



California Initiative Review (CIR)

Volume 2014

Article 5

1-1-2014

Proposition 2: State Budget – Budget Stabilization Account

Eric Riviera-Jurado
University of the Pacific, McGeorge School of Law

Robert Binning
University of the Pacific, McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/california-initiative-review>

 Part of the [Legislation Commons](#)

Recommended Citation

Riviera-Jurado, Eric Riviera-Jurado and Binning, Robert (2014) "Proposition 2: State Budget – Budget Stabilization Account," *California Initiative Review (CIR)*: Vol. 2014, Article 5.
Available at: <https://scholarlycommons.pacific.edu/california-initiative-review/vol2014/iss1/5>

This Article is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in California Initiative Review (CIR) by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Proposition 2:
State Budget – Budget Stabilization Account

Initiative Statute

Copyright © 2014 by the University of the Pacific,
McGeorge School of Law

By

Eric Riviera-Jurado

*J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2015
B.A., Political Science, California State University, Sacramento, 2011*

&

Robert Binning

*J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2015
M.A., Government, California State University, Sacramento, 2010
B.A., Political Science, California Polytechnic State University, San Luis Obispo, 2008*

I. EXECUTIVE SUMMARY

Proposition 2 is a legislatively referred constitutional amendment that would impact California's debts as well as both the State's and school districts' monetary reserves.¹ The proposition was originally titled Proposition 44, but was renamed by Senate Bill (S.B.) 867 on August 11, 2014.² Proposition 2 would amend the State constitution in three ways.³

First, Proposition 2 would mandate that the State, subject to budget emergencies, deposit specified funds into the State's Budget Stabilization Account (B.S.A.), which functions as a rainy-day fund for the State during difficult economic times.⁴ Additionally, it would increase the maximum size of the B.S.A. and would make it more difficult for the State to withdraw funds from or deposit less than the statutorily prescribed amount of funds into the B.S.A.⁵ Second, for the next fifteen fiscal years, Proposition 2 would require the State, subject to budget emergencies, to spend General Fund revenue to reduce State debts owed to pensions, retiree health benefits, local governments, and other state accounts.⁶ Third, Proposition 2 would create a State reserve account for the benefit of public schools and community colleges and its passage would trigger a stipulation in a separate legislative act, S.B. 858, which would require school districts to reduce their reserve accounts to a specified level.⁷

A "yes" vote would likely lead the State to increase State budget reserves, decrease State debt faster than it would otherwise, and reduce the amount of funds school districts may keep in local reserve accounts.⁸

A "no" vote would leave the rules related to State budget reserves, repayment of State debts, and public school district budget reserves unchanged.⁹

II. ROAD TO THE BALLOT

Proposition 2 is a legislatively referred constitutional amendment, which is a bill from the Legislature proposing to amend the State constitution.¹⁰ It was originally introduced by

¹ CAL. SEC'Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY, NOVEMBER 4, 2014, at 12, *available at* <http://vig.cdn.sos.ca.gov/2014/general/pdf/complete-vig.pdf#page=74> ["NOVEMBER 2014 VOTER GUIDE"].

² S.B. 867 (2013–14), *available at* http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0851-0900/sb_867_bill_20140811_chaptered.pdf.

³ *Infra* Part III(B).

⁴ *Infra* Part III(B)(1).

⁵ *Id.*

⁶ *Infra* Part III(B)(2).

⁷ *Infra* Part III(B)(3).

⁸ LEGISLATIVE ANALYST'S OFFICE, PROPOSITION 2, 1 (July 17, 2014), *available at* <http://www.lao.ca.gov/ballot/2014/prop-2-110414.pdf> ["L.A.O. ANALYSIS"].

⁹ *Id.*

¹⁰ Both the California State Legislature and the people of California must approve amendments to the California constitution. CAL. CONST. art. XVIII, §§ 1, 4.

Assembly Member Gatto (Democratic Party, Assembly District 43, Los Angeles) during the 2009–2010 legislative session.¹¹ The bill received the requisite two-thirds vote from each chamber of the State Legislature and the Governor approved it on October 13, 2010.¹² Under prior law, the Secretary of State was required to submit the constitutional amendment, then known as Assembly Constitutional Amendment (A.C.A.) 4, to the first general or statewide special election to occur within 131 days of the amendment’s qualification for the ballot.¹³ However, in 2011, Senator Hancock (Democratic Party, Senate District 9, Berkeley) authored S.B. 202 that explicitly required the Secretary of State to place A.C.A. 4 on the November 4, 2014, statewide general election ballot and all subsequent constitutional amendments only on ballots during general elections occurring in even-numbered years.¹⁴

On April 16, 2014, Governor Edmund G. Brown called an extraordinary session of the California State Legislature to alter A.C.A. 4 to more “adequately address [the State’s] debts and liabilities.”¹⁵ In particular, the Governor sought for the new version of the amendment to: “(1) [i]ncrease deposits when the state experiences spikes in capital gains revenues, the state’s most volatile tax revenue; (2) [a]llow supplemental payments to accelerate the state’s payoff of its debts and liabilities; (3) [c]reate a Proposition 98 reserve to smooth school spending and avoid future cuts; (4) [r]aise the maximum size of the Rainy Day Fund to 10 percent of General Fund revenues; (5) [and] [l]imit withdrawals to ensure the state does not overly rely on the fund at the start of a downturn.”¹⁶ During the extraordinary session, the State Legislature adopted A.C.A. 1, which integrated the Governor’s requested changes and required the Secretary of State to replace A.C.A. 4 with A.C.A. 1 on the November 4, 2014, ballot under the designation “Proposition 44.”¹⁷

Following the extraordinary session and the adoption of A.C.A. 1, S.B. 867 was enacted, changing the ballot designation of the constitutional amendment from “Proposition 44” to “Proposition 2,” and required the Secretary of State and county election officials to revise all voting materials to reflect this new designation.¹⁸ Pundits explain that the renumbering of both

¹¹ See A.C.A. 4 (2009–10), available at http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0001-0050/aca_4_bill_20101013_chaptered.pdf.

¹² *Complete Bill History*, OFFICIAL CAL. LEGIS. INFO., http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0001-0050/aca_4_bill_20101013_history.html (last visited September 2, 2014). While the Governor approved the amendment, the Governor’s approval is not necessary to the amendment’s viability. CAL. CONST. art. XVIII, §§ 1, 4.

¹³ CAL. ELEC. CODE § 9040.

¹⁴ S.B. 202 (Hancock) at § 1 (2011–12), available at http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0201-0250/sb_202_bill_20111007_chaptered.pdf.

¹⁵ Press Release, Office of Governor Edmund G. Brown, Jr., Governor Brown Calls Special Session to Strengthen Rainy Day Fund (Apr. 16, 2014), available at <http://www.gov.ca.gov/news.php?id=18482>.

¹⁶ *Id.*

¹⁷ A.C.A. 1 (Second Extraordinary Session, 2013–14), available at http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0001-0050/acax2_1_bill_20140516_chaptered.pdf.

