund to be dedicated to spending on schools.¹¹ This is the first test for calculating the amount of money that goes to education and schools.¹² The amount allocated as the minimum 40 percent contribution from the General Fund will fluctuate year to year, depending on the General Fund's total revenue.¹³ In addition to the money allocated by the General Fund, schools also receive local property tax money as a funding source.¹⁴ Additionally, the funding minimum increases in years of strong General Fund growth based on per capita personal income and average daily attendance.¹⁵

Proposition 111 (1990) created an alternative to the guaranteed minimum when growth in the General Fund was low.¹⁶ However, as a trade-off, the Legislature is required to accelerate funding when the General Fund is more stable.¹⁷ In years where the General Fund revenue falls or is slow, the funding requirement is based on attendance and growth per capita of the General Fund.¹⁸ Tests two and three use the prior year's Proposition 98 funding amount to assess the appropriation of funding for the current year.¹⁹ Test two adjusts the rate of funding based on inflation.²⁰ Inflation, as defined by Proposition 111, is the change in California's Per Capita Personal Income (CPCPI).²¹ Therefore test two adjusts funding based on the prior year's minimum guarantee, average daily k-12 attendance, and CPCPI.²² Test three uses the growth rate of non-Proposition 98 revenue to the General Fund instead of CPCPI.²³ So test three adjusts funding based on the prior year's minimum

⁸ Cal. Const. art. XIII § 2.

⁹ Cal. Const. art. XIII § 3.

¹⁰ Cal. Const. art. XIII § 4.

¹¹ LEGISLATIVE ANALYST'S OFFICE, A Historical Review of Proposition 98, at 9 (January 18, 2017), available at <https://lao.ca.gov/reports/2017/3526/review-prop-98-011817.pdf>.

¹² LEGISLATIVE ANALYST'S OFFICE, A Historical Review of Proposition 98, *supra* note 10, at 7..

¹³ *Id.*

¹⁴ LEGISLATIVE ANALYST'S OFFICE, A Historical Review of Proposition 98, *supra* note 10, at 8.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ LEGISLATIVE ANALYST'S OFFICE, A Historical Review of Proposition 98, *supra* note 10, at 12.

¹⁹ LEGISLATIVE ANALYST'S OFFICE, A Historical Review of Proposition 98, *supra* note 10, at 8.

²⁰ LEGISLATIVE ANALYST'S OFFICE, A Historical Review of Proposition 98, *supra* note 10, at 9.

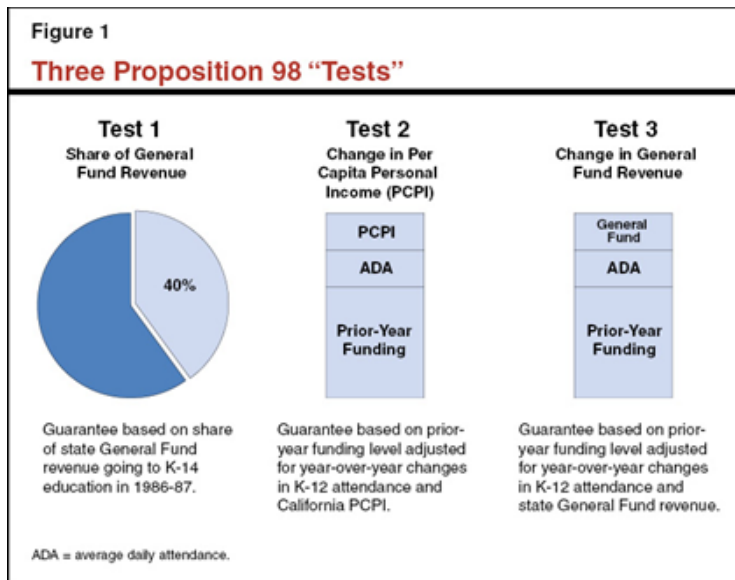
²¹ *Id.*

²² *Id.*

²³ *Id.*

guarantee, average daily k-12 attendance, and the change in non-Proposition 98 revenue to the General Fund to calculate funding for education and schools.²⁴

