

# **CALIFORNIA INITIATIVE REVIEW**

## **Analysis of Proposition 82**

Preschool Education. Tax on Incomes Over \$400,000  
for Individuals; \$800,000 for Couples. Initiative  
Constitutional Amendment Statute.

Copyright © 2006 By University of the Pacific,  
McGeorge School of Law

**By**

**Stephanie Keeney**

*J.D., University of the Pacific, McGeorge School of Law to be conferred May, 2006  
B.A., Theatre, Magna Cum Laude, University of Southern California, 2001*

**And**

**Juliette A. Tognetti**

*J.D., University of the Pacific, McGeorge School of Law to be conferred May, 2006  
M.P.H., Maternal & Child Health, Boston University, 2002  
B.S., Physiological Sciences, University of California, Los Angeles, 2000*

**Analysis of Proposition 82  
Table of Contents**

I. Executive Summary.....	1
II. The Law.....	1
A. Current Law.....	1
B. Proposed Law.....	2
III. Drafting Issues.....	4
IV. Constitutional Issues.....	4
A. Federal Constitution.....	4
B. State Constitution.....	4
1. Initiative Effect.....	4
2. Single Subject Rule.....	4
V. Public Policy Considerations.....	5
A. Proponents' Argument in Favor of Proposition 82.....	5
B. Opponents' Argument Against Proposition 82.....	6
VI. Conclusion.....	8

## **I. EXECUTIVE SUMMARY**

Proposition 82, the Preschool for All Act, is an Initiative Constitutional Amendment. *California Official Voter Information Guide*, Text of Proposed Laws, Proposition 82 (Secretary of State 2006), <<http://www.caag.state.ca.us/initiatives/pdf/SA2005RF0088.pdf>> (accessed Mar. 13, 2006). Proposition 82 proposes two changes to California's Constitution – an additional section to Article IX, and an amendment to Article XIII B.

The proposed addition to Article IX of the California Constitution would require the State to provide a voluntary preschool program under which all children may enroll in one year of preschool regardless of race, origin, or economic hardship. Proposition 82, §4(a). The preschool program would be administered by the Superintendent of Public Instruction ("Superintendent"), county superintendents and local administrators. These three tiers of state and local administration would be responsible for selecting preschool providers, overseeing programs and allocating funds. Proposition 82, §4(b). The Preschool for All Act is to be funded by a personal income tax, with revenues being placed in a Preschool for All Fund and used exclusively for preschool education in California. *Id.*

The proposed amendment to Article XIII B of the California Constitution would provide appropriate measures to protect its funding, and prohibit diversion of Preschool for All funds to the General Fund.

The Preschool for All program would ensure that every preschool age (four year old) child would have access to one free year of preschool education, with a minimum of three hours of instruction each day for 180 days each year. Minimum qualifications for preschool instructors would be set, and financial aid would be made available to teachers seeking the training to meet those qualifications. Proposition 82, Article 3, §14113. Administration of the Act would be overseen by the Superintendent, with input from county superintendents. §14116(a). The Act would be funded via the creation of a new Revenue and Taxation Code section imposing a 1.7% tax on taxpayer's taxable income where that income exceeds (a) \$400,000 for unmarried individuals, or married individuals not making a joint return with their spouse; (b) \$544,447 for head of household; or (c) \$800,000 for a married couple making a joint return. Proposition 82, Section 8. The tax would be implemented beginning in 2007 and would be deposited in the Preschool for All Fund and administered according to the proposition's provisions.

## **II. THE LAW**

### **A. Current Law**

Universal preschool in California has been available in one form or another via the Child Care and Developmental Services Act, and the Kindergarten Readiness Pilot Program. Cal. Educ. Code §§ 8200 et. seq., 48005.10-48005.55 (insert code book, year,

and supplement as appropriate). Under current law, the State Superintendent oversees the administration of all preschool programs according to funding priorities established by statute. *Id.* at § 8236. The programs include part-day and preschool appropriate curriculum for children three to five years old, and offer educational development, health, nutritional and social services, parent education and participation, and staff development. While some preschools are eligible for federal Head Start grant funds because they serve low-income or disabled children and their families, others are funded by Budget Act appropriations designated by the California Legislature, and directed at preschool education. *Id.* § 8235(a). Priority for these state preschool funds also is given to low-income families who meet eligibility standards. *Id.* at § 8235(c). Most public or private agencies, however, may qualify to contract to operate a state preschool program. *Id.* at § 8235(e).

