

CALIFORNIA INITIATIVE REVIEW

Analysis of Proposition 81

California Reading and Literacy Improvement and
Public Library Construction and Renovation Bond Act
of 2006

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I. Executive Summary

If approved by a majority of California voters during the June 2006 primary election, Proposition 81 would allow the state to sell up to \$600 million of general obligation bonds to benefit local library facilities, with an eye toward encouraging joint-use facilities with existing public educational institutions. *California Official Voter Information Guide*, Analysis of Proposition 81 (Secretary of the State, 2006).

To receive money for a library project a city, county, or library district would be required to provide 35 percent of a project's funds while the state bond would finance the remaining 65 percent. The new funds secured by the bond could be used for the construction of new libraries, remodeling or rehabilitation of existing libraries, the purchase of land for those libraries, and furnishings plus equipment needed to accommodate the Internet and similar computer technology. *California Official Voter Information Guide*, Proposition 81 (Secretary of the State, 2006). The funds could not be used for books, administrative costs, procurement of matching funds, or any ongoing operating expenses, including the cost of personnel. *Id.*

Proposition 81 was placed on the ballot by the California Legislature. In legislative form it was Senate Bill 1161, introduced by Senator Dede Alpert. SB 1161 passed the state senate with a vote of 28 to 9. *Proposition 81 Votes Cast*, http://ss.ca.gov/elections/vig_06/prop81_entire.pdf (accessed February 27, 2006). It passed the state assembly with a vote of 57 to 15. *Id.* One of those "no" votes came from Assemblyman Ray Haynes, one of the leading opponents of Proposition 81. *Assembly Analysis*, http://info.sen.ca.gov/pub/03-04/bill/sen/sb_1151-1200/sb_1161_cfa_20040823_225336_asm_floor.html (accessed February 27, 2006). In addition, the state Constitution requires that any "sale of bonds" must receive voter approval. Cal. Const. art. XVI, §2. Thus, Proposition 81 has been placed before the voters and must receive more than 50 percent of the votes cast June 6, 2006 in order to go into effect.

Proposition 81 is a general obligation bond requiring the state to pay back the principle and interest costs of the bond. Analysis of Proposition 81. These costs would be paid via general sales tax and general fund revenues received through personal and corporate income taxes. *Id.* The state's cost for issuing bonds depends primarily on the interest rate applied and the time period over which the bonds are repaid. *Id.* The Legislative Analyst assumes this bond would be paid over a period of about 30 years with an interest rate of five percent. *Id.* It would cost nearly \$1.2 billion to pay off both the principal (\$600 million) and interest (\$570 million) on the bond. *Id.* That amounts to an interest payment of 95 cents for every dollar borrowed. The combined annual payment for principle and interest would total \$40 million. *Id.* As discussed in this analysis, those numbers are disputed. Additionally, the financial impact has a local effect. First, because local agencies must provide 35 percent of a project's cost, the matching funds would collectively cost the local agencies that pursue bonds \$320 million. *Id.* Second, any local agencies that build new or expand existing libraries would incur operating costs. Statewide, these costs could amount to millions of dollars each year. *Id.*

II. The Law

A. History of Funding

Local libraries are funded from a combination of local, state, and federal funds, with the majority of costs being borne by cities and counties. Analysis of Proposition 81. In 1983, the state of California enacted the Public Library Foundation Program (hereinafter “PLF”). The goal of the PLF was to fund ten percent of library operational costs. Cal. Assembly Floor Analysis, SB 1161 (Aug. 23, 2004). Under the PLF, the state’s contribution to each public library is based on a per capita cost multiplied by the population served by that library. Cal. Educ. Code Ann. § 18022 (LEXIS 2006). California Education Code §§ 18020 – 18026 detail how each of these figures are computed. The California Legislature has relied on bond financing to fund library construction and renovation since the late 1980s. Propositions 85 and 14 are predecessors to Proposition 81.

1. Proposition 85

In 1988 an initiative bond act was submitted to voters - Proposition 85 (the Library Construction and Renovation Act of 1988). At that time the federal government was contributing \$13 million for library buildings and repairs while the state was spending \$76 million for library operating costs. *California Official Voter Information Guide*, Analysis of Proposition 85 (Secretary of State, 1988).