Within the mandatory funding requirements, the Legislature is free to allocate the education money to whichever education priorities it deems appropriate.²⁵ With a two-thirds vote of the Legislature, the minimum guarantee can be suspended for one fiscal year, and the Legislature can appropriate education funding at their discretion.²⁶ According to a 2017 report reviewing the effects of Proposition 98 produced by the Legislative Analyst Office (LAO), the State Legislature's nonpartisan fiscal and policy advisor, there is no real evidence to show the law actually increased funding to schools in a significant way.²⁷ This conclusion was drawn by comparing the 1988-89 formula for increasing funding with adjustments for daily attendance and inflation with the actual Proposition 98 funding for each year.²⁸



3. Proposition 2

Building on Proposition 98, Proposition 2 (2014) created the Public School System Stabilization Account (PSSSA).²⁹ This account was created to hold money from the General Fund that is designated for schools.³⁰ The purpose of the PSSSA was for additions to be made when revenues in the General Fund were high, and to withdraw from the account to allow for changes consistent with the fluctuation of student attendance and inflation.³¹

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ LEGISLATIVE ANALYST'S OFFICE, A Historical Review of Proposition 98, *supra* note 10, at 26.

²⁸ *Id.*

²⁹ LEGISLATIVE ANALYST'S OFFICE, A Historical Review of Proposition 98, *supra* note 6, at 7.

³⁰ *Id.*

³¹ *Id.*

Proposition 2 did not modify the minimum guarantee laid out in proposition 98.³² However, in years of economic decline, portions of the account can be reserved for use in the future.³³ According to a 2019-2020 California Department of Finance budget report, five criteria must be met for money to be deposited into the PSSSA³⁴:

1. State General Fund revenues from capital gains exceed 8 percent of total revenues
2. Proposition 98 "Test 1" is operative
3. Proposition 98 maintenance factor obligations created prior to 2014-15 have been paid
4. The Proposition 98 required minimum funding level is not suspended
5. The Proposition 98 funding level is greater than the prior year's funding level, adjusted for attendance growth and inflation (i.e., "Test 1" is greater than "Test 2")

Funds in the PSSA can be spent in fiscal years where the Proposition 98 funding (adjusted for inflation and growth) is insufficient to fund the prior fiscal year.³⁵ If the Governor declares a state of fiscal emergency, a deposit into the PSSSA can be suspended or reduced by the Legislature.³⁶ As of the LAO report's publication in 2017, no money had been deposited into the account.³⁷

B. Proposed Law

The proposed initiative seeks to add four new sections to the California Constitution. These sections, described in detail below, explain how the new revenue fund will function, how the generated revenues will be distributed to counties across the state, to what properties and how the tax will be applied, and provide a narrow exemption for some properties.³⁸

1. Addition of Section 8.7 to Article XVI

This addition to the California Constitution creates the Local Schools and Community College Fund ("The Fund") at the State Treasury.³⁹ This fund is different from the one created under Proposition 2 because there is not a set of criteria that must be met before money can be deposited into The Fund.⁴⁰ All money placed in The Fund will be kept in trust and allocated to schools in two ways.⁴¹ First, 11 percent will be allocated to the different community college districts based on the distribution system outlined in the Education Code

³² *Id.*

³³ *Id.* at 8.

³⁴ CAL. DEPT. FINANCE: 2019-2020 May Budget Revisions, at 18 (May 2019), available at <http://www.ebudget.ca.gov/2019-20/pdf/Revised/BudgetSummary/K-12Education.pdf>.

³⁵ *Id.*

³⁶ LEGISLATIVE ANALYST'S OFFICE, A Historical Review of Proposition 98, *supra* note 6, at 12.

³⁷ *Id.*

³⁸ Cal. Proposition 15, *supra* note 1, at §4-8.

³⁹ Cal. Proposition 15, *supra* note 1, at §4(a).

⁴⁰ *Id.* See CAL. DEPT. FINANCE: 2019-2020 May Budget Revisions, *supra* note 18 (criteria for money to be deposited into the PSSSA).