¹⁸ S.B. 867 (2013–14), available at http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0851-0900/sb_867_bill_20140811_chaptered.pdf. “Commencing with the November 3, 1998, general election, all State measures in all elections at which State measures are submitted to a vote of the voters shall be numbered in a continuous sequence, commencing with the number “1” and continuing in

Proposition 44 and the water bond measure, now known as Proposition 1, “symbolically linked” the measures at the top of the ballot.¹⁹ This may increase support for Proposition 1 by linking it to the “almost universally lauded” Proposition 2 and distinguishing the two measures from the other measures on the ballot.²⁰

III. THE LAW

A. Existing Law

Under current law, the State may deposit funds into the existing B.S.A.; however, the Governor may choose to put less than the prescribed three percent of General Fund revenues or nothing at all into the account at his or her discretion.²¹ Although State law requires that half of the money deposited into the B.S.A. be used to pay off certain specified debts, this year’s State budget is expected to fully repay those obligations.²² As a result, after this year, there will no longer be any statutory requirements for the State to expend additional revenue to reduce the State’s substantial debt.²³ Additionally, the State is required to spend a constitutionally prescribed amount on public schools and community colleges each year.²⁴ While current law does not mandate a State-controlled reserve account exclusively benefitting public schools or community colleges, local school districts are required to maintain their own reserve accounts.²⁵

1. State Reserves

The amount that the State may spend each year is based on the amount of taxes the State receives and available reserve funds.²⁶ When the economy is struggling, it causes tax revenue to drop, usually requiring the State to reduce spending or raise taxes.²⁷ To avoid spending decreases or tax increases, governments often create budget reserve accounts that they contribute to during economic booms and then use to mitigate the effects of volatile tax revenue streams in times of recession.²⁸ As the Legislative Analyst’s Office (“L.A.O.”) succinctly stated, “[I]f a government

numerical sequence for a period of ten years from the year of commencement.” CAL. ELEC. CODE § 13117(a). At the conclusion of the ten-year period, the numbering of the ballot measures restarts at “1.” CAL. ELEC. CODE § 13117(b). However, as evidenced in this case, the Legislature may renumber propositions appearing on ballots. *See, e.g.*, S.B. 867 (2013–14), available at http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0851-0900/sb_867_bill_20140811_chaptered.pdf.

¹⁹ John Myers, *New Ballot Numbers for November’s Water, Budget Propositions*, KQED NEWS (Aug. 12, 2014), <http://blogs.kqed.org/newsfix/2014/08/12/new-ballot-numbers-for-November-water-and-budget-propositions/>.

²⁰ *Id.*

²¹ *See generally* CAL. CONST. art. XVI, § 20.

²² NOVEMBER 2014 VOTER GUIDE, *supra* note 1, at 16.

²³ *Id.*

²⁴ *Id.* at 14.

²⁵ *Id.*

²⁶ *Id.* at 12.

²⁷ *Id.*

²⁸ *Id.*

saves more in reserves when the economy is doing well, it spends less during that time and has more money to spend when the economy is doing poorly.”²⁹

California has had the B.S.A. since 2004 when voters passed Proposition 58, a prior constitutional amendment.³⁰ Proposition 58 empowered the Governor, through executive order, to determine each year whether the state Controller would deposit three percent or less of General Fund revenues into the B.S.A. reserve.³¹ Currently, three percent of General Fund revenue is roughly equivalent to three billion dollars.³² The State Treasurer must spend half of the funds deposited into the B.S.A., up to five billion dollars, to pay off deficit recovery bonds, which are likely to be fully repaid in this year’s budget.³³ By statute, the maximum amount the B.S.A. may reach is \$8 billion or five percent of General Fund revenue, whichever is greater.³⁴ The State may withdraw any or all funds from the B.S.A. through a majority vote by the Legislature.³⁵ Since the B.S.A. was created, the State has only deposited funds into the account in the 2006–2007 and 2007–2008 fiscal years and it currently has a zero balance, although this year the Governor has decided to deposit funds into the B.S.A.³⁶

2. State Debts

Currently California is roughly \$300 billion, or about three times the State’s annual budget, in debt.³⁷ This substantial debt has contributed to the reduction of California’s credit rating to one of the lowest state ratings in the country, although its creditworthiness has improved in recent years.³⁸ The debt includes about \$150 billion in already earned pension and retiree health care benefits owed to public employees and “several billion dollars” owed to local governments, including school districts.³⁹ After the deficit recovery bonds issued in 2004 to overcome California’s immense deficit are fully repaid this year, which will cost the state

²⁹ *Id.* at 12–13.

³⁰ *See generally* CAL. CONST. art. XVI, § 20.

³¹ *Id.* at § 20(e).

³² NOVEMBER 2014 VOTER GUIDE, *supra* note 1, at 13.

³³ CAL. CONST. art. XVI, § 20(f)(1). The State issued these deficit recovery bonds to relieve the State of its substantial budget deficit in 2004. *See id.* at § 1.3.

³⁴ NOVEMBER 2014 VOTER GUIDE, *supra* note 1, at 13; CAL. CONST. art. XVI, § 20(c).

³⁵ NOVEMBER 2014 VOTER GUIDE, *supra* note 1, at 14.

³⁶ *Id.* at 13.

³⁷ *Id.* at 14–15. However, reports about California’s actual amount of debt varies widely. For instance, the California Public Policy Center estimates that California’s combined outstanding debts may be \$848.4 billion. *Calculating California’s Total State and Local Government Debt*, CAL. PUB. POL’Y CENTER (Apr. 26, 2013), <http://californiapolicycenter.org/calculating-californias-total-state-and-local-government-debt/>. *But see* Autumn Carter, *Unsustainable California*, CAL. COMMON SENSE (June 11, 2014), <http://cacs.org/research/unsustainable-california-the-top-10-issues-facing-the-golden-state-wall-of-debt/> (“California’s actual wall of debt is \$443 billion.”).

³⁸ *Moody’s Lifts View on California Debt to Highest in 13 Years*, CNBC (June 25, 2014, 6:46 PM), <http://www.cnbc.com/id/101789976> (“Of the 47 states rated by Moody’s, just two—Illinois and New Jersey—have lower ratings, while 42 have higher ratings.”).

³⁹ NOVEMBER 2014 VOTER GUIDE, *supra* note 1, at 14–15.

approximately \$6 billion, there will be no existing statutory requirements for the state to expend extra funds to repay State debt faster than each individual debt would otherwise require.⁴⁰

3. *School Reserves*

Under the current California Constitution, the State is required to spend about forty percent of the State's budget to fund public schools and community colleges.⁴¹ As the vast majority of the funding for public schools and community colleges comes from the State, any changes in tax revenue levels dramatically affects the size of the State's budget and causes erratic changes to public school funding that significantly affects the services schools may offer.⁴² To mitigate the impact of volatile funding, State law requires school districts to keep minimum amounts of funds in reserve accounts.⁴³ While State law requires school districts to keep between one and five percent of their annual budget in reserve, many districts keep much more than that in their reserve accounts.⁴⁴ Reserve funds serve a multitude of purposes and can allow districts to make large infrequent expenses or to mitigate the impact of decreased State funding in low tax revenue years.⁴⁵

B. Proposed Law

Proposition 2 would mandate that the State deposit funds into the B.S.A. and use funds to reduce State debt, except during a budget emergency.⁴⁶ Additionally, the proposition would create a State reserve account for public schools and impose caps on the amount of funds school districts may keep in their own reserve accounts.⁴⁷

1. *State Reserves*

Proposition 2 would change how the State determines how much money is deposited into the B.S.A., the maximum size of the B.S.A., and when the State may withdraw funds from the B.S.A.⁴⁸ For the first fifteen fiscal years following the approval of Proposition 2, the State would be required to deposit 0.75 percent of General Fund revenues into the B.S.A.,⁴⁹ while using an additional 0.75 percent of General Fund revenues to pay down specified debts.⁵⁰ After Proposition 2's requirement to pay down those debts expires in the 2030–2031 fiscal year, the

⁴⁰ *Id.* at 16.