The goal of Proposition 85 was to provide for bond financing of public library construction. “Bond financing is a type of long-term borrowing that the state uses to raise money for various purposes. The state obtains this money by selling bonds to investors. In exchange, it agrees to repay this money, with interest, according to a specified schedule.” Legislative Analyst’s Office, An Overview of State Bond Debt <http://www.lao.ca.gov/ballot/2004/bond_11_2004.htm> (accessed March 19, 2006). Proposition 85 called for the state to sell “general obligation bonds.” *California Official Voter Information Guide*, Text of Proposed Laws, Proposition 85, §§ 19970 -19971. “These must be approved by voters and their repayment is guaranteed by the state’s general taxing power.” Legislative Analyst’s Office, An Overview of State Bond Debt <http://www.lao.ca.gov/ballot/2004/bond_11_2004.htm> (accessed March 19, 2006).

Proposition 85 authorized up to \$75 million in bonds to finance library construction and renovation. Analysis of Proposition 85. Voters passed Proposition 85 by more than 52 percent of the ballots cast. University of California, Hastings College of the Law, California Ballot Propositions, Proposition 85 <<http://traynor.uchastings.edu/cgi-bin/starfinder/27635/calprop.txt>> (accessed March 19, 2006). Ultimately, 24 local library projects were funded ranging in costs from \$300,000 to \$10 million. *California Official Voter Information Guide*, Analysis of Proposition 14 (Secretary of State, 2000). Nearly \$3 million of the \$75 million authorized was unspent and so remained available for use when Proposition 14 was submitted to the voters in 2000. *Id.*

2. Proposition 14

Twelve years after the Library Construction and Renovation Act of 1988, Proposition 14 (the California Reading and Literacy Improvement and Public Library Construction and Renovation Bond Act of 2000) was submitted to voters. At that time, the federal and state contribution to California public libraries was a combined \$90 million. Analysis of Proposition 14. Additionally, Proposition 14 was submitted after federal funding had been cut in 1998 because of Congress' failure to renew the federal Library Services and Construction Act. Cal. Assembly Floor Analysis, SB 1161 (Aug. 23, 2004).

Proposition 14 authorized up to \$250 million in bonds to finance library construction and renovation. Analysis of Proposition 14. Proposition 14 essentially mirrored the language of Proposition 85, with three notable differences. First, Proposition 14 added a section giving preference for new construction applications to joint-use projects (libraries that serve the community and school districts), and gave preference for remodeling applications submitted by public libraries that were located in the attendance areas of public schools. *California Official Voter Information Guide*, Text of Proposed Laws, Proposition 14, § 19994. Second, Proposition 14 eliminated a library's discretion to spend 1 percent of the grant money received on art for the library. *California Official Voter Information Guide*, Text of Proposed Laws, Proposition 85, § 19963, not appearing in Proposition 14). Third, Proposition 14 removed the one percent cap on costs the state librarian could receive for costs associated with administering the program. Proposition 14, § 20011.

Voters approved Proposition 14 by 59 percent. Secretary of State, *Statement of Vote: 2000 Primary Election* < http://www.ss.ca.gov/elections/sov/2000_primary/measures.pdf > (accessed March 19, 2006). Ultimately, 45 projects were funded. Analysis of Proposition 81. While 60 projects were eligible for funds they could not be funded due to a lack of money – a shortfall of about \$506 million. *Id.*

B. The Effects of Proposition 81

In June 2006, voters will again determine the outcome of a library construction and renovation bond. This time it is Proposition 81, the California Reading and Literacy Improvement and Public Library Construction and Renovation Bond Act of 2006. Currently, the federal and state contribution to public libraries is \$46 million. *Id.* The state's PLF funding over the past several years has seen drastic fluctuations. The table below demonstrates these figures:

FISCAL YEAR:	PLF FUNDING:
1998/1999:	\$38.8 million
1999/2000:	\$56.8 million
2000/2001:	\$56.8 million
2001/2002:	\$52.9 million
2002/2003:	\$31.5 million
2003/2004:	\$15.8 million
2004/2005:	\$14.3 million
2005/2006:	\$14.3 million

California Library Association, CLA Facts < http://www.cla-net.org/included/docs/2006PLF_Fact_Sheet.pdf > (accessed March 19, 2006).

