

**Proposition 6:**  
**Voter Approval for Increases in Gas and Car Taxes**

Initiative Constitutional Amendment

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## I. EXECUTIVE SUMMARY

Proposition 6 would repeal the gas and diesel tax increases and vehicle fees that were enacted in 2017, effectively eliminating taxes recently imposed by SB 1. Proposition 6 would also require voter approval to impose, increase, or extend excise and sales taxes on gas, diesel, and vehicles. The Legislature would only be able to pass tax measures relating to gas, diesel, and vehicle usage if it receives a  $\frac{2}{3}$  vote of each house *and* receives approval by a majority of voters.

A **YES** vote would eliminate fuel and vehicle taxes recently passed by the Legislature (SB 1). Funding for highway and road maintenance and repairs, as well as transit programs, would be reduced. The Legislature would be required to get approval from a majority of voters for new or increased state fuel and vehicle taxes in the future.<sup>1</sup>

A **NO** vote would keep fuel and vehicle taxes recently passed by the Legislature (SB 1) in effect to pay for highway and road maintenance and repairs. The Legislature would continue having the ability to impose new or increased state fuel and vehicle taxes in the future without approval from a majority of voters.<sup>2</sup>

## II. HISTORY

### II.

Proposition 3 (1938) added Article XIX to the California Constitution and requires tax revenues from vehicle fuels to be used for public road and highways.<sup>3</sup> It also requires revenues from vehicle fees and taxes to be used to enforce laws regarding use, operation, and registration of vehicles, California Highway Patrol purposes, or street and highway purposes.<sup>4</sup> Proposition 2 (1998) limited borrowing state transportation funds for the state general fund.<sup>5</sup> Proposition 42 (2002) established statutory formulas in the California Constitution that direct how to spend state gas sales tax revenues for transportation: 20% for public transportation, and 40% for transportation improvement projects, 40% for local street and road improvements.<sup>6</sup> Proposition 1A (2006) established restrictions on borrowing the gas tax sales funds discussed in Proposition 42.<sup>7</sup> Proposition 22 (2010) prohibits the California Legislature from borrowing or taking any fuel tax revenues and limited the Legislature's ability to modify any statutory allocations for transportation purposes.<sup>8</sup> Proposition 69 (2018)<sup>9</sup> protects the new taxes and fees created through SB 1 by mandating that the taxes are only used for transportation related services. It added subdivision "g" to California Constitution, Article XIX A, to require diesel sales taxes to be deposited into the Public Transportation Account.<sup>10</sup> Proposition 69 also added Article XIX D to the California Constitution which requires new transportation improvement fees to be used solely

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<sup>1</sup> LEGISLATIVE ANALYST'S OFFICE, Proposition 6, at 1 (September 8, 2018), available at <https://lao.ca.gov/ballot/2018/prop6-110618.pdf>

<sup>2</sup> *Id.*

<sup>3</sup> California Association of Counties, *The Why and How SB 1 Funds are Guaranteed for Transportation* (on file with *California Initiative Review*).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Proposition 69 was approved in the primary election in June 2018.

<sup>10</sup> Cal. Const. art. XIX A subd. (g).

for public streets, highways, and public transportation purposes that are specifically enumerated in the provision.<sup>11</sup>

### **III. THE LAW**

#### **A. Current Law**

SB 1 (2017) increased the state funding for California’s transportation system. It included a \$0.12 increase in the gas excise tax which was effective November 2017, a transportation improvement fee that ranges from \$25-\$175 which was effective January 2018, a \$0.20 increase in diesel excise tax effective in 2019, and a \$100 fee on zero-emission vehicle registration effective in July 2020.<sup>12</sup> It is estimated that the revenue from these taxes will provide California approximately \$4.4 billion this fiscal year.<sup>13</sup> The different fees and taxes from SB 1 will progressively take effect over the next few years and at full effect would produce \$5.2-\$5.4 billion annually, with two-thirds of that designated specifically for maintenance and rehabilitation of local streets and roads as mandated by the California Constitution.<sup>14</sup>