Teaching permits are currently required for preschool instructors and may be obtained from the California Commission on Teacher Credentialing. To qualify, 40 units from an accredited college or university must be completed, and at least 24 of those units must be dedicated to early childhood care and development coursework. No baccalaureate degree is required. For preschool aides working in state schools, there is no minimum educational requirement apart from a high school education. *Id.* at §§ 8360-8370.

## **B. Proposed Law**

Proposition 82, named the Preschool for All Act, proposes that preschool be constitutionally-guaranteed for all of California's children born after June 6, 2006, and eligible for preschool by fall of 2010. Proposition 82, Section 4(a). It enables the collection of an additional 1.7% personal income tax on incomes over \$800,000 for couples filing jointly, \$544,457 for head of household filers, and over \$400,000 for individual filers to fund the Act. Proposition 82, Section 8 § 17041.1. Whereas existing preschool monies are commingled with funds for other state education programs, under the initiative, all revenues from this tax would be separately maintained for Preschool for All programs. Proposition 82, Chapter 1.5, Article 6 § 14132(a). The changes to the tax code would go into effect January 1, 2007, unless the Legislature decides otherwise. Projected funds from this Act would provide between \$6,000 and \$8,000 for each child enrolled in Preschool for All programs in 2010-11, the intended start-up year for the initiative. This estimate is almost double the funds currently held for each child in the current state preschool system, and 75% more than of the spending currently estimated for K-12 students. California Legislative Analysts Office. Prop. 82: Overview of the Measure, [http://www.lao.ca.gov/ballot/2006/82\\_06\\_2006.htm](http://www.lao.ca.gov/ballot/2006/82_06_2006.htm) (accessed Mar. 8, 2006).

Funding would support five major areas under the Act: operation of the program, facilities, training for new and current preschool teachers and aides, maintenance reserves, and administration. Proposition 82. Chapter 1.5. Article 6 § 14134. In the early years of the program, fund distribution would be based on the number of eligible four-year olds in a county, and in 2016-17 the funds would be distributed based on the actual number of those children enrolled in Preschool for All programs. *Id.* at § 14131. Funds are limited to 6% for administrative costs, which, among other provisions, would include

program monitoring, planning, needs assessment, data collection, regulations and guidelines. *Id.* at § 14130. If the balance of funds falls below 10% of the annual operating costs for the Act, Proposition 82 requires that a funding emergency be declared and would empower the Legislature, by two-thirds vote, to institute a parental contribution for preschool services for one year only. That contribution would be set by the state Superintendent. *Id.* at § 14132(d).

Not unlike what is currently done with state preschool programs, Preschool for All would be overseen by the state Superintendent and administered by county superintendents and other local administrators. To implement the objectives of Preschool for All, county superintendents would be able to contract with local educators, i.e. public school districts, charter programs, for-profit and non-profit preschool providers, and family child care providers, or provide the preschool programs directly, as long as they meet statewide quality standards. By July 1, 2007, each county superintendent would be expected to submit a 5-year implementation plan for Preschool for All. These plans must: address and resolve access issues for children not living near a preschool site (transportation costs are not funded by the Act), coordinate with local elementary schools and day care providers to help meet the needs of families, compensate teachers and aides similarly to their K-12 counterparts, create and perform community outreach to make people aware of the preschool programs and their availability, and be sure to phase-in lower achieving areas first (as measured by the California Academic Performance Index). The plans must give enough attention to English language learners and identify children with special needs so that they may receive a developmental assessment. Lastly, the plans must put preschool teachers and aides on par with their counterparts in K-12. The plans would guide counties in providing preschool programs and ensure the guarantees of the Preschool for All constitutional amendment are met. *Id.* at Article 4 §§ 14120-14122.

Preschool for All would require new certification qualifications for preschool teachers and aides, but would allow for a 10-year phase-in period. By 2014, all preschool teachers will be expected to have bachelor's degrees completed with a focus on early childhood care and education. By 2016, all teachers will be required to have the bachelor's degree and an additional Early Learning Credential (to be available in 2008) issued by the state commission. Preschool for All, if passed, will also fund financial aid for individuals interested in pursuing such an education. To justify the state funding these educations, individuals that receive financial aid will be required to work in a Preschool for All program for a given period of time after graduation. Moreover, Preschool for All will have funds available to colleges and universities to develop and implement courses and degrees in early childhood care and education. *Id.* at Article 2 §§ 14111-14115.

