

CALIFORNIA, JANUARY 2017 Churchwell White's Guide to Propositions on the General Election Ballot

2016 INITIATIVE UPDATE

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On November 8, 2016, 17 propositions were presented to California voters. Of the 17 propositions, 12 passed and 5 failed. The results for the propositions will be certified at the county level on December 9, 2016, and the Secretary of State will certify the results on December 16, 2016. Unless otherwise indicated, the below measures will take effect on December 16, 2016.

Several controversial initiatives were on the 2016 general election ballot. Proposition 57 will result in the early release of rehabilitated, non-violent felons from prison. It also implements procedures to decrease the number of juvenile offenders being tried in adult court, with the hopes that prosecution in juvenile court will lead to reduced recidivism of juvenile offenders. Proposition 66 streamlines and expedites death penalty appeals. Proposition 63 mandates background checks for certain ammunition purchases. California will see a decrease in single-use plastic bags with the passage of Proposition 67. Significantly, Proposition 64 legalizes the recreational use of marijuana.

Churchwell White LLP is proud to serve as a trusted resource for our partners in local government and administration. Feel free to contact our firm if you have any questions or would like additional information regarding the initiatives discussed in the Initiatives Update.

Best regards,

A handwritten signature in black ink, appearing to read 'D. White'.

Douglas L. White, Managing Partner

Proposition 51 – \$9 Billion in Bonds for Education and Schools

Proposition 51 authorizes the state to sell \$9 billion in general obligation bonds to construct and modernize school facilities. \$6 billion would be for K-12 public school facilities, 1 billion dollars for charter schools and vocational education facilities, and 2 billion dollars for California Community Colleges facilities. Proponents for Proposition 51 asserted that the bonds would address poor school facility conditions primarily affecting low-income students and low-income neighborhoods. Opponents argued that this measure would increase the state's debt without benefiting the state's school systems, because the funds would not be evenly distributed among schools that most need assistance. The state's existing allocation system, which is a first-come, first-served basis, may reward school districts with the sophistication to apply for the funds in a prompt manner.

The state will likely issue these bonds over the next five (5) years, and make principal and interest payments from the state's General Fund over a period of approximately 35 years. The average payment per year is estimated at 500 million dollars, which is less than 0.5 percent of the state's current General Fund budget. It is unclear how local school districts will respond to the increase in state funds. Currently, school districts that receive state grant funding for approved projects must contribute 40 to 60 percent of local funding, depending on the nature of the project. However, if schools lack sufficient local funding, they may apply for additional state grant funding, up to 100 percent (100%) of the project cost. With the passage of Proposition 51, school and community college districts might raise and spend more locally because of the increased availability of school funds. On the other hand, these districts may raise and spend less locally, and then apply for additional state grant funding. Increased state funds for construction and modernization will also benefit construction companies retained to work on approved district projects.

Proposition 52 – Voter Approval of Changes to the Hospital Fee Program

The Medi-Cal program provides health care benefits to low-income Californians who meet certain eligibility requirements. The Medi-Cal program costs are shared between the state and federal government. In order to meet its share of the costs, the state imposed a special charge on most private hospitals, called the Hospital Quality Assurance Fee ("hospital fee"). The revenue from the hospital fee was used for two purposes: (1) fund the state share of increased Medi-Cal payments for hospitals and grants for public hospitals; and (2) generate state General Fund savings. This hospital fee has been collected since 2009 and was set to end on January 1, 2018.

Proposition 52 makes this hospital fee permanent once the federal government approves the indefinite extension. Significantly, this measure will make it more difficult to end the fee by requiring a two-thirds vote of each house of the Legislature, rather than a majority vote. Additionally, the Legislature can no longer change the fee. Changes to the hospital fee require voter approval. This fee will continue to generate General Fund savings for the state, and be used on hospitals to fund Medi-Cal health care services, care for uninsured patients, and children's health coverage.

Medi-Cal will be severely impacted if President-elect Trump's administration decides to and successfully repeals the Affordable Care Act. California would lose an estimated 15 billion dollars annually in federal funding for Medicaid expansion and insurance subsidies. The number of uninsured Californians is also expected to double.

Proposition 54 – Conditions Under Which Legislative Bills Can Be Passed

Proposition 54 imposes certain provisions to increase transparency in government, which must be met before a bill in the California Legislature is passed. The Legislature: (1) may not pass any bill unless it has been in print and

published on the Internet for at least 72 hours before the vote, except in cases of public emergency; (2) must make audio-visual recordings of all its proceedings, except in closed session, and post them on the Internet; (3) must permit persons to record legislative proceedings by audio or video means, except during closed session; and (4) must allow recordings of legislative proceedings to be used for any legitimate purpose, without payment of any fee to the state. This measure is expected to cost about 1 million dollars annually to record and post the legislative meetings, on top of a one-time cost of 1 to 2 million dollars to buy cameras and other equipment. This measure goes into effect January 1, 2017, unless, before January 1, a copy of a referendum petition affecting the statute is submitted to the Attorney General.