While the goal of PLF funding was to pay ten percent of local libraries' operational costs, PLF funding has recently fallen to fund just one percent of those costs. Cal. Assembly Floor Analysis, SB 1161 (Aug. 23, 2004). California's current spending for public libraries ranks it 18th across the nation. Cal. Assembly Floor Analysis, SB 1161 (Aug. 23, 2004).

1. Program Provisions

Proposition 81 essentially comprises the same program embodied in Propositions 14 and 85. Proposition 81 authorizes up to \$600 million in bonds to be sold to finance library construction and renovation. Analysis of Proposition 81. Under Proposition 81, as under Propositions 14 and 85, the state would pay 65 percent of the cost for each construction project approved, and the local entity would be required to match 35 percent of the funds needed for the project. Thus, local entities would be required to pay the remaining 35 percent of the costs of each project. *Id.* Additionally, Proposition 81 would establish The California Public Library Construction and Renovation Board of 2006 (hereinafter "Board") to govern how the bond would be distributed. *Id.* "The board is comprised of the State Librarian, the Treasurer, the Director of Finance, an Assembly Member appointed by the Speaker of the Assembly, a Senator appointed by the Senate Committee on Rules, and two members appointed by the governor." Proposition 81 § 20023(b).

Specifically, Proposition 81 authorizes any grants of money to be spent on the following activities:

- 1) building new facilities or expansions,
- 2) buying land to build a facility,
- 3) remodeling and rehabilitating an existing building (including electrical and telecommunications systems to allow for Internet and other computer technology)
- 4) furniture and furnishings,
- 5) architecture, engineering and other fees for services, and
- 6) service charges (as required by a local jurisdiction). Proposition 81, § 20026(a)-(f).

Proposition 81, however, forbids grant money to be spent on:

- 1) books and library materials,
- 2) administrative costs (including costs related to preparing the grant request, raising the matching funds, or costs associated with an election if voter approval is needed for the project),
- 3) interest costs or other charges for financing the project, and
- 4) ongoing operating expenses. Proposition 81, § 20028(a)-(d).

Criteria are also established to determine what projects are eligible for funding. Applicants must at least request \$50,000, but no more than \$20 million. Proposition 81, §§ 20031(c) and 20033(a). Further, projects where construction bids have already been solicited are ineligible. Proposition 81, § 20031(b).

Moreover, additional criteria are established for selecting which projects would be selected to receive state funding. First priority would be given to projects that were eligible for aid but could not receive a grant under Proposition 14 due to a lack of available funds. Proposition 81, § 20032(a). These projects are eligible to receive up to 50 percent of the total bond money available under Proposition 81. Thus, up to \$300 million of the total \$600 million could be used by these applicants. *Id.* Additionally, \$25 million will be reserved exclusively for joint-use projects. If these projects require more money, the balance may be financed from remaining bond funds. Proposition 81, § 20032(d)(1)-(2). The criteria upon which applications will be evaluated include:

- 1) the needs of urban, suburban, and rural areas,
- 2) the age and condition of existing library facilities within an area,
- 3) the degree to which existing library facilities are inadequate in meeting the needs of the residents in the library service area,
- 4) the degree to which the library integrates appropriate electronic technologies into the proposed project,
- 5) the degree to which the proposed site is appropriate for the proposed project and its intended use, and
- 6) the financial ability of the agency applying for funds to maintain and operate the proposed library. Proposition 81, § 20036(a)(1)-(7).

Local governments who accept Proposition 81 funds are subject to additional constraints. First, any unused state money must be returned. Proposition 81, § 20035. Second, the public library receiving state money must remain a public library for 20 years, or the state money must be paid back. Proposition 81, § 20037.

2. Financing

Under Proposition 81, the state would be responsible for contributing 65 percent of the costs for approved construction projects. Proposition 81, § 20033(a). The bond principle and interest would be paid from the General Revenue fund each year until paid in full. Proposition 81, §§ 20042 – 20043. General Revenue funds are generally raised by the state through personal and corporate income taxes, as well as state sales taxes. Analysis of Proposition 81. The actual cost that the state would incur for paying off the bonds is disputed. The Legislative Analyst estimates the total cost for paying off the principle (\$600 million) and the interest (\$570 million) at an interest rate of five percent over a 30 year period would be \$1.2 billion. *Id.* Under these numbers the state would pay about \$40 million annually for the program. *Id.* However, the Assembly predicted that the total cost would approach \$1.9 billion, translating into an average payment of about \$65 million a year for the program. Cal. Assembly Floor Analysis, SB 1161 (Aug. 23, 2004).