Preschool for All will be potentially funded by billions of dollars. To ensure that such funds are managed and spent appropriately, allocation reports will be available to the public. In addition, if any county fails to deliver quality programs or use funds appropriately, the state Superintendent may impose sanctions that would, in their most severe effect, dismissal of responsible administrators. The Act also empowers the

Legislature to create fines or criminal penalties for any misuse of funds as well. Quality control will happen at the local and state levels. Parent advocates will be appointed to resolve parent issues with quality, access and other matters, and the Governor's office will make sure that audits and regular evaluations of programs are completed. *Id.* at Article 5 §§ 14123, 14127-14128.

### **III. DRAFTING ISSUES**

Proposition 82 does not appear to have any drafting issues.

### **IV. CONSTITUTIONAL ISSUES**

#### **A. Federal Constitution**

Proposition 82 does not appear to be in conflict with the federal Constitution. Preschool for All would not interfere with the state's current federal funding resources for preschool education.

#### **B. State Constitution**

##### **1. Initiative Effect**

Voter approval of an initiative has near-permanent legislative effect. An initiative that is approved by a majority of voters goes into effect the day after the election, unless the initiative specifies otherwise. Cal. Const. art. II, § 10(a). Accordingly, Proposition 82, if passed, will amend the California Constitution the day after the election. Proposition 82 does not authorize the Legislature to directly amend or repeal the Act. Therefore, the only way to amend or repeal the Act is by another voter initiative which is a detailed process altogether and may only be done a few times per year. *Id.* at § 10(c).

##### **2. Single Subject Rule**

An initiative may not contain measures that speak to more than one subject or else it will be invalid. *Id.* at § 8(d). This requirement aims to prevent voter confusion when initiatives combine a variety of independent issues having separate effects. *Senate v. Jones*, 21 Cal. 4th 1142 (1999). The "reasonably germane test" recited by the Supreme Court in *Jones* permits initiatives to propose facially distinct provisions that are reasonably related to a common theme or purpose. *Id.* at 1157.

Despite attempting two different tasks, creating a constitutional right to one year of preschool education to all children in California, and designing a funding mechanism for such a right through a new personal income tax on wealthier Californians,

Proposition 82 would more than likely pass muster under the single-subject rule. A court will likely conclude that the main parts of the initiative have a reasonable and commonsense relationship, and further the common purpose of providing a defined pool of money and resources for preschool education. According to a recent California Supreme Court decision, the connection between these separate provisions will likely be sufficient to satisfy the single-subject rule. *Manduley v. Super. Ct.*, 27 Cal.4th 537, 581 (2002).

## **V. PUBLIC POLICY**

### **A. Proponents of Proposition 82**

Proponents of Proposition 82 consider the initiative and its tax increases an investment in California's children and future. Studies have shown that for every dollar spent on quality preschool for all children, California gets more money back in savings on remedial education programs, lower high school drop out rates, and, on the whole, a better educated workforce. Lynn A. Karoly and James H. Bigelow, *The Economics of Investing in Universal Preschool Education in California*, (Rand Corp. 2005). Other studies show preschool indirectly prevents crime by keeping children in school, out of gangs or away from drugs. California's Preschool Shortage, A Missed Opportunity for Crime Prevention. A Report from Fight Crime: Invest in Kids California, Washington, D.C., February 2005, <http://www.fightcrime.org/ca/waitlist/capreschool.pdf> (accessed Mar. 8, 2006).

The Preschool for All initiative also stands to strengthen K-12 education. With every child guaranteed the right to a high-quality preschool education, more children will be better prepared for kindergarten and be able to read well by the third grade. Proponents point to the fact that preschool occurs during a critical time in a child's development where the brain is growing quickly and learning is more effective. New curriculum standards will make existing programs better and new qualifications for preschool teachers and aides will ensure quality instruction takes place. About Proposition 82. [www.yeson82.com](http://www.yeson82.com) (accessed Mar. 8, 2006).

Preschool for All also encourages parental involvement and coordinates child care options for working families. With the initiative's modifications of the current state preschool system, parents will be able to choose from public, private and non-profit preschool providers for their children and be assured that those programs are coordinated with local elementary schools and day care providers to give children the stability of continuity in education and care. About Proposition 82. [www.yeson82.com](http://www.yeson82.com) (accessed Mar. 8, 2006).