⁴¹ Cal. Proposition 15, *supra* note 1, at §4(a).

by the Board of Governors of California Community Colleges.⁴² Second, the Superintendent of Public Instruction will allocate the remaining 89 percent to school districts and county education offices statewide based on the procedures outlined in the Education Code.⁴³

The annual growth or reduction of revenue in The Fund will determine the amount that each school will receive.⁴⁴ However, each school will receive at least \$100 per unit of average daily attendance.⁴⁵ Proposition 15 states that the allocation of money from The Fund will have no impact on other funding that is earmarked for education.⁴⁶ Instead, the purpose of The Fund is to supplement other funding that schools receive.⁴⁷

Also, money held in The Fund cannot be repurposed for any service not stated in this section by the Governor, Legislature, Director of Finance, or Controller by means of appropriation, transfer, or reversion.⁴⁸ Nor can the money be loaned to the General Fund, another state fund, or a local fund.⁴⁹ Lastly, the amount of money in The Fund will have no impact on the constitutional requirement that 40% of the General Fund be designated for education.⁵⁰ Nothing in Proposition 15 explicitly protects the funding if a state of emergency is declared.⁵¹ However, section 22 Article XIII B (which details government spending limitations), states appropriations can be made to the emergency account from any funding source that does not strictly limit such appropriation by a two-thirds vote of the Legislature.⁵²

2. Addition of Section 8.6 to Article XVI

Proposition 15 will leave the Legislature to determine the amount of additional revenue that each county generates in a fiscal year.⁵³ This amount will be calculated using a tax rate of 1 percent of a property's fair market value as constitutionally required by taxation laws in Article XIII and the new tax assessment outlined in section 2.5 of the taxation laws (which is created by this initiative and discussed below).⁵⁴ The amount of added revenue in each county will be reported to the county auditor.⁵⁵

First, the county auditor will subtract a sum of money that is equivalent to the county's additional proceeds to the General Funds that will be appropriated to schools districts as dictated by Article XVI Section 8 (dealing with school spending) because of the exemption provided in Article XIII Section 3.1 (pertaining to taxation requirements and introduced

⁴² Cal. Proposition 15, *supra* note 1, at §4(a)(1).

⁴³ Cal. Proposition 15, *supra* note 1, at §4(a)(2).

⁴⁴ Cal. Proposition 15, *supra* note 1, at §4(a)(3).

⁴⁵ *Id.*

⁴⁶ Cal. Proposition 15, *supra* note 1, at §4(c).

⁴⁷ *Id.*

⁴⁸ Cal. Proposition 15, *supra* note 1, at §4(b).

⁴⁹ *Id.*

⁵⁰ Cal. Proposition 15, *supra* note 1, at §4(b).

⁵¹ *Id.*

⁵² Cal. Const. Art XIII B § 3(c)(2).

⁵³ Cal Proposition 15, *supra* note 1, at §5(a).

⁵⁴ *Id.*

⁵⁵ *Id.*

below).⁵⁶ The Director of Finance will decide what the county's share of the cost will be each fiscal year based on the reduction of revenue due to the exemption provided in the taxation requirements outlined in Article XIII Section 3.1.⁵⁷ Then, the decrease in tax revenue from Personal Income Taxes and Corporation Taxes will be examined by the Franchise Tax Board to evaluate how the increased tax revenue from the operation of the tax limitations governed by Article XIII A Section 2.5, and the taxation requirements in Section 3.1(a) of Article XIII, have impacted the reduction of revenue for the General Fund and other state funds.⁵⁸ County auditors will be responsible for transferring the determined deduction amount as identified by the Franchise Tax Board to the General Fund and any other impacted state fund.⁵⁹ The amount allocated to the General Fund is predetermined by the government spending limitations stated in Article XIII B of the California Constitution and is related to each county's obligation to pay money into the State General Fund.⁶⁰ The revenues generated in each county by the implementation of this tax assessment will fluctuate each fiscal year and be reflected in the amount the county auditor allocates to various State funds.⁶¹

Also, counties will be annually compensated for the "administrative cost" of implementing the new tax assessment.⁶² The Legislature will define what an "administrative cost" is, but that definition must include the cost of assessments, assessment appeals, legal counsel, tax allocation and distribution, and auditing and enforcing the provisions of this initiative that pertain to the operation of the tax assessment.⁶³ It will also be the Legislature's responsibility to establish the start-up costs for each county and provide funding via the General Fund until sufficient funding is established by other means.⁶⁴ This statute will also provide that the General Fund be reimbursed for funding the start-up.⁶⁵ Counties will make annual refunds for the correction of tax assessments in the prior fiscal year and then will be reimbursed for those payments.⁶⁶ The reimbursement amount will be subtracted from the county's share of the total added revenue that is generated by the new tax assessment scheme.⁶⁷

Finally, this section of Proposition 15 stipulates that all school districts, counties, and education agencies that receive funding from this Proposition must publicly disclose the amount of money they received resulting from the property tax revenue generated by the new tax assessment and how the money was spent.⁶⁸ These disclosures must be made

⁵⁶ Cal Proposition 15, *supra* note 1, at §5(b)(1)(B).