#### **B. Proposed Changes/Proposed Law**

If passed, Proposition 6 would amend the California Constitution to require voter approval for new or increased taxes on gasoline or diesel fuel and operational taxes.<sup>15</sup> Additionally, it would effectively repeal SB 1 because the initiative expressly makes the new requirement effective for any taxes passed on or after January 1, 2017.<sup>16</sup>

### **IV. LIKELY FISCAL EFFECTS**

#### **A. Legislative Analyst’s Office Report**

The Legislative Analyst's Office (“LAO”) publishes two important sets of information when it comes to proposed initiatives: 1) estimates of the fiscal effect the proposed initiatives would have on state and local governments, and 2) analyses of all measures qualified for the state ballot.<sup>17</sup> The 2018 LAO Report states that if Proposition 6 is passed, SB 1 transportation tax revenues would be immediately reduced by \$2.4 billion and within two years be reduced \$5.1 billion annually.<sup>18</sup> The Report also states that adding the voter approval requirement would result in more difficulty in imposing transportation-related taxes in the future because the taxes could

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<sup>11</sup> Cal. Const. art. XIX D.

<sup>12</sup> LEGISLATIVE ANALYST’S OFFICE, *supra* note 1, at 9.

<sup>13</sup> *Id.*

<sup>14</sup> The Road Repair and Accountability Act of 2017, available at <http://www.counties.org/post/sb-1-road-repair-and-accountability-act-2017>; *see also* Interview with Kiana Valentine, California State Association of Counties (August 20, 2018) (notes on file with the *California Initiative Review*); *see also* LEGISLATIVE ANALYST’S OFFICE, *supra* note 1, at 9.

<sup>15</sup> Cal. Proposition 6 (2018); *see also* LEGISLATIVE ANALYST’S OFFICE, *supra* note 1, at 10.

<sup>16</sup> *Id.*; *see also* LEGISLATIVE ANALYST’S OFFICE, *supra* note 1, at 10.

<sup>17</sup> LEGISLATIVE ANALYST’S OFFICE, About our Office, available at <https://lao.ca.gov/About>

<sup>18</sup> LEGISLATIVE ANALYST’S OFFICE, *supra* note 1, at 11.

be approved by the Legislature and not the voters, leading to less revenue than would have otherwise been generated.<sup>19</sup>

## **B. Other Possible Fiscal Effects**

There are currently 6,500 transportation projects underway in response to funding received from SB 1.<sup>20</sup> Each of these projects is likely comprised of multiple contracts with private contractors, construction companies, architects and other businesses. If enacted, Proposition 6 would cut funding for the vast majority of these projects as it would decrease the State's funds available for projects. As a result, many contracts would have to be cancelled. This could lead to costly litigation with a multitude of private companies looking for the contract to be honored regardless of the tax being repealed. This could potentially cost the state millions of dollars as it has to deal with the legal consequences of each contract that it will breach. Furthermore, if a court finds that each of these contracts needs to be honored, the State will have to find additional funding for these contracts and the projects may be completed with funds received through federal grants, local governments, or other state resources.<sup>21</sup> The breach of each of these contracts could also lead to these private companies bringing suit against the State challenging the constitutionality of Proposition 6, based on the arguments discussed below. This litigation could also take considerable state resources and cost the taxpayers millions of dollars.

## **V. DRAFTING ISSUES**

The text of Proposition 6 is so short that it can lead to ambiguities in the language and leave room for a variety of interpretations. Section 3.5(b) of Proposition 6 states that any increase in the rate of taxes on vehicle gas or diesel fuel imposed after January 1, 2017 "shall cease to be imposed unless and until approved by the electorate."<sup>22</sup> It has been widely discussed that Proposition is "repealing" SB 1, which is the vehicle gas and diesel fuel tax referred to into Section 3.5(b), however there is no language that would express an intention to repeal, rather it is saying SB 1 would simply no longer be enforced. There is further ambiguity with this same clause because there is no distinction as to who would be responsible for ceasing the enforcement of SB 1. These ambiguities could be resolved through reformation by the court.