Proposition 55 – Extension of Personal Income Tax on Incomes Over \$250,000

Proposition 30, which was approved by voters in November 2012, increased the income tax rates on high-income taxpayers. Depending on the income level, high-income taxpayers pay an extra 1, 2, or 3 percent tax on part of their incomes. These higher rates are in effect through 2018.

Proposition 55 extends the personal income tax increases on incomes over \$250,000 (for single filers; over \$500,000 for joint filers; and over \$340,000 for heads of household) for twelve (12) years (until 2030). This measure is expected to generate 4 billion to 9 billion dollars annually, from 2019 to 2030. The funds generated from the high-income tax will be allocated to K-12 schools, California Community Colleges, healthcare programs for low-income people, budget reserves, and payment of state debt. Education revenues may not be used for administrative costs, but local school boards will have the discretion to decide, in open meetings, how revenues are to be spent.

Proposition 56 – Increase the Cigarette Tax by \$2.00 Per Pack

Proposition 56 increases the cigarette tax by two dollars per pack, with equivalent increases on other tobacco products and electronic cigarettes containing nicotine. This measure was proposed with the intent to reduce smoking across California, especially by young people, and to raise revenue related to healthcare and tobacco control. The revenues will primarily be allocated to existing healthcare programs, tobacco use prevention/control programs, tobacco-related disease research and law enforcement, University of California physician training, dental disease prevention programs, and administration.

This measure is expected to increase general state and local revenue by over 1 billion dollars in 2017 to 2018. This revenue increase is expected to offset any potential losses as a result of decreased consumption of cigarettes as a result of the tax increase. This measure will go into effect April 1, 2017.

Proposition 57 – Felons Convicted of Non-Violent Crimes and Juvenile Trials

Proposition 57 addresses parole considerations for nonviolent felons, as well as sentencing of juveniles in adult court. Specifically, this measure: (1) allows parole consideration for nonviolent felons upon completion of his or her prison term for the primary offense, and before the nonviolent felon serves any additional time related to other crimes or sentencing enhancements; (2) authorizes the California Department of Corrections and Rehabilitation (“CDCR”) to award sentencing credits for rehabilitation, good behavior, and education; (3) requires the CDCR to adopt regulations to implement new parole and sentence credit provisions, and certify the regulations enhance public safety; (4) provides that juvenile court

judges will decide whether the juvenile will be prosecuted as an adult; and (5) mandates a hearing in juvenile court before transferring juveniles to adult court. One concern regarding this measure is that current law does not define which felonies are considered “nonviolent.” However, current law does explicitly state that certain felonies are considered violent. The current interpretation of “nonviolent felony” is any felony which is not specified as being violent.

This measure increases the number of inmates eligible for parole consideration at an earlier date. Therefore, state costs related to imprisoning nonviolent felons are expected to decrease. County costs, such as payment of county probation officers, will be accelerated with the early release of nonviolent felons. This is not an additional cost because counties would have eventually incurred these probation costs in the future. This measure is also expected to lead to a decrease of youths tried as adults. State prison and parole costs would be reduced because juveniles would no longer spend time in prison or be supervised by state parole agents following their release. State court costs would also decrease because juvenile court proceedings are typically shorter than adult court proceedings. This cost will be slightly offset by the increased number of youths in state juvenile facilities. That said, costs to counties may increase, because counties are responsible for paying a portion of the costs of housing juveniles in state juvenile facilities. County probation departments must also supervise juveniles after their release. The costs to counties is estimated at a few million dollars annually.

Proposition 58 – Bilingual Education in Public Schools

Approximately one in five California students is an English learner. More than 80 percent (80%) of English learners are native Spanish speakers. Proposition 227, which was passed in 1998, placed restrictions on how English learners were taught and on the use of bilingual

programs. Before Proposition 227 was implemented, about thirty percent of California’s English learners were taught in bilingual programs. Ten years later, only about 5 percent of California’s English learners were taught in bilingual programs.

This measure repeals key provisions of Proposition 227 and creates a framework by which public schools can teach English more effectively to English learners, and start or expand bilingual programs. This measure does so by: (1) removing restrictions to bilingual programs and no longer mandating a waiver before children are taught in bilingual programs; (2) requiring districts to respond to some parental demands regarding the structure by which their children learn English; and (3) mandating that school districts and county offices of education ask parents and other community members how English learners should be taught. This measure is expected to have minimal effect on state and local costs. This measure is effective July 1, 2017.