⁵⁷ *Id.*

⁵⁸ Cal Proposition 15, *supra* note 1, at §5(c).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Cal Proposition 15, *supra* note 1, at §5(d)(1).

⁶³ *Id.*

⁶⁴ Cal Proposition 15, *supra* note 1, at §5(d)(2).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Cal Proposition 15, *supra* note 1, at §5(e).

⁶⁸ Cal Proposition 15, *supra* note 1, at §5(f).

widely available to the general public and be articulated in a manner that is easy to understand.⁶⁹

3. Addition of Section 2.5 to Article XIII A

Section 6 of Proposition 15 would amend Section 2.5 of Article XIII A of the California Constitution by establishing the operative dates for Proposition 15. Section 6 also provides definitions and procedures relating to the operative dates as well as the criteria for exempting small businesses. Lastly, Section 6 also establishes a task force to assist with the administration of Proposition 15.

The operative dates come in two phases. First, Proposition 15 would be effective January 1, 2022, for some businesses' real property, and some businesses would start to be reassessed at least once every three years thereafter unless the following small business exemption applies.⁷⁰ If a small business occupies more than half of a commercial or industrial property's occupied square footage, then the property's reassessment would be delayed until the 2025-2026 assessment period.⁷¹ To qualify as a small business, a business must meet the following three criteria. First, the business must have fewer than fifty annual full-time equivalent employees.⁷² Second, the business must be independently owned and operated such that the business ownership interests, management, and operation are not subject to control, restriction, modification, or limitation by an outside source, individual, or business.⁷³ Third, the business owns real property located within California.⁷⁴ Additionally, a small business owner with property worth less than the full market value of \$3 million would be exempt from the market-based reassessment.⁷⁵

Lastly, Section 6 requires that the Legislature establish a task force to assist with implementing and administering the new regime. The task force will consist of a county assessor, taxpayer representative, a member from the Board of Equalization, a member of the Legislature, and a proponent of Proposition 15.⁷⁶ The Proposition does not specify the task force's selection criteria or whom within the Legislature will select the task force members.⁷⁷ The task force will recommend changes to the Legislature outlining necessary statutory and regulatory changes for Proposition 15 to be implemented.⁷⁸

⁶⁹ *Id.*

⁷⁰ Cal. Proposition 15, *supra* note 1, at §6(a)(1)

⁷¹ Cal. Proposition 15, *supra* note 1, at §6(e)(1)

⁷² Cal. Proposition 15, *supra* note 1, at §6(e)(4)(a).

⁷³ Cal. Proposition 15, *supra* note 1, at §6(e)(4)(b).

⁷⁴ Cal. Proposition 15, *supra* note 1, at §6(e)(4)(c).

⁷⁵ Cal. Proposition 15, *supra* note 1, at §6(d).

⁷⁶ Cal. Proposition 15, *supra* note 1, at §6(b).

⁷⁷ *Id.*

⁷⁸ *Id.*

4. Addition of Section 3.1 to Article XIII

Section 7 of Proposition 15 permits small businesses, as defined above, to exempt up to \$500,000 of tangible personal property from taxation.⁷⁹ The Legislature may not lower this amount, but the Legislature does have the authority to raise the amount of tangible property that small businesses may exempt from taxation.⁸⁰ This section explicitly does not allow aircrafts or vessels to qualify for this exemption.⁸¹ Lastly, this section also states that any related entities are considered to be one taxpayer, thereby not allowing independently managed and operated businesses to qualify for these exemptions if they are related to a business that does not qualify as a small business.⁸²

C. PATH TO THE BALLOT

On May 22, 2020, Proposition 15 qualified to appear on the ballot during the November 2020 election.⁸³ Subsequently, the California Attorney General drafted a title and summary as required by California law.⁸⁴ Coalition partners of the opponents to Proposition 15 filed litigation against the Attorney General on the grounds that the title was false and misleading.⁸⁵ While Judge Earl of the Sacramento County Superior Court felt that some portions of the description were "somewhat misleading," Judge Earl stated that the "Court is not convinced the sentence is so misleading that it justifies judicial intervention."⁸⁶ Judge Earl rejected all the opponent's claims citing the current legal standard that provides the Attorney General broad discretion in drafting the title and summary, barring anything false or misleading.⁸⁷ The appeal was denied, and the Attorney General's title and summary remained unchanged.