The court can reform an initiative, to preserve the will of the electorate, if it is otherwise invalid.<sup>23</sup> Reformation of an initiative is proper when it may be done without changing the express intent of the electorate, and the electorate would clearly prefer reform over ineffectuality of the initiative.<sup>24</sup> If passed and ambiguities in the language of the proposition are challenged, the court would likely be able to reform any language in the statute to make it functional by: defining the status of the tax after the "repeal" and before the majority vote and deciding what entity would be responsible for ceasing enforcement of SB 1. These reformations would be

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<sup>19</sup> *Id.*

<sup>20</sup> No on Proposition 6, available at <https://noprop6.com>

<sup>21</sup> Caitlin Chen, *What happens to California road repairs if voters repeal the gas tax increase?*, THE SACRAMENTO BEE, July 11, 2018 (10:38AM), <https://www.sacbee.com/news/politics-government/capitol-alert/article214600210.html>

<sup>22</sup> Cal. Proposition 6 (2018); *see generally* Cal. Redevelopment Ass'n v. Matosantos, 53 Cal. 4th 231 (2011).

<sup>23</sup> *Id.* at 274.

<sup>24</sup> *Id.*

possible as it would not alter the intent of the proposition. It would only refine the means to achieve this end. The court will likely see that the people would prefer reform over ineffectuality as they voted for the proposition, showing it was their preference to have the SB 1 taxes repealed.

## VI. CONSTITUTIONAL ANALYSIS

The California Constitution requires the Legislature to spend revenues from the excise taxes, some diesel taxes, and truck weight fees on transportation purposes, including state highways, local streets and roads, and mass transit.<sup>25</sup>

The California Constitution requires initiative measures to be in compliance with the single-subject rule.<sup>26</sup> To satisfy the single-subject rule, provisions must be reasonably germane to a common theme or purpose, which requires the provisions have a reasonable and common sense relationship among their various components in furtherance of a common purpose.<sup>27</sup> Here the proposition deals with a single constitutional amendment that would require voter approval of taxes passed by legislature on vehicles and fuel. As this is a very concise and limited subject, it will have no issues being seen as a single subject.

This initiative would be a constitutional amendment because it would add Section 3.5 to Article XIII A to the California Constitution and would require a majority vote by the electorate in order to approve any taxes on vehicles or fuel that has passed both houses of the Legislature.<sup>28</sup>

The California Constitution does not allow for a referendum on taxes.<sup>29</sup> To repeal a tax that was properly passed with a two-thirds vote in both houses, an amendment must be added to the constitution by initiative that declares the tax unconstitutional. Proposition 6 employs this means to repeal the recent gas tax passed in late 2017.

An argument could be made that this constitutional amendment would be invalid as it abridges the power of the Legislature to tax. This argument, however, does not hold up against precedent.<sup>30</sup> The power of the Legislature to tax, save some constitutional limitation, is nearly absolute.<sup>31</sup> The Constitution, however, reserves the right of the initiative and referendum for the people.<sup>32</sup> Courts have found that as the people have reserved this right to amend the constitution and propose statute with few limitations<sup>33</sup>, the people have the final word legislatively and it is not unconstitutional to remove a tax enacted by the legislature through the initiative process.<sup>34</sup>

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<sup>25</sup> LEGISLATIVE ANALYST'S OFFICE, *supra* note 1, at 8.

<sup>26</sup> Cal. Const. art. II, § 8, subsection (d).

<sup>27</sup> *Id.*

<sup>28</sup> Cal. Proposition 6 (2018).

<sup>29</sup> Cal. Const. art. II § 9.

<sup>30</sup> *Carlson v. Cory*, 139 Cal. App. 3d 724 (1983).

<sup>31</sup> *Id.* at 728.

<sup>32</sup> Cal. Const. art. II § 8.

<sup>33</sup> *See People's Advocate, Inc. v. Superior Court*, 181 Cal. App. 3d 316, 324 (1986) (internal rules of the legislative body cannot be altered by initiative). *See also Raven v. Deukmejian* 52 Cal. 3d 336, 349 (1990) (revision of constitution may only be accomplished through a constitutional convention and popular ratification).

<sup>34</sup> *Carlson, supra*, at 728.