⁴¹ *Id.* at 14; see CITY COLLEGE OF S.F., PROPOSITION 98—HOW DOES IT WORK? 1, available at http://www.ccsf.edu/dam/Organizational_Assets/About_CCSF/Admin/Governmental_Relations/Proposition98_TheTests.pdf.

⁴² NOVEMBER 2014 VOTER GUIDE, *supra* note 1, at 14.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Infra* Part III(A)(1)–(2).

⁴⁷ *Infra* Part III(A)(3).

⁴⁸ NOVEMBER 2014 VOTER GUIDE, *supra* note 1, at 15.

⁴⁹ CAL. CONST. art. XVI, § 20(c)(1) (added by Proposition 2); L.A.O. ANALYSIS, *supra* note 8, at 8.

⁵⁰ CAL. CONST. art. XVI, § 20(c)(1) (added by Proposition 2); L.A.O. ANALYSIS, *supra* note 8, at 8; see *infra* Part III(b)(2).

State would be required to deposit the entire 1.5 percent of General Fund revenues previously allocated by Proposition 2 into the B.S.A.⁵¹ Thus, based on Legislative Analyst’s Office estimates, for the first fifteen years of Proposition 2 being in effect it would require the State to deposit between \$800 million and \$2 billion dollars into the B.S.A. and twice that afterwards.⁵²

However, the State may put less than the required amount into the B.S.A. or suspend deposits altogether under two exceptions.⁵³ Both exceptions require the Governor to call a “budget emergency” with the support of the Legislature by a majority vote.⁵⁴ Under Proposition 2, the Governor may only declare a budget emergency in the event of an emergency, as defined by the California Constitution,⁵⁵ or if available funds are insufficient to maintain “General Fund spending at and not exceeding the highest level of [any of] the past three years.”⁵⁶

Proposition 2 would increase the maximum size of the B.S.A. to about⁵⁷ ten percent of General Fund revenues, which would currently be \$11 billion.⁵⁸ If this maximum were reached, Proposition 2 would instead require that the State use excess funds to maintain infrastructure, as currently defined in California’s Government Code.⁵⁹

Under Proposition 2, the State may only take funds out of the B.S.A. if the Governor declares a budget emergency and the Legislature, by majority vote, authorizes the State to remove funds either to address an emergency or to maintain spending at the highest level of any of the past three years.⁶⁰ In the first year of a budget emergency, the Legislature may not

⁵¹ CAL. CONST. art. XVI, § 20(c)(1) (added by Proposition 2); L.A.O. ANALYSIS, *supra* note 8, at 8. The additional 0.75% of General Fund revenue will become available as a result of Proposition 2’s additional mandate that 0.75% of General Fund revenue be used to pay off State debt will expire after 2029–2030. CAL. CONST. art. XVI, § 20(c)(1) (added by Proposition 2); L.A.O. ANALYSIS, *supra* note 8, at 8.

⁵² L.A.O. ANALYSIS, *supra* note 8, at 8.

⁵³ CAL. CONST. art. XVI, § 22(b) (added by Proposition 2); L.A.O. ANALYSIS, *supra* note 8, at 9.

⁵⁴ CAL. CONST. art. XVI, § 22(a) (added by Proposition 2); L.A.O. ANALYSIS, *supra* note 8, at 9.

⁵⁵ CAL. CONST. art. XVI, § 22(b)(1) (added by Proposition 2). “[E]mergency” means the existence, as declared by the Governor, of conditions of disaster or of extreme peril to the safety of persons and property within the State, or parts thereof, caused by such conditions as attack or probable or imminent attack by an enemy of the United States, fire, flood, drought, storm, civil disorder, earthquake, or volcanic eruption.” CAL. CONST. art. XIII B, § 3(c)(2).

⁵⁶ CAL. CONST. art. XVI, § 22(b)(2) (added by Proposition 2); L.A.O. ANALYSIS, *supra* note 8, at 9.

Historically General Fund spending is adjusted for State population and the cost of living. CAL. CONST. art. XVI, § 22(b)(2)(A) (added by Proposition 2); L.A.O. ANALYSIS, *supra* note 8, at 9.

⁵⁷ Because amounts used for paying off prescribed debts and deposited into the B.S.A. are based on Department of Finance estimates, Proposition 2 can only provide that the B.S.A. will not exceed ten percent of the Department of Finance’s estimate of General Fund revenues, which cannot be expected to be perfect each year. *See* CAL. CONST. art. XVI, § 20(e) (added by Proposition 2).

⁵⁸ L.A.O. ANALYSIS, *supra* note 8, at 9–10.

⁵⁹ CAL. CONST. art. XVI, § 20(e) (added by Proposition 2); L.A.O. ANALYSIS, *supra* note 8, at 10.

“[I]nfrastructure” means real property, including land and improvements to the land, structures and equipment integral to the operation of structures, easements, rights-of-way and other forms of interest in property, roadways, and water conveyances. CAL. GOV’T CODE § 13101.

⁶⁰ CAL. CONST. art. XVI, § 22(a) (added by Proposition 2); L.A.O. ANALYSIS, *supra* note 8, at 9.

authorize the State to withdraw more than half of the B.S.A. funds.⁶¹ Only in a second consecutive year of a budget emergency may the Legislature authorize the State to liquidate the B.S.A.⁶²

2. State Debts

Proposition 2 would mandate that the State use additional funds each year to reduce the debt owed to “pension and retiree health benefits” and for “specified debts to local governments and other State accounts.”⁶³ From the 2015–2016 fiscal year through the 2029–2030 fiscal year, Proposition 2 would require that the State use 0.75 percent of General Fund revenues⁶⁴ to pay down these specified debts.⁶⁵ Under current General Fund revenue estimates the proposition would require the State to pay about \$800 million this year towards those debts.⁶⁶ Beginning in the 2030–2031 fiscal year, the proposition would no longer require that the State use 0.75 percent of General Fund revenue to reduce those debts and would instead require the State to deposit those funds into the B.S.A.⁶⁷

Furthermore, Proposition 2 would require the State to spend additional funds to reduce the debt “when state tax revenue from capital gains are higher than average.”⁶⁸ Capital gains tax revenue⁶⁹ varies widely from year-to-year based on fluctuations in the economy, making the effect of this requirement difficult to predict.⁷⁰ For example, if Proposition 2 were in place over the last thirteen fiscal years, capital gains tax revenues would only have been high enough to trigger additional debt funding about half of the time.⁷¹ However, the Legislative Analyst’s

⁶¹ CAL. CONST. art. XVI, § 22(a)(2)(B) (added by Proposition 2); L.A.O. ANALYSIS, *supra* note 8, at 9.

⁶² CAL. CONST. art. XVI, § 22(a)(2)(B) (added by Proposition 2); L.A.O. ANALYSIS, *supra* note 8, at 9.

⁶³ L.A.O. ANALYSIS, *supra* note 8, at 7; *accord* CAL. CONST. art. XVI, § 20(c)(1)(B) (added by Proposition 2).