III. DRAFTING ISSUES

Proposition 15 does not appear to have any drafting errors.

⁷⁹ Cal. Proposition 15, *supra* note 1, at §7(a).

⁸⁰ Cal. Proposition 15, *supra* note 1, at §7(a)(3).

⁸¹ Cal. Proposition 15, *supra* note 1, at §7(a)(2).

⁸² Cal. Proposition 15, *supra* note 1, at §7(b).

⁸³ Nick Cahill, *Property Tax Overhaul Initiative Qualifies for California Ballot*, Courthouse News Service (May 29, 2020), <https://www.courthousenews.com/property-tax-overhaul-initiative-qualifies-for-california-ballot/>

⁸⁴ Cal. Elec. Code § 13313

⁸⁵ Ben Christopher, *Critics demand fairer prop ballot labels and summaries, but lawsuits tend to flame out*, Calmatters (August, 6 2020), <https://calmatters.org/politics/california-election-2020/2020/08/california-proposition-descriptions-lawsuits-attorney-general/>

⁸⁶ *Jon Coupal v. Alex Padilla*, No. 34-2020-80003440 (CA. Sup. Ct. Sacramento Co. August, 6, 2020), <https://www.law360.com/tax-authority/articles/1298705/calif-court-upholds-ballot-language-of-property-tax-measure>

⁸⁷ *Id.*

IV. CONSTITUTIONAL AND STATUTORY ISSUES

Proposition 15 does not violate any provisions of the United States Constitution. Proposed initiative amendments to the California Constitution cannot revise the Constitution.⁸⁸ A revision to the Constitution means the changes would fundamentally alter the structure of government.⁸⁹ There is not a revision issue here.⁹⁰ Also, all provisions in an initiative must be reasonably related to a single subject.⁹¹ All of the provisions in Proposition 15 relate to the tax revenues created from this change in the tax assessment for commercial and industrial properties and how the revenues will be used.⁹² There is not a single subject issue.⁹³

V. PUBLIC POLICY ISSUES

Both sides of the Proposition ground their argument in sound public policy concerns facing California. The proponents base their argument for Proposition 15 in more funding for schools and community services, including emergency services, affordable housing, and infrastructure projects.⁹⁴ The opposition to Proposition 15 stems from negative impacts on small businesses, minority-owned businesses, and inadequacies and inefficiencies in the funding scheme for schools.⁹⁵

A. Proponent's Argument

The proponents argue that millions of dollars will be generated in additional revenue that will provide funding for community services.⁹⁶ Likely beneficiaries of the revenue are park and recreation programs, housing projects, homeless initiatives, and unemployment services.⁹⁷ However, each community may use the funds at their own discretion to meet the needs of their citizens.⁹⁸ Proposition 13 severely restricted the use of property tax revenue as a funding source for schools by capping property taxes at 1 percent.⁹⁹ In contrast, many states already reassess commercial and industrial property based on their fair market value.¹⁰⁰

⁸⁸ Cal. Const. art. XIII § 3.

⁸⁹ *Strauss v. Horton*, 46 Cal.4th 364, 425 (Cal. 2009).

⁹⁰ Cal. Proposition 15, *supra* note 1, at § 3-8.

⁹¹ *Senate of State of Cal. v. Jones*, 21 Cal. 4th 1142, 1156 (Cal. 1999).

⁹² Cal. Proposition 15, *supra* note 1, at § 3-8.

⁹³ *Id.*

⁹⁴ CAL SEC'Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY NOVEMBER 3, 2020, available at <https://voterguide.sos.ca.gov/propositions/15/arguments-rebuttals.htm> [NOVEMBER 2020 VOTER'S GUIDE].