Local governments are responsible for funding 35 percent of the project costs. Proposition 81, § 20033(a). On total, local government entities would spend \$320 million, assuming the state distributed the entire \$600 million in bond money. Analysis of Proposition 81. Local governments would also have costs associated with upkeep and additional operating expenses from the expansions or renovations. *Id.* The Legislative Analyst estimates these costs would amount to several millions of dollars annually. *Id.*

3. Differences from Proposition 14

While Proposition 81 is very similar to its predecessor Propositions 13 and 13.3, Proposition 81 has minor, almost technical changes. First, Proposition 81 would broaden the definition of “joint-use” programs to include not just school districts, but also the University of California campuses, the California State University campuses, community college districts, and county offices of education. Proposition 81, § 20032(d)(1)(A)(i)-(v). Additionally, Proposition 81 would require that the public education institution involved in the joint-partnership contribute at least 50 percent of the required 35 percent local matching funds. Proposition 81, § 20032(d)(1)(B). Second, Proposition 81 would provide that if the Board should require that the local government entity actually own the land on which proposed construction is to occur, an eminent domain action to take that property would satisfy any potential “ownership” requirement. Proposition 81, § 20027. Third, the state treasurer would be authorized to seek out ways to maximize any federal tax benefits that may be obtained from issuing and financing the bonds. Proposition 81 § 20047.

III. Drafting Issues

As Proposition 81 substantially replicates previous Propositions 14 and 85, there do not appear to be any drafting issues.

IV. Constitutional Issues

A. Federal Constitution

Proposition 81 does not raise any federal constitutional issues.

B. State Constitution

There do not appear to be any state constitutional issues expressly raised by Proposition 81. There is, however, an area of interest worthy of discussion.

1. General Obligation Bond

First, Article XVI of the California Constitution allows the California Legislature to create a “General Obligation Bond Proceeds Fund” in the State Treasury. The proceeds from the sale of these bonds are to be placed into this fund. Cal. Const. art. XVI, § 1.5. Bonds are a type of long-term borrowing used by the state to raise money for various purposes. Legislative Analyst’s Office, An Overview of State Bond Debt, http://www.lao.ca.gov/ballot/2006/bond_6_2006.htm. The state obtains money by selling bonds to investors. In exchange, the state agrees to repay this money, with interest, according to an agreed upon schedule. *Id.* General obligation bonds are paid from the state’s General Fund, which is funded by personal and corporate income taxes, and general sales tax. *Id.*

Second, Section 1.5 of Article XVI requires an accounting of all money deposited into this fund, with the proceeds of bonds being maintained in a separate account. *Id.* These proceeds may only be paid out in accordance with the law authorizing the issuance of the particular bond from which the proceeds were derived. *Id.*

Third, the California Constitution states that every measure providing for the “preparation, issuance, and sale of bonds” of the State of California shall be put before the voters in the form of either a bond act or statute. Cal. Const. art. XVI, §2.

Proposition 81 adheres to the California Constitution requirements. First, Proposition 81 authorizes the state to issue \$600 million in general obligation bonds to finance library construction. An Overview of State Bond Debt. Second, Proposition 81 directs the bonds its authorizes to be governed by the “General Obligation Bond Law,” which makes up several sections of the state Government Code commencing with Section 16720. *California Official Voter Information Guide*, Text of Proposed Laws, Proposition 81, art. 3, § 20039. Third, Proposition 81 is being submitted to the voters in the 2006 primary election.