⁶⁴ For the purposes of Proposition 2, the Director of Finance will estimate General Fund revenues and expenditures for the upcoming four fiscal years within ten days of the enactment of the budget bill. CAL. CONST. art. IV, § 12.5 (added by Proposition 2).

⁶⁵ CAL. CONST. art. XVI, § 20(c)(1) (added by Proposition 2); L.A.O. ANALYSIS, *supra* note 8, at 8. Proposition 2 requires the State to use the 0.75% of General Fund revenues set aside to reduce State debt related to: (1) unfunded General Fund obligations to schools under Proposition 98 that existed on July 1, 2014; (2) budgetary loans to the General Fund from non-General Fund State funds that existed on July 1, 2014; (3) costs imposed on local programs occurring before the 2004–2005 fiscal year that the State must reimburse the local programs for and that the State may, as prescribed by law, repay over a term of years; and (4) “[u]nfunded liabilities for State-level pension plans and prefunding other postemployment benefits” in excess of the amounts already required. CAL. CONST. art. XVI, § 20(c)(1)(B)(2) (added by Proposition 2).

⁶⁶ L.A.O. ANALYSIS, *supra* note 8, at 8.

⁶⁷ CAL. CONST. art. XVI, § 20(c)(2)(A) (added by Proposition 2); L.A.O. ANALYSIS, *supra* note 8, at 8.

⁶⁸ L.A.O. ANALYSIS, *supra* note 8, at 8.

⁶⁹ *Capital Gains Tax*, INVESTOPEDIA, http://www.investopedia.com/terms/c/capital_gains_tax.asp (last visited Oct. 9, 2014) (The capital gains tax is “[a] type of tax levied on capital gains incurred by individuals and corporations. Capital gains are the profits that an investor realizes when he or she sells the capital asset for a price that is higher than the purchase price.”).

⁷⁰ *See* L.A.O. ANALYSIS, *supra* note 8, at 8.

⁷¹ *Id.*

Office notes that when capital gains tax revenues are particularly high, Proposition 2 could trigger up to an additional \$2 billion in spending towards the repayment of State debts per year.⁷²

3. *School Reserves*

Proposition 2 would also create a new school State reserve account known as the “Proposition 98 Reserve” or Public School System Stabilization Account (P.S.S.S.A.).⁷³ When the Legislature deposits funds into the P.S.S.S.A. it would trigger a stipulation in S.B. 858 that would set a cap on the reserve accounts school districts control.⁷⁴ However, the implementation of these changes would not go into effect until after school funding is restored to the levels it was prior to the latest recession.⁷⁵ In years when tax revenue from capital gains is above average and other specified conditions are met, Proposition 2 would direct some of these additional funds into the P.S.S.S.A., which may not exceed “ten percent of the total allocations to school districts and community college districts”⁷⁶ The State could then spend funds from this new reserve account to moderate the sometimes-harsh effects of volatile budgets on schools and community colleges by stabilizing the funding they receive.⁷⁷ However, in order to allocate funds from the P.S.S.S.A., the Governor, with the support of the Legislature, would have to declare a budget emergency.⁷⁸ While Proposition 2 would alter when the State spends funds on schools by holding some funds in the State reserve account, the total amount the State spends on schools under Proposition 2 would, over time, be identical to the amount spent in its absence.⁷⁹

Furthermore, if Proposition 2 is passed and school funding is restored, a section in S.B. 858 would set a cap on the amount of funds school districts can keep in their own reserves in any

⁷² *Id.*

⁷³ CAL. CONST. art. XVI, § 21(a) (added by Proposition 2).

⁷⁴ CAL. EDUC. CODE § 42127.01 (as added by S.B. 858 (2013–2014)); L.A.O. ANALYSIS, *supra* note 8, at 10; *California Proposition 2, Rainy Day Budget Stabilization Fund Act (2014)*, BALLOTPEDIA, [http://ballotpedia.org/California Proposition 2, Rainy Day Budget Stabilization Fund Act \(2014\)](http://ballotpedia.org/California_Proposition_2,_Rainy_Day_Budget_Stabilization_Fund_Act_(2014)), (last visited Sept. 3, 2014); *see* CAL. EDUC. CODE § 42127.01 (as added by S.B. 858 (2013–2014)) (capping the reserve funds a school district may preserve only if Proposition 2 is adopted by the people in the November 4, 2014, general election).

⁷⁵ CAL. CONST. art. XVI, § 21(f) (added by Proposition 2); Press Release, Office of Governor Edmund G. Brown Jr., Governor Brown, Legislative Leaders Announce Rainy Day Fund Agreement (May 8, 2014), *available at* <http://gov.ca.gov/news.php?id=18517> (“[T]he Proposition 98 reserve would not begin until school funding is fully restored following cuts made during the Great Recession.”) [Press Release].

⁷⁶ CAL. CONST. art. XVI, § 21(h) (added by Proposition 2); *accord* L.A.O. ANALYSIS, *supra* note 8, at 10.

⁷⁷ *See* L.A.O. ANALYSIS, *supra* note 8, at 10 (“Before money would go into this reserve, the State would have to make sure that the amount spent on schools and community colleges grows along with the number of students and the cost of living. The State could spend money out of this reserve to lessen the impact of difficult budgetary situations on schools and community colleges.”).

⁷⁸ CAL. CONST. art. XVI, § 22(a)(4) (added by Proposition 2).

⁷⁹ CAL. CONST. art. XVI, § 21(j), (k) (added by Proposition 2); L.A.O. ANALYSIS, *supra* note 8, at 10 (“Though Proposition 2 changes when the State would spend money on schools and community colleges, it does not directly change the total amount of State spending for schools and community colleges over the long run.”); Press Release, *supra* note 75 (Proposition 2 would “[c]reate a Proposition 98 reserve to smooth school spending and avoid future cuts. This reserve for schools makes no changes to the guaranteed level of funding dedicated to schools under Proposition 98.”).

year after the State deposits funds into the P.S.S.S.A.⁸⁰ For the most part, S.B. 858 would require school districts to keep their reserves below a certain threshold in years after the State deposited funds into the P.S.S.S.A.⁸¹ Depending on the size of the district, the cap will be set between three percent and ten percent of the district’s annual budget.⁸² When school districts face “extraordinary fiscal circumstances, including, but not limited to, multiyear infrastructure or technology projects,” county education officials may exempt school districts from these caps on their reserves.⁸³ Because the cap on school district reserves is the creation of S.B. 858, which is contingent on Proposition 2 passing, future Legislatures could change the law regarding the cap on school district reserves by majority vote.⁸⁴

IV. DRAFTING ISSUES

The Legislative Analyst’s Office (L.A.O.) has noted that Proposition 2 may further reduce the public’s already limited understanding of the budget process and relies on uncertain revenue estimates, which may lead to unintended consequences.⁸⁵ Formula-driven ballot measures have already complicated California’s budget process.⁸⁶ For example, Proposition 98 employs several constitutional budget formulas that have created a process for determining annual school funding that “is understood by a small number of insiders.”⁸⁷ Additionally, the L.A.O. notes that the Gann limit, the progeny of Proposition 111, includes estimates relevant to the budget that “are difficult to fathom.”⁸⁸ The L.A.O. cautions that the creation of additional constitutional budget formulas through Proposition 2 could adversely affect the public’s understanding of the budget process.⁸⁹

Second, the L.A.O. notes that the implementation of Proposition 2 would require reliance on data that is uncertain, currently unknown, and subject to interpretation.⁹⁰ For example, Proposition 2 would require a certain percentage of General Fund revenue to be deposited into different accounts each year, but as the L.A.O. notes, when the Governor and Legislature finalize the amount to be deposited under the proposition’s formulas, they would be relying on uncertain,

⁸⁰ CAL. EDUC. CODE § 42127.01 (as added by S.B. 858 (2013–2014)); L.A.O. ANALYSIS, *supra* note 8, at 10. This restriction would not affect community colleges. CAL. EDUC. CODE § 42127.01 (as added by S.B. 858 (2013–2014)); L.A.O. ANALYSIS, *supra* note 8, at 10.