Lastly, while Preschool for All has no cost for 99.4% of Californian taxpayers, proponents contend it is a fiscally sound proposition with built-in protections that should assure the remaining 0.6% of taxpayers that funds will not be misappropriated. The taxes collected will be earmarked for the Preschool for All Fund and can only be spent on

preschool education. Limits on administrative spending also reinforce the Act's commitment to primarily direct the money at the preschool education classroom. About Proposition 82. [www.yeson82.com](http://www.yeson82.com) (accessed Mar. 8, 2006).

Proposition 82 is supported by a wide-ranging alliance of children's advocates, businessmen and women, educators, law enforcement and elected public officials in California. Notably, the Preschool for All Act is designed to help California's working families and has been endorsed by the organized labor unions, and the AFL-CIO. Art Pulaski, Executive Secretary-Treasurer of the AFL-CIO, commented, "The California Labor Federation is standing behind Prop. 82 because it will strengthen our schools and ease the burden on working families by making quality preschool programs voluntarily available to everyone." AFL-CIO Endorses Proposition 82. [www.yeson82.com/rel\\_030806.php](http://www.yeson82.com/rel_030806.php) (accessed Mar. 15, 2006). Preschool for All also is supported by more than 400,000 of California's teachers belonging to the California Teachers Association and the California Federation of Teachers. In addition, business leaders in many communities including the Chambers of Commerce in San Francisco, Oakland and Los Angeles, state assemblymen and women, state senators, and local community leaders and officials back the initiative. Voters can go to [www.yeson82.com](http://www.yeson82.com) for a complete list of individuals and organizations supporting the initiative.

## **B. Opponents of Proposition 82**

Opponents stress five major points of contention when discussing Proposition 82. First, they feel that there are more important educational uses of limited state resources than to establish this Preschool for All program. Next, they assert that Proposition 82 does not focus on the more viable option of expanding preschool availability for those children who are most in need. Third, they point to the necessary reduction in existing funds for other state programs that will result from the passage of Proposition 82, including decreased funding to schools, roads, and state services. Fourth, opponents believe that California's small businesses will most suffer under Proposition 82. Allan Zaremborg, *California Chamber of Commerce Commentary: Proposition 82 Takes a Flawed Approach*, <<http://www.calchamber.com/CC/Headlines/Commentary/02132006TS.htm>> (accessed Mar. 13, 2006). Lastly, opponents are concerned that the creation of a preschool bureaucracy will create further difficulties to an already complicated K-12 education system. No on 82, *Ballot Argument Against Prop 82*, [http://www.stopreiner.org/facts\\_arguments.html](http://www.stopreiner.org/facts_arguments.html) (accessed Mar. 13, 2006).

To begin, opponents believe that there are more important uses of limited state resources. *Id.* A \$2.4 billion annual tax would be welcomed by California's existing elementary, middle and high school programs, which opponents stress are underserved and are currently failing California's children. Because of California's consistent budget deficit, existing educational programs could make good use of a \$2.4 billion annual sum. Existing programs should be given the opportunity to be brought up to par before new programs are created. *Id.* In this way, California's children will be able to receive a better K-12 education, and will be better served in the long run. Moreover, the

Legislative Analyst estimates that the Preschool for All program will cost \$8,000 per student per year to educate students for three hours each day. Because this is nearly identical to the cost of educating a K-12 student for a full day, opponents argue this is an unwise allocation of resources. *Id.* Furthermore, California taxpayers already subsidize preschool programs for low income children with a \$3 billion annual sum. Rather than creating an entirely new preschool infrastructure via a \$2.4 billion tax, opponents suggest expanding existing preschool opportunities for low income children. Bakersfield, California has established a five week preschool program which children are able to attend before starting kindergarten. The cost does not exceed \$350 per child for the five weeks. *Id.* Opponents would prefer to see less expensive, more efficient programs like this Bakersfield program rather than establishing an entirely new bureaucracy with a corresponding tax.

Opponents next argue that Proposition 82 fails to focus on increasing preschool availability for those children who are most in need. The Legislative Analyst has noted that only 9.4% of the funding from the Preschool for All program will enroll high risk children in preschool who otherwise would not have been able to enroll. *Id.* It is these high risk children who will arguably benefit the most from receiving a preschool education, and towards whom this \$2.4 billion in funding should be aimed. *Id.* Because resources for education are so limited, opponents argue that they should be used to maximize the benefit to children most in need – and that more than 9.4% should be targeted towards high risk children.