V. Public Policy Considerations

A. Proponents’ Argument in Favor of Proposition 81

Proponents of Proposition 81 call it a necessity due to the long line of social needs that have gone unmet. Proponents argue that Proposition 81 will combat illiteracy, provide a safe place for kids, and serve the disabled. *California Official Voter Information Guide*, Argument in Favor of Proposition 81. They argue that illiteracy not only hurts the individual who cannot read, but also denies businesses greater productivity and the development of better products that literate employees could deliver. *Id.*

Proponents further argue that California must establish more libraries to serve the demand created by the growing populations of young people and seniors – the two groups that most use libraries. *Id.* They cite a 2003 needs assessment, conducted by the California State Library, which concluded there are more than 500 public library building projects needed in the next five years. *Id.* Additionally, they express the opinion that some communities do not have libraries and others that have libraries, are seeing their facilities deteriorate. *Id.*

Proposition 81 is not a tax increase, proponents state. Rather, the initiative would be funded by the sale of bonds. Proponents argue that by using state bond money, local governments will only need to provide the match of 35 percent, leaving local governments with other funds to use as they see fit. Proponents suggest local government could use this other money to expand library programs or improve book collections. *Id.*

Proponents concede that Proposition 81 provides funds for less than a quarter of the state’s needs according to the State Library assessment. Telephone interview with Lee Spahn, campaign manager, Yes for Libraries, March 1, 2006 (notes on file with the University of the Pacific, McGeorge School of Law, Capitol Center for Government Law and Policy). Yet because Proposition 81 requires a 35 percent match, the \$600 million contribution from the state becomes nearly \$1 billion in investment when the local match is included. *Id.* It is this efficient use of state money combined with local money, demonstrated by the proven track record of the 1988 and 2000 bond acts that proponents say is a better use of limited funding. *Id.*

In response to criticism from opponents who argue library funding should be supported by the state's annual budget, proponents say infrastructure needs such as libraries have always required significant investment that is most often financed over time. They point to building projects in the 1950s and 1960s, saying bonds financed those projects. *Id.*

Finally, proponents express the opinion that Proposition 81 makes the best use of state-funded dollars by funding vital needs, not administrative overhead.

B. Opponents' Argument Against Proposition 81

Opponents counter that bonding debt has skyrocketed 1,250 percent in the past 20 years. *California Official Voter Information Guide*, Argument Against Proposition 81. By paying for libraries with bonds, that require the repayment of principle and interest, opponents argue Proposition 81 saddles our children and grandchildren with unnecessary debt. *Id.*

Opponents object to what they call an unending request for money. *Id.* They argue that proponents asked for library money in 1988 and again to 2000 on the premise that those bonds would meet the need. *Id.* Additionally, they see the pressure to spend local money on matching funds for the Proposition 81 state dollars as a tactic that undermines the necessary commitment to fund actual operating costs of any new library. (WORDY) Interview with Lew Uhler, president, National Tax Limitation Committee, February 28, 2006 (notes on file with the University of the Pacific, McGeorge School of Law, Capital Center for Government Law and Policy).

Opponents argue that instead of bonds, California should pay for libraries by committing general fund revenues for new facilities. Argument Against Proposition 81. They continue that politicians have refused to make libraries a priority. Instead, the politicians spend more money on their pet projects, such as welfare, free health care, and reduced college tuition for illegal aliens. *Id.* Opponents argue that politicians would not be so free-spending if voters demanded that politicians spend money on the state's top priorities first. *Id.*

At least one opponent concedes that bonds are an appropriate financial mechanism for some infrastructure. Interview with Lew Uhler. Mr. Uhler reasoned that the cost of some public projects is so great that bonds are a logical means of financing the high price tag over time. *Id.* Still, Mr. Uhler argues that any bond in isolation leads to an inadequate evaluation of the state's overall spending. *Id.* For instance, funding libraries is never compared to other programs to determine which yields the greater social need. *Id.*

Finally, opponents recommend that voters oppose this initiative not as a vote against libraries, but a vote to stop self-indulgent politicians. *Id.*

VI. Conclusion

On June 6 voters will determine whether California will use bonds to finance the construction of new or expanded library facilities. The pattern of past library bonds may lead to the conclusion that this bond will be met with approval. However, in a year when politicians have voiced strong opinions about bonds for infrastructure projects from roads to ports to flood control to education to high-speed rail, observers wonder if a lengthy list of potential bond requests on the November ballot may make voters more cautious this June. Proponents argue that we can build now with cheaper dollars or wait and use more expensive dollars. Interview with Lee Spahn. Opponents argue that politicians should be forced to prioritize state spending instead of leaving it to the capricious nature of voters. Interview with Lew Uhler. Certainly voters may hear more about Proposition 81 this spring, because it is one of just two initiatives on the ballot, the fewest number of initiatives on a ballot since the special election of October 2003.