⁸¹ L.A.O. ANALYSIS, *supra* note 8, at 10; see CAL. EDUC. CODE § 42127.01 (as added by S.B. 858 (2013–2014)).

⁸² L.A.O. ANALYSIS, *supra* note 8, at 10; see CAL. EDUC. CODE § 42127.01 (as added by S.B. 858 (2013–2014)).

⁸³ CAL. EDUC. CODE § 42127.01(b) (as added by S.B. 858 (2013–2014)); L.A.O. ANALYSIS, *supra* note 8, at 10. In failing to explicitly define “extraordinary fiscal circumstances” the Legislature would leave county superintendents of schools significant leeway to grant districts exceptions to the reserve cap.

⁸⁴ L.A.O. ANALYSIS, *supra* note 8, at 10–11.

⁸⁵ MAC TAYLOR, LEGISLATIVE ANALYST’S OFFICE, THE 2014–2015 BUDGET: OVERVIEW OF THE GOVERNOR’S BUDGET 20–21 (2014), *available at* <http://www.lao.ca.gov/reports/2014/budget/overview/budget-overview-2014.pdf>.

⁸⁶ *Id.* at 20.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 21.

imperfect, unreliable data concerning capital gains taxes, among other things.⁹¹ Since Proposition 2’s deposit and withdrawal mechanisms for the B.S.A. and P.S.S.S.A. are contingent on exact percentages, a difference of even one percent between estimated amounts and actual amounts could determine whether the Legislature deposits funds into the B.S.A. and P.S.S.S.A.⁹²

V. CONSTITUTIONAL ANALYSIS

Propositions can violate the California Constitution by violating the Single Subject Rule.⁹³ The Single Subject Rule requires that all parts of an initiative be “reasonably germane” to each other and the general purpose of the initiative.⁹⁴ Proposition 2 generally concerns legislative reserve fund deposits and expenditures.⁹⁵ Section 27 of S.B. 858, which only becomes operative if Proposition 2 is enacted, contains a provision capping local school district reserves.⁹⁶ Although Section 27 of S.B. 858 is inextricably linked to Proposition 2, S.B. 858 is the result of distinct legislative action separate from Proposition 2; as a result, the Single Subject Rule would not require the topics of Proposition 2 and S.B. 858 to be reasonably germane.⁹⁷ Therefore, Proposition 2 does not appear vulnerable to a challenge under the Single Subject Rule.⁹⁸

A proposition can also violate the constitution if it fails to comply with the procedural rules governing the initiative process.⁹⁹ In analyzing whether a proposition unconstitutionally fails to comply with procedural rules, the court determines the substantive purpose of the rule and will only find the proposition unconstitutional if the substantive purpose of the rule is violated.¹⁰⁰ “The main purpose of the title and summary requirements is to avoid misleading the public with inaccurate information.”¹⁰¹ By failing to discuss S.B. 858’s contingent provisions, the Attorney General’s official summary may mislead the public with inaccurate information, violating the essential purpose of the summary or Section 9051 of the Election Code requiring the summary be “true.”¹⁰² Courts have not analyzed whether failing to describe contingent provisions, like those in S.B. 858, makes a summary unconstitutionally deficient; however, as a summary is only required to describe the “chief principals and points” of the initiative and

⁹¹ *Id.*

⁹² See NOVEMBER 2014 VOTER GUIDE, *supra* note 1, at 15–17.

⁹³ CAL. CONST. art. II, § 8(d).

⁹⁴ Fair Political Practices Comm’n v. Superior Court, 25 Cal. 3d 33, 38–39 (1979).

⁹⁵ NOVEMBER 2014 VOTER GUIDE, *supra* note 1, at 12.

⁹⁶ CAL. EDUC. CODE § 42127.01 (as added by S.B. 858 (2013–2014)).

⁹⁷ See *Zaremborg v. Superior Court*, 115 Cal. App. 4th 111, 118 (2004) (“[T]he title and summary prepared by the Attorney General are presumed accurate, and substantial compliance with the ‘chief purpose and points’ provision is sufficient.” While the Act also contains numerous ‘auxiliary and subsidiary’ matters not mentioned in the summary, it is not unreasonable to conclude, as referendum proponents argue, that failure to mention the tax credit contingency does not alter the chief purpose nor render the summary fatally defective. As we have previously explained ‘a statement of the major objectives . . . of the measure is satisfactory’” (citations omitted).).

⁹⁸ *Id.*

⁹⁹ *Assembly of the State of Cal. v. Deukmejian*, 30 Cal. 3d. 638, 649 (1982).

¹⁰⁰ *Id.* at 648–50.

¹⁰¹ *Zaremborg*, 115 Cal. App. 4th at 116.

¹⁰² *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 243–44 (1978); CAL. ELEC. CODE § 9051.

Proposition 2’s summary describes the B.S.A. and P.S.S.S.A. reserves the court could reasonably find that Proposition 2’s summary is not “fatally defective.”¹⁰³ Furthermore, invalidating a voter-approved initiative is likely an inappropriate remedy for a procedural violation that may be remedied by a lawsuit prior to the election.¹⁰⁴ Even if the court were willing to invalidate a proposition, SB 858 is not part of the official language of Proposition 2, so there is a strong argument that the Attorney General’s summary is true *as applied* to Proposition 2.

VI. PUBLIC POLICY CONSIDERATIONS

Proposition 2 received unanimous support in the Legislature and is strongly supported by the Governor, thus unsurprisingly the proposition has received minimal debate in the Legislature and the media.¹⁰⁵ For the most part, Proposition 2’s provisions creating more robust State reserve requirements and requiring the paying down of State debts more quickly have received widespread support.¹⁰⁶ However, in creating a State school reserve account the funding of which would satisfy Proposition 98’s spending requirements and by triggering S.B. 858’s limit on local school reserve accounts, Proposition 2 has faced opposition from education interest groups.¹⁰⁷

A. State Reserves

The official arguments registered with the Secretary of State in support of Proposition 2 emphasizes that the creation of the B.S.A. will help stabilize California’s volatile budget process, encourage the Legislature to live within their means, and pay down existing debt.¹⁰⁸ According to Speaker Emeritus Perez, Proposition 2 would “establish a better approach for California’s budget that saves the spiking revenues we take in during good years, and saves it for those tough years where revenues are scarce.” Spiking revenue largely results from changes in capital gains tax revenue, which varies widely from year to year.¹⁰⁹ Since capital gains are the profits a person or company makes from investments, capital gains tax revenue fluctuates with the stock market.¹¹⁰ The Governor has emphasized the need for California legislators to “avoid the mistakes of the past . . . and . . . establish a solid rainy day fund, locked into the constitution”¹¹¹ By imposing more rigid requirements for depositing and withdrawing funds from the

¹⁰³ Amador Valley Joint Union High Sch. Dist., 22 Cal. 3d at 243–44.