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* Cal. Proposition 15, *supra* note 1, at §2(e).

⁹⁹ *Id.*

¹⁰⁰ Cal. Proposition 15, *supra* note 1, at §2(e).

Additionally, California's schools are severely underfunded.¹⁰¹ Before Proposition 13, California ranked 7th in spending per student; in 2019, California ranked 39th.¹⁰² With the additional stream of tax revenue reserved specifically for school use, the proponents believe class sizes can be reduced, extra-curricular and after school programs can be funded, and additional staff (counselors, nurses, and librarians) can be hired.¹⁰³

Proposition 15 will encourage new housing developments by taking away the incentive of commercial property owners to hold onto land.¹⁰⁴ The current cap on property taxes means communities' best chances of raising revenues is to apply sales taxes, leading to the development of auto malls and other retail properties instead of housing units.¹⁰⁵ By changing the tax assessment for commercial and industrial properties, owners will have a stronger incentive to use the land rather than pay the higher taxes and not develop the land.¹⁰⁶

Currently, commercial and industrial properties are assessed on their acquired value.¹⁰⁷ A property that has not been sold in decades has not been reassessed since the current owner acquired the property.¹⁰⁸ Also, there are legal loopholes that property owners use to avoid having their property reassessed.¹⁰⁹ One such loophole is that property owners that do not invest in improvements to their property do not trigger a reassessment of the property's value, whereas owners who do invest in improvements are subject to having their property reassessed.¹¹⁰ Under Proposition 15, commercial and industrial properties would be reassessed every three years.¹¹¹

B. Opponent's Argument

1. Would Hurt Small Businesses

Opponents and opposition coalition partners from the minority business community and social justice groups contend that Proposition 15 would have disparate impacts on small businesses and minority communities. Opponents argue that the small business exception is crafted narrowly and therefore, would not properly protect small businesses from a property tax increase. As described earlier, to qualify, a small business must meet three metrics. First, the business must have fewer than fifty annual full-time equivalent employees.¹¹² Second, the business must be independently owned and operated such that

¹⁰¹ *Id.*

¹⁰² EDSOURCE. *States in Motion: Visualizing how education spending has changed overtime.* November 12, 2019), <https://edsourc.org/2015/states-in-motion-school-finance-naep-child-poverty/83303>

¹⁰³ Cal. Proposition 15, *supra* note 1, at § 3.

¹⁰⁴ Yes on 15 Housing Brief. August 7, 2020. PDF.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Cal. Proposition 15, *supra* note 1, at §2(m).

¹⁰⁸ Cal. Proposition 15, *supra* note 1, at §2(e).

¹⁰⁹ *Id.*

¹¹⁰ Cal. Proposition 15, *supra* note 1, at §2(j).

¹¹¹ Cal. Proposition 15, *supra* note 1, at §2(e).

¹¹² Cal. Proposition 15, *supra* note 1, at §6(e)(4)(a).

the business ownership interests, management, and operation are not subject to control, restriction, modification, or limitation by an outside source, individual, or business.¹¹³ Third, the business owns real property located within California.¹¹⁴ Opponents specifically take issue with the second small business requirement that requires businesses to be "independently owned and operated" as they would prohibit small businesses with larger business partners and franchisees of major chains from being exempt.

Opponents also argue that most small businesses, especially in minority communities, rent the buildings they operate in and are in a triple net lease agreement.¹¹⁵ Triple net lease agreements are leasing agreements in which the tenants are contractually bound to pay all the property expenses, including real estate taxes, building insurance, and maintenance - in addition to their rent. Opponents contend that most small businesses do not own the building where they operate and that virtually all commercial landlords, especially in areas with high property valuations, such as Los Angeles, San Francisco, Orange County, and San Diego, will not meet the criteria to qualify as a small business. Therefore, many small businesses will see their property taxes increase upon the market value reassessment of the owner's property. Opponents contend that small businesses and consumers will be hurt because businesses will have to raise prices on their products or services or lay off workers to remain competitive, especially against online retailers or service providers.