Constitutionality can be further questioned as the initiative could interfere with contracts that have already been formed. The United States Constitution and the California Constitution both make legislation invalid if it interferes with the obligations of contracts.<sup>35</sup> Slight alteration of the obligation created by the contract does not make the legislation invalid.<sup>36</sup> Severe impairment will require a deeper consideration by the courts of the validity of the legislation.<sup>37</sup> If a contract is funded strictly with taxes already received, without granting funding based on anticipated taxes, there will likely be minimal alteration to contracts and Proposition 6 will be deemed valid. If a contract is funded prospectively, based off of forecasted tax income, and Proposition 6 repeals SB 1 taxes then the court could find that Proposition 6 severely impairs the obligations of those contracts and could deem it invalid.

## VII. PUBLIC POLICY CONSIDERATIONS

### A. Support

The supporters of Proposition 6 have put forth arguments focusing on a select handful of considerations. One main point supporters have made is that California's cost of living is so high that working families can barely keep up and these new gas and vehicle taxes can end up costing those families more than \$500 annually.<sup>38</sup> Proponents also cite that the gas tax hike implemented through SB 1 is unfair because it is a regressive tax that hits lower income working families significantly more than it affects the wealthy.<sup>39</sup> A large argument made by Proposition 6 supporters focuses on the Legislature's alleged misuse of the current gas and car tax revenues. They argue that 72% of all California vehicle-related taxes and fees are used for programs other than infrastructure and if that revenue from pre-SB 1 taxes were used for transportation purposes then the State would have \$5.6 billion annually for transportation, rather than having to raise any other taxes.<sup>40</sup>

Senate Minority Leader Pat Bates, Assembly Minority Leader Brian Dahle, the Howard Jarvis Taxpayers Association, National Federation of Independent Businesses, California Republican Party, and Coalition of Energy Users are among the 44 listed individuals and organizations in support of Proposition 6.<sup>41</sup> As of August 1, 2018, \$3,571,074 has been raised in support of Proposition 6, with Yes on Prop 6 (a committee sponsored and funded by No New Taxes, a Project of the Howard Jarvis Taxpayers Association) contributing \$1,301,401, Reform California - Yes on 6 contributing \$74,231 (with donors such as Jones for Senate 2018, Bill Brough State Assembly 2018, San Diego Tax Fighters, and other private individuals<sup>42</sup>) and Yes on Prop 6, Repeal the Gas Tax (major funding from California Republican Party, Walters for

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<sup>35</sup> U.S. Const. art. I § 10. Cal. Const. art. I §9.

<sup>36</sup> *Allen v. Bd. of Admin.*, 34 Cal. 3d 114, 119 (1983).

<sup>37</sup> *Id.*

<sup>38</sup> Yes on Proposition 6, Repeal the Unfair Gas Tax, available at <https://voteforprop6.com>

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Give Voters a Voice, Repeal Unfair Gas Tax, available at <https://voteforprop6.com/endorsements/>

<sup>42</sup> California Secretary of State, Cal-Access, Campaign Finance: Yes on 6: Repeal the Gas Tax, available at [http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1268914&session=2017&page=\\*&view=late1](http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1268914&session=2017&page=*&view=late1)

Congress and Making Investments Majority Insured PAC, Kevin McCarthy for Congress<sup>43</sup>) contributing \$2,195,443.<sup>44</sup>

## **B. Opposition**

No on Prop 6 has put forth various arguments for why they oppose Proposition 6. Opponents state that eliminating SB 1 funding would halt 6,500 transportation improvement projects that are currently underway, leading to the loss of 68,000 jobs and \$183 billion in economic investments.<sup>45</sup> They argue that Californians need a reliable and well-maintained local street and road system, however we will continue to face challenges because of the increased demand and unreliable funding.<sup>46</sup> Additionally, Proposition 6 opponents argue that voters already voiced their opinions regarding transportation funding when Proposition 69 was overwhelmingly passed in June 2018, which prevents the legislature from “raiding” transportation funds and ensures the funds are used only for transportation improvements.<sup>47</sup>