¹⁰⁴ No pre-election lawsuit alleging that the Title or Summary were defective has been brought.

¹⁰⁵ *Complete Bill History: ACAX2-1*, OFFICIAL CAL. LEGIS. INFO., http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0001-0050/acax2_1_bill_20140516_history.html (last visited Oct. 5, 2014).

¹⁰⁶ *Infra* Part IV(A)–(B).

¹⁰⁷ *Infra* Part IV(C).

¹⁰⁸ NOVEMBER 2014 VOTER GUIDE, *supra* note 1, at 12.

¹⁰⁹ *See id.* at 14.

¹¹⁰ Michael B. Marois, *California Law Makers Pass Rainy Day Fund Ballot Measure*, BLOOMBERG (May 15, 2014, 11:07 AM), <http://www.bloomberg.com/news/2014-05-15/california-lawmakers-pass-rainy-day-fund-ballot-measure.html>.

¹¹¹ Sharon Bernstein, *California Governor Brown Urges Continued Fiscal Restraint*, REUTERS (Jan. 22, 2014), <http://www.reuters.com/article/2014/01/23/us-usa-california-governor-idUSBREA0K1LJ20140123>.

B.S.A., Proposition 2 would help to ensure the State is financially prepared to mitigate future downturns in the economy.¹¹²

B. State Debts

The Governor, in particular, has supported Proposition 2 as a way to address California's debt.¹¹³ In his official press release calling for the special session that led to the adoption of the current form of the proposition, Governor Brown stated, "We simply must prevent the massive deficits of the last decade and we can only do that by paying down our debts and creating a solid rainy day fund."¹¹⁴ Credit ranking companies, such as Standard and Poor's, have also criticized California for failing to save money when the economy is doing well and for relying too heavily on volatile revenue sources like capital gains taxes.¹¹⁵

Reliance on volatile revenue sources to fund as much as two-thirds of the State's budget,¹¹⁶ which includes several long-term funding obligations like public employee pensions, has been a major source of California's "Wall of Debt."¹¹⁷ When Governor Brown first proposed his changes to the proposition, the California Chamber of Commerce quickly endorsed his effort.¹¹⁸ Other groups like California Forward and the California Business Roundtable, in addition to tax-payer groups, have also lent their support, noting that the "Wall of Debt" makes California a risky investment to investors and job creators.¹¹⁹ Past attempts to address the State's debts and continuing obligations came at the cost of cuts to education spending, which Proposition 2 does not, in the long-run, decrease.¹²⁰ While California will continue to face significant debt problems in the future, Proposition 2's mandate that the State use, at minimum,

¹¹² *Supra* Part III(B)(1).

¹¹³ *Governor Calls Special Session on Rainy Day Fund*, CBS L.A. (Apr. 16, 2014), <http://losangeles.cbslocal.com/2014/04/16/governor-calls-special-session-on-rainy-day-fund/>.

¹¹⁴ Press Release, Office of Governor Edmund G. Brown Jr., Governor Brown, Governor Brown Calls Special Session to Try to Strengthen Rainy Day Fund (April 16, 2014), *available at* <http://gov.ca.gov/news.php?id=18481>.

¹¹⁵ Marois, *supra* note 110.

¹¹⁶ *Id.*

¹¹⁷ Jessica Calefati, *State Budget: Governor Brown Proposes Paying Down Wall of Debt, Continues to Call for Restraint*, SAN JOSE MERCURY NEWS, Jan. 8, 2014, http://www.mercurynews.com/california/ci_24874278/state-budget-gov-jerry-brown-proposes-paying-down.

¹¹⁸ Press Release, Cal Chamber, Governor Brown, Governor Calls Special Session on Rainy Day Reserve (Apr. 17, 2014), *available at* <http://www.calchamber.com/headlines/pages/04172014-governor-calls-special-session-on-rainy-day-reserve.aspx>.

¹¹⁹ Christopher Nelson, *Bolstered Rainy Day Fund Would Benefit California Business Community*, CAL. FORWARD (Aug. 7, 2014), www.cafwd.org/reporting/entry/bolstered-rainy-day-fund-would-benefit-california-business-community; SAN DIEGO TAX PAYER'S ASS'N, ASSEMBLY CONSTITUTIONAL AMENDMENT 1 (July 2014), *available at* <http://www.sdcta.org/Uploads/Documents/Board%20Approved%20SDCTA%20Position%20Paper%20ACA%201%207-25-14,%20SK%20FINAL.pdf>.

¹²⁰ Tami Luhby, *Big Taxes + Big Spending Cuts = California Budget Surplus*, CNN MONEY (Jan. 3, 2014), <http://money.cnn.com/2013/02/07/news/economy/california-budget/>.

0.75% of General Fund revenue to reduce the debt, which will amount to between \$800 million and \$2 billion depending on capital gains tax revenues, makes an important step towards the reduction of the State's debt.¹²¹

C. School Reserves

Opposition to Proposition 2 stems from the proposition's creation of the P.S.S.S.A., a State school reserve fund. The passage of the proposition would trigger a conditional section of S.B. 858 setting a cap on the amount of funds local school districts may keep in their own reserve accounts. Although only 2BadForKids and Educate Our State are registered as opposition to Proposition 2, the California Association of School Business Officials (School Business Officials) and the Association of California School Administrators (School Administrators) additionally oppose the proposition.¹²²

1. Creation of a State School Reserve

Since the P.S.S.S.A. is a budget reserve account like the B.S.A., many of the benefits ascribed to the B.S.A. are similarly extended to the P.S.S.S.A.¹²³ Like the B.S.A., the P.S.S.S.A. may help to "end the cycle of boom and bust spending" by ensuring funds are available to stabilize education spending when General Fund revenues fall by diverting some funds away from schools and into the P.S.S.S.A. when the economy is doing well.¹²⁴ By stabilizing funding levels, the State may enable schools to better and more accurately plan for future years and implement long-term programs that depend on State revenues. Furthermore, the P.S.S.S.A. and B.S.A. align with best-practices recommendations from the National Association of State Budget Officers.¹²⁵

Opposition groups support the idea of a State reserve fund for schools, but oppose Proposition 2 because it may lead to fewer increases in aggregate education spending, it has the potential to inhibit the implementation of the recent Local Funding Formula, and it may lead the public to incorrectly believe school funding is adequate.¹²⁶

¹²¹ *Supra* Part III(B)(2).

¹²² Interview with Catherine Welsh, Treasurer, Educate Our State, in Sacramento, CA (August 2014) (noting that some opponents to the proposition failed to meet the deadline for registering as official opponents).

¹²³ LEGISLATIVE ANALYST'S OFFICE, BUDGET RESERVE PROPOSALS 6–7 (Apr. 28, 2014), *available at* http://www.lao.ca.gov/handouts/state_admin/2014/Budget-Reserve-Proposals-042814.pdf [L.A.O. PROPOSALS].

¹²⁴ Press Release, Toni G. Atkins Speaker of the Assembly, Legislature Unanimously Passes Rainy Day Fund (May 15, 2014), *available at* <http://asmdc.org/speaker/news-room/press-releases/legislature-unanimously-passes-rainy-day-fund>.