Proposition 59 – State’s Position on Citizens United v. Federal Election Commission – Campaign Finance

Individuals, corporations, labor unions, and other groups make significant contributions in political campaigns in order to influence voters’ decisions. Prior to 2010, corporations and labor unions were limited in their ability to make independent expenditures in federal elections. Certain California local governments had similar laws in place for local elections. In *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310 (“*Citizens United*”), the U.S. Supreme Court found that independent expenditures made by corporations and labor unions were a form of speech protected under the U.S. Constitution. This decision affects independent expenditures made towards political campaigns in federal, state, and local governments.

This decision may be overturned through a two-step “amendment” process. First, Congress would propose the amendments to the Constitution or call a constitutional convention to propose amendments after the state

legislatures of at least 34 states have asked for such a convention. Then, at least 38 states would need to approve a proposed amendment before it becomes law. The approval process may be done through the state legislature or a state-level convention.

Proposition 59 is an advisory measure which does not require any particular action by the Congress or California Legislature. This measure asks whether California's elected officials should use their authority to propose and ratify an amendment to the federal Constitution overturning the United States Supreme Court decision in *Citizens United*. Therefore, California may take steps to move forward with the two-step "amendment" process.

Proposition 63 – Background Checks for Ammunition Purchases

Current federal and state law includes various regulations on the sale of firearms. These regulations include background checks, removal of firearms from individuals no longer permitted to carry firearms, limits on the type of firearms that can be bought, a ten-day waiting period before a dealer sells a firearm to a buyer, and requirements for recording and reporting firearm sales. Ammunition sales were not regulated in the same manner as firearms.

In July 2016, California passed legislation to increase regulation of ammunition sales. Beginning July 2019, ammunition dealers will be required to check with the Department of Justice ("DOJ") whether a buyer is permitted to purchase ammunition. Beginning January 2018, individuals and businesses will be required to obtain a one-year license from the DOJ to sell ammunition, with exceptions. Beginning January 2018, state law generally will require that most ammunition sales (including Internet and out-of-state sales) take place through a licensed ammunition dealer.

This measure implements additional, or changes, regulations to the sale of ammunition. Some key provisions of this measure include: (1) the DOJ is mandated to provide

information about prohibited persons to the federal National Instant Criminal Background Check System; (2) lost or stolen firearms and ammunition must be reported to law enforcement; (3) most California residents are prohibited from bringing ammunition into the state without first having the ammunition delivered to a licensed ammunition dealer; (4) a new court process to ensure that individuals convicted of offenses that prohibit them from owning firearms do not continue to have them will be implemented; (5) dealers must check that individuals are required to pass a background check and obtain DOJ authorization to purchase ammunition; (6) certain types of individuals and businesses will be exempt from obtaining a one-year license for selling ammunition; (7) a number of reporting requirements related to firearms and ammunition will go into effect; (8) large-capacity magazines are banned; and (9) the theft of firearms is a felony. These provisions will take effect between July 1, 2017 and July 1, 2019.

This measure makes various changes to penalties related to firearms and ammunition, which may lead to an increase in correctional costs to state and local governments. These costs are expected to be in the low millions in dollars annually.

Proposition 64 – Legalization of Marijuana and Hemp

Under current state law, the use of medical marijuana is legal. Individuals must have a recommendation from a doctor to use medical marijuana. In 2003, the Legislature legalized medical marijuana collectives, which are nonprofit organizations that grow and provide marijuana to their members. Collectives were not licensed or regulated by the state, but cities and counties could regulate where and how medical marijuana is grown and sold by individuals or collectives.

Recently, the Legislature passed a set of laws to regulate the medical marijuana industry. These laws required the state to set standards for labelling, testing, and packaging medical marijuana products, and to develop a system

to track such products from production to sale. Medical marijuana collectives were also required to be closed and replaced by state-licensed businesses.

Under federal law, it is illegal to possess or use marijuana, including for medical use. In *Gonzales v. Raich* (2005) 545 U.S. 1, the United States Supreme Court found that federal agencies could continue to prosecute individuals who possess or use marijuana for medical purposes, even if legal under a state's law. Currently, the United States Department of Justice chooses not to prosecute most marijuana users and businesses that follow state and local marijuana laws if those laws are consistent with federal priorities. These priorities include preventing minors from using marijuana and preventing transportation of marijuana across state lines.

Proposition 64 does the following: (1) legalizes personal, nonmedical use of marijuana under state law, by adults 21 or older; (2) permits adults 21 and over to purchase marijuana at state-licensed businesses or through their delivery services; (3) designates state agencies to license, starting 2018, and regulate the marijuana industry; (4) imposes a state excise tax of 15 percent on retail sales of marijuana, and state cultivation taxes on marijuana of \$9.25 per ounce of flowers and \$2.75 per ounce of leaves; (4) exempts medical marijuana from some taxation; (5) establishes packaging, labeling, advertising, and marketing standards and restrictions for marijuana products; and (6) prohibits marketing and advertising marijuana directly to minors.