Schools, counties, and cities all have similar concerns when it comes to Proposition 6 effects. Counties and cities have been receiving monthly apportionments of the SB 1 tax revenues since January 2018 and have already identified over 6,500 projects for funding on the local street and road system, so removing this funding will likely hinder the completion of many of those projects. By the time Proposition 6 is voted on and implemented, SB 1 will already be roughly one year in implementation, so counties will lose that revenue they currently receive as well as any future revenue that would be received from the other taxes and fees that would take effect in the future.<sup>48</sup>

The California Association of Highway Patrol, California Alliance for Retired Americans, Sierra Club California, California Chamber of Commerce, California Labor Federation AFL-CIO, California Alliance for Jobs, League of Women Voters of California, California State Association of Counties, and California Democratic Party are just a few of the 16 political groups, 82 individual businesses, 111 local government entities, 29 public interest groups, 6 social justice groups, 5 public safety groups, 5 senior groups, 14 environmental groups, 53 business enterprises, 66 labor groups, and 65 infrastructure groups that oppose Proposition 6.<sup>49</sup> As of August 1, 2018, \$14,024,113 has been raised in opposition to Proposition 6, with No on Prop 6: Stop the Attack on Bridge & Road Safety (sponsored by business, labor, local governments and transportation advocates) contributing \$13,476,297 and Associated General Contractors Issues PAC, No on Prop 6 contributing \$574,816.

## **C. Requiring an Initiative for All Future Fuel and Vehicle Taxes**

Section 3.5(a) of Proposition 6 requires that all future fuel and vehicle taxes be approved with a majority vote by the electorate on top of the  $\frac{2}{3}$  vote required from each house for a

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<sup>43</sup> *Id.*; see also Vote Yes on Proposition 6 - Endorsements, available at <https://voteforprop6.com/endorsements/>

<sup>44</sup> *Id.*

<sup>45</sup> No on Proposition 6, *supra*, note 19.

<sup>46</sup> Save California Streets Executive Summary, available at <http://www.savecaliforniastreet.org/read-the-report/>

<sup>47</sup> *Id.*

<sup>48</sup> Interview with Kiana Valentine, *supra* note 13.

<sup>49</sup> No on Proposition 6, *supra*, note 19.

proposed tax to become law.<sup>50</sup> This additional vote is arguably the most important part of Proposition 6 despite the main arguments from proponents and opponents focusing on the repeal of SB 1 taxes. The popular majority vote for a tax by initiative after passing with a 2/3 vote in each house poses a substantial hurdle to all future gas and vehicle taxes if Proposition 6 passes. A 2/3 vote of each house to pass a tax is already a high bar for any legislative action. Voters should carefully consider their vote for or against Proposition 6 keeping in mind if they want more control over taxes being passed or potentially blocking future, needed taxes from becoming law.

## VIII. CONCLUSION

Proposition 6, if enacted, will repeal the gas and diesel tax increase that was put into effect by the passage of SB 1 in 2017.<sup>51</sup> Furthermore, any future gas and diesel tax will not be enacted unless it is passed by two-thirds of both houses and then submitted to the electorate and approved by a majority vote.<sup>52</sup>

Proponents of Proposition 6 claim that the tax has driven the already pricey cost of living in California to an unsustainable high, which primarily is affecting middle and lower income families.<sup>53</sup> They also contend that there is already enough money allotted to transportation projects and that the real problem is wasteful government spending.<sup>54</sup> Opponents to Proposition 6 argue that all the projects currently fixing the crumbling roads of California will be halted as funding will dry up if the tax is repealed, which could cause safety problems in the future.<sup>55</sup> They further argue that repealing the gas tax will cause countless jobs to be lost as the projects being funded by these taxes will cease to exist.<sup>56</sup>

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<sup>50</sup> Cal. Proposition 6, § 3.5(a) (2018). Cal. Const. art. XIII A § 3(a).

<sup>51</sup> Cal. Proposition 6 (2018).

<sup>52</sup> *Id.* at § 3.5(a).

<sup>53</sup> Yes on Proposition 6, Repeal the Unfair Gas Tax, available at <https://voteforprop6.com>

<sup>54</sup> *Id.*

<sup>55</sup> No on Proposition 6, *supra*, note 19.

<sup>56</sup> *Id.*