¹²⁵ NAT'L ASS'N OF STATE BUDGET OFFICERS, STATE BUDGETING AND THE LESSONS LEARNED FROM THE ECONOMIC DOWNTURN (Summer 2013), *available at* <http://www.nasbo.org/sites/default/files/State%20Budgeting%20and%20Lessons%20Learned%20from%20the%20Economic%20Downturn-final.pdf>.

¹²⁶ Letter from Jeffrey A. Vaca, Deputy Exec. Dir. of Public Relations, Cal. Ass'n of Sch. Bus. Officials, to John A. Perez, Speaker of the Assembly, Cal. Legislature (Apr. 28, 2014), *available at*

The School Business Officials oppose Proposition 2 because it would allow the State to count any funds transferred to the P.S.S.S.A. towards the minimum education-spending guarantee, which Proposition 98 imposed, for the fiscal year when the deposit is made.¹²⁷ This would allow the State, in strong economic years, to avoid increasing the amount of education spending that reaches schools.¹²⁸ As Jennifer Bestor of Educate our State explained, “Since budget emergencies seem to get called every five years . . . it’s not hard to imagine a really good year . . . putting a little into the P.S.S.S.A., followed by a bad year when, instead of topping up school spending, anything in the P.S.S.S.A. gets used for base spending to relieve pressure on the General Fund.”¹²⁹ Additionally, 2BadForKids notes that California is currently ranked fiftieth in the nation in adjusted per-pupil expenditures and that placing revenue in the reserve instead of increasing funding for education makes long-term increases to aggregate education spending unlikely.¹³⁰ This course will keep California among the lowest in the nation for per-pupil expenditures.¹³¹ However, as Proposition 98 requires that, at minimum, a certain percentage of General Fund revenue is annually used for education, aggregate education spending will grow with General Fund revenues over time.

Additionally, the School Business Officials believe the P.S.S.S.A. will significantly delay full implementation of the Local Control Funding Formula.¹³² The Local Control Funding Formula is a recent change to the education funding formula that became operative in 2013.¹³³ Its objective was to transfer an assortment of current prior funding streams to three new grant programs to increase local control.¹³⁴ These three grant programs are based on the student populations the schools serve and allow school districts to decide how the money is spent.¹³⁵ However, the Local Control Funding Formula will not be fully implemented for eight years.¹³⁶

<http://s3.documentcloud.org/documents/1158826/statebud-24-25-rainydayfund-casboopposes042814.pdf> [Vaca Letter].

¹²⁷ Kimberly Beltran, *School Leaders Oppose Brown’s Rainy Day Measure*, CABINET REPORT (Aug. 13, 2014), <https://cabinetreport.com/politics-education/school-leaders-oppose-browns-rainy-day-measure>.

¹²⁸ *Id.*

¹²⁹ Email conversation with Jennifer Burton.

¹³⁰ *Prop 2: Fact vs. Fiction*, 2BADFORKIDS, http://www.2badforkids.org/fact_vs_fiction (last visited Oct. 5, 2014) [“*Prop 2: Fact vs. Fiction*”]; see also John Fensterwald, *Latest—But Outdated—Ed Week Survey Ranks California 50th in Per Pupil Spending*, EDSOURCE (Jan. 13, 2014), <http://edsource.org/2014/latest-but-outdated-ed-week-survey-ranks-california-50th-in-per-pupil-spending/56196#.VBZJwBYXNEM>.

¹³¹ *Id.*

¹³² *LCFF Frequently Asked Questions*, CAL. DEPT. OF EDU., <http://www.cde.ca.gov/fg/aa/lc/lcffffaq.asp> (last visited Sept. 14, 2014).

¹³³ *Local Control Funding Formula*, CAL. TEACHERS ASS’N, <http://www.cta.org/Issues-and-Action/School-Funding/Local-Control-Funding-Formula.aspx> (last visited Sept. 14, 2014).

¹³⁴ *Id.*

¹³⁵ *Local Control Funding Formula*, CAL. DEPT. OF EDU., <http://www.cde.ca.gov/nr/el/le/yr13ltr0807.asp> (last visited Sept. 27, 2014).

¹³⁶ *Local Control Funding Formula Overview*, CAL. DEPT. OF EDU., <http://www.cde.ca.gov/fg/aa/lc/lcffoverview.asp> (last visited Sept. 14, 2014).

Thus, Proposition 2 may be antithetical to the Local Control Funding Formula’s objective of increasing local control as Proposition 2 may divert funds into State reserves instead of toward the grant programs.¹³⁷ The School Administrators share the School Business Officials concerns and further question the wisdom of having three reserve funds: the P.S.S.S.A., the B.S.A., and local school district reserves.¹³⁸ The opposition believes that local school districts are in the best position to assess how large a reserve is needed and to decide how it ought to be spent.¹³⁹

The School Business Officials also believe that creating a rainy day fund will suggest to the public that the school system is adequately funded, which is not the case.¹⁴⁰ According to School Business Officials the State still owes 7.9 billion to pay down the “maintenance factor,” which is the State’s obligation under Proposition 98 to backfill education funding levels when the State decreases funding from the previous year.¹⁴¹ Thus, the public may be misled by Proposition 2 to believe that the creation of a State school reserve fund is the result of a surplus of funds.¹⁴²

2. *Creation of a Local School Reserve Cap*

S.B. 858 is the education omnibus trailer bill that contains the provisions implementing local school district reserve caps and would become operative in December 2014 with the passage of Proposition 2.¹⁴³ The California Teachers Association (CTA) supports the cap on local school district reserves because “taxpayer dollars need to be spent in our classrooms and on our children not sitting in bank accounts.”¹⁴⁴ The CTA notes that the average local school reserve was 30.34% for the 2012–2013 fiscal years, with about 73% of districts having more than 15% in reserve.¹⁴⁵ During a Senate Budget and Fiscal Review Committee hearing, a lobbyist from the California School Employees Association argued that if Proposition 2 passes without some reserve cap, districts will tend to deposit more money into their reserves, regardless of need, whenever the Legislature does so.¹⁴⁶ The lobbyist asserted that school districts would see the Legislature reinforce their rainy day fund and assume they ought to follow

¹³⁷ Press Release, Ass’n of Cal. Sch. Administrators, Proposed Rainy Day Fund is Bad for Schools (last visited Oct. 5, 2014), available at

<http://www.acsa.org/FunctionalMenuCategories/Media/NewsReleases/Rainyday.aspx>.

¹³⁸ ASS’N OF CAL. SCH. ADMINISTRATORS, PROPOSITION 2—BUDGET STABILIZATION ACCOUNT TALKING POINTS 1 (last visited Oct. 5, 2014), available at

http://www.acsa.org/MainMenuCategories/Advocacy/Issues-and-Actions/PositionsonLegislation_1/Prop2TalkingPoints.aspx [“TALKING POINTS”].

¹³⁹ NOVEMBER 2014 VOTER GUIDE, *supra* note 1, at 16.

¹⁴⁰ Vaca Letter, *supra* note 126; L.A.O. PROPOSALS, *supra* note 123, at 2.

¹⁴¹ L.A.O. PROPOSALS, *supra* note 123, at 2.

¹⁴² Vaca Letter, *supra* note 126.

¹⁴³ CAL. EDUC. CODE § 42127.01 (as added by S.B. 858 (2013–2014)).