2. Small and Rural Counties will Experience a Decrease in Tax Revenue

Opponents argue that this ballot measure would result in negative revenue for rural and less populated counties. Santa Clara County Assessor Larry Stone estimated that the \$500,000 exemption in tangible business expenses would exceed the potential property tax increases from the market valuation scheme.¹¹⁶ Further, the California Assessors Association (CAA) commissioned a study that found that more wealthy counties will benefit disproportionately while smaller and more rural counties could see declines in their property tax revenues.¹¹⁷ The LAO similarly indicated that situations in which Mr. Stone described where existing areas with high property tax revenue and higher property tax rates could receive more funding than areas with lower property tax rates and less commercial buildings.¹¹⁸ Opponents contend that since Californians have such dramatically

¹¹³ Cal. Proposition 15, *supra* note 1, at §6(e)(4)(b).

¹¹⁴ Cal. Proposition 15, *supra* note 1, at §6(e)(4)(c).

¹¹⁵ Social Justice Impact Study of Split Roll, CA NAACP: California State Conference of the National Association for the Advancement of Colored People, <http://www.ca-naacp.org/images/Forms/NAACP - Social Justice Study two.pdf> (last visited September, 22, 2020).

¹¹⁶ J. Hearing Assemb. Rev. and Tax. and Local Gov. Comm. 2020 Leg., (CA 2020) (prepared testimony of Larry Stone, Santa Clara County Assessor, California Assessors' Association)

¹¹⁷ Split Roll Implementation - estimated Costs to County Assessors, Capitol Matrix Consulting, May 2020, <https://noonprop15.org/wp-content/uploads/2020/06/CAA-Oppose-SplitRoll-w-attachments.pdf>.

¹¹⁸ J. Hearing Assemb. Rev. and Tax. and Local Gov. Comm. 2020 Leg., (CA 2020) (prepared testimony of Brian Uhler, Deputy Legislative Analyst, Legislative Analyst's Office)

different median property values, disparate impacts on revenue will result from the Proposition.

3. Will Weaken the Economic Recovery and Lead to Lost Jobs

Opponents to Proposition 15 argue that the \$6.5 billion and \$12.5 billion tax increase would significantly impact employment in the state; these figures align with the LAO and proponents of Proposition 15.¹¹⁹ Opponents cite a 2012 Pepperdine study that examined the effects of a similar proposal on the economy and jobs. The 2012 study found that the shift from the acquisition model to the periodic assessment model would result in almost \$72 billion of lost economic output and almost 397,000 lost jobs.¹²⁰ While this study does not analyze the exact proposal, the opponents argue that the underlying change to the property tax system would have a similar impact on the economy and jobs. A recent study completed in 2020, but before the COVID-19 pandemic impact was fully realized, projects that Proposition 15 would lead to 120,000 jobs lost.¹²¹

4. Adversely Impacts the Agricultural Community

Proposition 15 makes several exemptions from the new market valuation scheme. One of those exemptions is for agricultural lands. Specifically, the text within Proposition 15 states that "real property used for commercial agricultural production."¹²² However, under current law, real property is divided into two major categories: land and improvements.¹²³ The Board of Equalization provides examples of what constitutes an improvement to real property in Property Tax Rule 124.¹²⁴ Examples of "improvements" include machinery, buildings, fences, paved roads, and fruit and nut trees.¹²⁵ According to an LAO analysis, Proposition 15's agricultural exemption would apply to land, but not improvements.¹²⁶ Legal experts have similarly expressed this claim in the field.¹²⁷ The authors of Proposition 15 attempted to exempt commercial agricultural production from the split roll; however, since "improvements" to agricultural producing lands will qualify a property for a market value assessment, and improvements are so essential to the production of agricultural products, it renders this exemption functionally ineffective. Opponents argue that the exemption is ineffective because while the land itself would be exempt from reassessment, the land's

¹¹⁹ LEGISLATIVE ANALYST'S OFFICE, Proposition 15, *supra* note 2, at 2.

¹²⁰ Pepperdine University, Davenport Institute, *An Analysis of Split Roll Property Tax Issues and Impacts (March 2012)*, available at <https://publicpolicy.pepperdine.edu/davenport-institute/content/research/archived-reports/split-roll.pdf>

¹²¹ Berkeley Research Group, *Taxing Commercial and Industrial Property at Full Market Value (March 2020)*, available at <https://www.politico.com/f/?id=00000171-5087-d6b1-a3f1-d4d7be430000>

¹²² Cal. Proposition 15, *supra* note 1, at §6(c)(1).