Starting January 1, 2018, medical marijuana patients must also obtain a physician's recommendation that complies with Article 25 of Chapter 5 of Division 2 of the Business and Professions Code. The county health department or county's designee is responsible for developing protocols to check that medical marijuana identification cards are issued with the proper physician's recommendation.

This measure also permits local regulation and taxation of marijuana. Cities and counties could require nonmedical marijuana businesses to obtain local licenses and restrict where they could be located, or completely ban

marijuana-related business. However, cities and counties cannot ban transportation of marijuana through their jurisdictions. Cities and counties may also authorize on-site consumption of marijuana at licensed business, under certain conditions.

Penalties for marijuana crimes have also changed under this measure. Currently, possession of one ounce or less of marijuana is punishable by a \$100 fine. Under the measure, youth under the age of 18 would be required to attend a drug education or counseling program and complete community service. In addition, selling marijuana for nonmedical purposes is currently punishable by up to four years in state prison or county jail. Under this measure, selling marijuana without a license would be a crime generally punishable by up to six months in county jail and/or a fine of up to \$500. Penalties for driving while under the impairment of marijuana remains the same. This measure also requires the destruction, within two years, of criminal records for individuals arrested or convicted for certain marijuana-related offenses.

Individuals convicted and serving sentences for activities that are made legal or subject to lesser penalties are eligible for resentencing. Qualifying individuals would be resentenced to the punishment they would have received under the measure. Resentenced individuals currently in jail or prison would be subject to community supervision for up to one (1) year following their release, unless a court removes that requirement. In addition, individuals who have completed sentences for crimes that are reduced by the measure could apply to the courts to have their criminal records changed.

This measure is expected to generate tax revenues ranging from high hundreds of millions of dollars to over 1 billion dollars annually. Most of these revenues are required to be spent for specific purposes, such as youth programs, environmental protection, and law enforcement. Costs related to criminal justice will also be reduced at the state and local level, as there will be a decline in the number of offenders held in state prisons and county jails for growing and selling marijuana.

Proposition 66 – Death Penalty Procedures

There were two (2) Propositions on the November 8, 2016 general election ballot pertaining to the death penalty. If both measures passed, the measure with the most “yes” votes would supersede the other. Proposition 62, which sought to repeal the death penalty, was defeated. Proposition 66, which expedites the death penalty process, passed.

Currently, it can take up to 20 years to complete a legal challenge to the death penalty. This measure expedites the legal procedures by which an individual may challenge his or her death penalty sentence. In order to do so, Proposition 66 would do the following: (1) designate superior courts for initial petitions and limits successive petitions; (2) establish a time frame for state court death penalty review; (3) require appointed attorneys who take noncapital appeals to accept death penalty appeals; (4) exempt prison officials from the existing regulation process for developing execution methods; (5) authorize death row inmate transfers among California prisons; and (6) increase the portion of a condemned inmates’ wages that may be applied to victim restitution.

While this measure is expected to have short-term increases in state court costs due to the expedited time lines on legal challenges to death sentences, it is expected that this expedited time line will also lead to savings in the future by clearing the appeals docket for death sentences.

Proposition 67 – Prohibition on Plastic Single-Use Carryout Bags

Proposition 67 affirms Senate Bill 270, which was passed by the California Legislature in 2014. This measure would prohibit certain stores from providing customers single-use plastic or paper carryout bags, but permits sale of recycled paper bags, reusable bags, or compostable bags. The bags must meet certain standards, which are listed in the measure. Stores may not charge less, but may charge more, than ten cents for each bag. Since Proposition 65 did not pass, the revenue from the sale of recycled paper

bags, reusable bags, or compostable bags is retained by the stores. However, this revenue must be used for specific purposes. These purposes include offsetting the cost of implementing Proposition 67 and supporting educational efforts to encourage the use of reusable bags. Cities, counties, and the state may enforce the provisions of the measure, a violation of which results in a monetary penalty.

Local governments may face increased inquiry on how to implement the provisions of Proposition 67. Local government staff should discuss appropriate responses with counsel. Furthermore, local governments that seek to encourage use of compostable bags in their jurisdiction must: (1) provide a majority of its residential households access to curbside collection of foodwaste for composting; and (2) pass an ordinance allowing stores in its jurisdiction to sell to consumers a compostable bag at checkout, at a cost not less than ten cents per bag. Lastly, while the measure preempts local governments from passing an ordinance which differs from the statewide ban on single-use carryout bags, it grandfathered in single-use bag ordinances passed prior to September 2014. Local governments which wish to retain its current single-use bag ordinance should not make any amendments to the ordinance.

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