¹⁴⁴ *Local Budget Transparency and Cap on School District Reserves*, CAL. TEACHER’S ASS’N (June 12, 2014), <http://www.cta.org/Blog/2014/June/Local-Budget-Transparency-and-Cap-on-School-District-Reserves.aspx>.

¹⁴⁵ *Id.*

¹⁴⁶ John Fensterwald, *Cap on District Reserves Passes Despite Lawmaker’s Reservations*, EDSOURCE, (June 16, 2014) <http://edsource.org/2014/cap-on-district-reserves-passes-despite-lawmakers-reservations/63258#.VAiCmMXOso>.

suit in preparation for a lean funding year.¹⁴⁷ This would, according to supporters, take additional funds out of the classroom as administrators move allocated funds into their local school district reserves.¹⁴⁸

Other interested parties at the hearing noted that because the State must satisfy several factors before it can deposit any funds into the P.S.S.S.A.,¹⁴⁹ it would be at least seven years before the local reserve cap would go into effect, giving the Legislature sufficient time to study and assess the effects of local reserve caps.¹⁵⁰ The CTA further emphasized that S.B. 858, as a legislatively enacted law, can be amended or appealed later.¹⁵¹ The hurdles to depositing funds into the P.S.S.S.A. and the Legislature's ability to amend any potential issues later diminish the potential harm S.B. 858 may cause.¹⁵²

The local reserve cap is opposed by several groups, including Educate Our State,¹⁵³ the School Business Officials,¹⁵⁴ School Boards,¹⁵⁵ and the School Administrators,¹⁵⁶ who focus on both the process by which S.B. 858 was passed and its effects on local school budgets. Senate Bill 858 was passed through the legislative process as a trailer bill to the State's education budget bill, Assembly Bill 86, without any vetting through the legislative process and was not part of Governor Brown's original proposed budget in June or any of his revisions in May.¹⁵⁷ Editorials in SF Gate and the San Jose Mercury News suggest that the proposal was pushed through to satisfy labor unions who want the reserve funds available for raises.¹⁵⁸

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF A.C.A. 1X2 (May 5, 2014), available at http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0001-0050/acax2_1_cfa_20140515_093413_sen_floor.html (Deposits will not be made into the P.S.S.S.A. until the State "has met total school funding requirements . . . , has repaid and allocated the current Proposition 98 maintenance factor . . . , and, has not suspended Proposition 98 in the year of the transfer.").

¹⁵⁰ *Id.*

¹⁵¹ Fensterwald, *supra* note 146.

¹⁵² *Id.*

¹⁵³ EDUCATE OUR STATE!, <http://www.educateourstate.org/> (last visited Sept. 14, 2014).

¹⁵⁴ Jeff Vaca & Sara C. Bachez, *CASBO Adopts "Oppose" Positions on Propositions 44 and 46*, CAL. ASS'N OF SCH. BUS. OFFICIALS, <http://archive.constantcontact.com/fs109/1113248925076/archive/1118113471224.html> (last visited Oct. 5, 2014).

¹⁵⁵ *Bill to Restore School District Reserve Authority Announced at Capitol Press Conference*, C.S.B.A. (Aug. 19, 2014), <http://csba.org/Newsroom/CSBANewsletters/2014/August/ElectronicOnly/AB146PressConference.aspx?p=1>.

¹⁵⁶ *Plan to Cap Reserves Still a Vexing Issue*, CAL. ASS'N OF SCH. ADMINISTRATORS, <http://www.acsa.org/FunctionalMenuCategories/Media/EdCalNewspaper/EdCal-2014/July28/Reserves.aspx> (last visited Sept. 14, 2014) ["*Plan to Cap Reserves Still a Vexing Issue*"].

¹⁵⁷ *Id.*

¹⁵⁸ Editorial, *Legislature Allows Big Holes in Rainy Day Fund*, SFGATE (June 18, 2014), available at <http://www.sfgate.com/opinion/editorials/article/Legislature-allows-big-holes-in-rainy-day-fund-5562956.php>; Editorial, *Yes on Proposition 44's Rainy Day Fund*, SAN JOSE MERCURY NEWS, July 25 2014, http://www.mercurynews.com/opinion/ci_26215888/mercury-news-editorial.

Large local reserves, which would disappear if local reserve caps are put in place, allow districts to adapt to unexpected financial changes. Educate Our State notes that caps may harm local school district's credit ratings.¹⁵⁹ Standard and Poor's explained, "Very strong reserve levels contribute to a district's fiscal capacity to absorb episodes of unanticipated fiscal strain and, thus, affect its rating level."¹⁶⁰ A good credit rating allows school districts to borrow additional funds during economic downturns.¹⁶¹ The School Board Association echoed concerns about local school districts, especially smaller districts, to meet unexpected expenses that arise in the typical course of operating a school.¹⁶² These caps may amount to only weeks' worth of salary for most districts.¹⁶³ Such "one-size-fits-all" reserve caps, critics argue, are fiscally irresponsible in practice since schools have different financial concerns and require different sized budget reserves.¹⁶⁴

Proposition 2 and S.B. 858 may create an ironic situation wherein the Legislature is required to build up its reserves while prudent districts are barred from doing the same.¹⁶⁵ This may also be contrary to the Governor's own emphasis on local control.¹⁶⁶ The creation of a local reserve cap runs contrary to the unique position local school districts are in to assess the educational needs of their districts.¹⁶⁷

VII. CONCLUSION

Proposition 2 would likely reduce State debt over time, increase the likelihood that the State would annually deposit funds into the B.S.A., and create a reserve fund for public schools and community colleges known as the P.S.S.S.A. Additionally, the passage of Proposition 2 would trigger a stipulation in S.B. 858 that would, upon the State making a deposit into the P.S.S.S.A., place a cap on the amount of funds school districts may have in their reserve accounts.

¹⁵⁹ *S & P Ratings Service PDF*, 2BADFORKIDS, http://www.2badforkids.org/s_p_ratings_service_pdf (last visited Sept. 14, 2014).

¹⁶⁰ *Id.*

¹⁶¹ *Prop 2: Fact vs. Fiction*, *supra* note 130.

¹⁶² Letter from Dennis Meyers, Assistant Exec. Dir., Governmental Relations, Cal. Sch. Boards Ass'n, to Edmund G. Brown Jr., Governor, State of Cal. (June 19, 2014), *available at* http://www.csba.org/Advocacy/LegislativeNews/~/_media/CSBA/Files/Advocacy/LegislativeAdvocacy/2014_0619_SB858budgetlettertoGovernor.ashx ("For example, if a roof or HVAC system fails ... a small district needs to draw upon reserves Some are so small that if one family moves ... the reduction in funds is a recognizable hit").

¹⁶³ *Id.*

¹⁶⁴ TALKING POINTS, *supra* note 138.

¹⁶⁵ *Plan to Cap Reserves Still a Vexing Issue*, *supra* note 156.

¹⁶⁶ *Id.*

¹⁶⁷ ACSA: *Restore Adequate School District Reserves*, ASS'N OF CAL. SCH. ADMINISTRATORS, <http://www.acsa.org/FunctionalMenuCategories/Media/NewsReleases/Reserve.aspx> (last visited Oct. 5, 2014).

The legislation putting Proposition 2 on the ballot received unanimous support from the Legislature and the approval of the Governor. Additionally, there is opposition to the Proposition from school administrators and other education advocates.