¹²³ Cal. Rev. & Tax. § 104

¹²⁴ Cal. Code Reg., tit. 18, § 124

¹²⁵ *Id.*

¹²⁶ J. Hearing Assemb. Rev. and Tax. and Local Gov. Comm. 2020 Leg., (CA 2020) (prepared testimony of Brian Uhler, Deputy Legislative Analyst, Legislative Analyst's Office)

¹²⁷ Craig A. Becker, *The Split-Roll Initiative Is Poised to Rock California's Property Tax System*, Pillsbury Law (June 29, 2020), <https://www.pillsburylaw.com/en/news-and-insights/split-roll-initiative-california.html>

improvements could reclassify the land as commercial and trigger a market value reassessment.

C. Fiscal Impact

According to the LAO, between \$6.5 billion and \$12.5 billion will be generated from the tax increase on commercial and industrial properties.¹²⁸ A USC report found the potential revenue increase would be between \$10 billion to \$12 billion.¹²⁹ The LAO report stated the tax assessment implementation would result in an annual cost of several million dollars.¹³⁰ Additionally, some rural communities may see a reduction in tax revenue because the initiative lowers the tax on business equipment to \$500,000.¹³¹ Any business equipment valued at less than \$500,000 will no longer be taxed.¹³² The drop in revenue from business equipment is expected to be several million dollars a year.¹³³ The CAA commissioned a fiscal analysis, which concluded the costs to implement the proposed tax assessment over the next three years would be one billion dollars.¹³⁴ In this report, CAA also expressed concerns regarding staffing and stated that they will need to hire about 900 more county tax assessors throughout the state to maintain the periodic market value assessment of commercial and industrial properties.¹³⁵ Proposition 15 states that counties will be reimbursed by the General Fund for the "administrative costs" of implementing the Proposition, which cover the costs of performing these assessments until other sufficient funding is established.¹³⁶

VI. CONCLUSION

Proposition 15 would effectively create a "split roll" tax assessment where commercial and industrial properties are assessed differently than residential properties and commercial properties valued at less than \$3 million.¹³⁷ The additional revenue generated from the new tax assessment would be placed in a trust to be distributed to schools and local communities.¹³⁸ Opponents to Proposition 15 argue that the tax increase will have a negative impact on the costs of living and small businesses by raising the costs

¹²⁸ LEGISLATIVE ANALYST'S OFFICE, Proposition 15, *supra* note 2, at 2.

¹²⁹ USC DORNSIFE, Program for Environmental and Regional Equity, *Getting Real About Reform II: Estimating Revenue Gains from Changes to California's System of Assessing Commercial Real Property (February 2020)*, at 1, Available at https://dornsife.usc.edu/assets/sites/242/docs/Updated_2019_Rev_Est_memo_Design_v5.pdf.

¹³⁰ LEGISLATIVE ANALYST'S OFFICE, Proposition 15, *supra* note 2, at 2.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ California Assessors' Assoc, *California Assessors' Association White Paper on a "Generic" Split-Roll* (March 2020), at 2, available at <https://www.calassessor.org/index.php/resources/publications/2019-003-white-paper-split-roll/viewdocument/2433>.

¹³⁵ *Id.*

¹³⁶ Cal Proposition 15, *supra* note 1, at §5(d)(1).

¹³⁷ Cal. Proposition 15, *supra* note 1, at § 3.

¹³⁸ Cal. Proposition 15, *supra* note 1, at § 5.

to rent building space and fear consumers will bear the burden of increased costs of goods and services.¹³⁹

A "Yes" vote on Proposition 15 means supporting an increase in the property taxes on commercial and industrial properties valued at \$3 million or more by changing their tax assessment to be based on the property's fair market value.¹⁴⁰

A "No" vote on Proposition 15 means opposing an increase in the property taxes on commercial and industrial properties valued at \$3 million or more and retaining the tax rates imposed on commercial and industrial properties that were enacted in Proposition 13.¹⁴¹

¹³⁹ CAL SEC'Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY NOVEMBER 3, 2020, *supra* note 81.

¹⁴⁰ CAL SEC'Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY NOVEMBER 3, 2020, *supra* note 4.

¹⁴¹ *Id.*