Opponents then argue that Proposition 82 will necessarily decrease existing funding for schools, roads, and other state services. Because Proposition 82 will increase the personal income tax in higher tax brackets and allocate this tax towards the Preschool for All program, it may lead to negative effect on the revenues for other programs. *Id.* Opponents believe that the program will cost well over \$2.4 billion per year, and that deficiencies in funding may be filled by relying on further tax increases or by pulling funding from existing state programs. *Id.*

Next, opponents caution that California's small businesses will be targeted by Proposition 82's changes. Because Proposition 82 mandates a raise in personal income taxes, and because 80% of small businesses pay personal income tax, these small businesses will lose a percentage of their revenue if Proposition 82 passes. *Id.* While these small businesses may avoid personal income taxation by incorporating, many choose not to because incorporation may result in higher overall taxes (as dividends paid to shareholders are not deductible and are thus subject to double taxes) and will require additional paperwork to comply with federal, state and local regulations. Anonymous, *Forms of Business Ownership*, <[http://www.sba.gov/starting\\_business/legal/forms.html](http://www.sba.gov/starting_business/legal/forms.html)> (accessed Apr. 15, 2006). Furthermore, privately run preschools (another small business) may be run out of business by this program, which threatens to “replace thriving businesses that provide jobs and tax revenue with a government run program.” *Id.* Accordingly, California's small business owners will shoulder a heavy burden if Proposition 82 is to pass.

Finally, opponents argue that creating a preschool bureaucracy will further complicate an already complex K-12 educational system. Under Proposition 82, the Superintendent will receive a great amount of discretion in reviewing and approving each district's operational and funding plans. Proposition 82, Article 3, §14116(a). The Superintendent will also be responsible for evaluating the need for facilities, adopting regulations for statewide standards, establishing the financial allocation per child, and performing other tasks as needed. *Id.* at §14117. There will be a licensing procedure for Preschool for All programs, as well as employment regulations and admissions policies. *Id.* at §14118. Opponents claim that Proposition 82 thus creates a bureaucratic structure to govern the Preschool for All program. They claim this "system is modeled after the same inefficient bureaucracy running K-12 schools," with unnecessary layers of bureaucracy and administration. No on 82, *The Facts*, <<http://www.stopreiner.org/facts.html>> (accessed Mar. 13, 2006). Opponents fear the infrastructure of the Preschool for All program, as drafted in Proposition 82, will be inefficient and waste resources, and that a less complicated structure would better achieve the program's goals.

## **VI. CONCLUSION**

Proposition 82, the Preschool for All Act, is a voter initiative that will create an amendment to California Constitution. It would guarantee that part-day, voluntary preschool programs be available to all California children the year before they are eligible for kindergarten. Administered by the state Superintendent, along with county and local officials, Preschool for All would provide access to all qualified public and private preschool providers.

To fund the Preschool for All Act, the initiative builds in a 1.7% increase in the personal income tax for individual filers with over \$400,000 in income and for couples with \$800,000 in income reported. The funds collected will be put into trust for the program, and be completely dedicated to providing Preschool for All.

Proponents of the Proposition support it because they want California to invest in the future of its children. Children that go without preschool are often unprepared for later grades or perform below average compared to their peers who had access to preschool programs. Additionally, proponents urge voters to approve the initiative because Preschool for All would cut down the potential for crime. Children that perform well in school tend to stay in school and avoid involvement with gangs or drugs. Proposition 82 has built-in mechanisms to protect the funds it creates. Careful monitoring of programs both at the county and state levels will assure that funds are primarily directed at preschool classrooms and are not lost in administrative mires. While California already has programs in place to help low-income families and their children take advantage of a preschool education, labor unions, business leaders, legislators and California teachers want to see that advantage extended to working, middle class families as well. Proposition 82 supporters believe it to do just that.

Opponents of the Preschool for All Act contend that there are many reasons why this initiative is an unwise choice for California voters. First, they believe there are more important educational uses of limited state resources. Next, they assert that Proposition 82 does not focus on the more viable option of expanding preschool availability for those children who are most in need. Third, they reason a necessary reduction in existing funds for other state programs will result from the passing of Proposition 82 to include: decreased funding to schools, roads, and state services. Finally, opponents believe that California's small businesses will suffer the most under Proposition 82.