

Proposition 2: Authorizes Bonds for Public School and Community College Facilities

Bond Act

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I. EXECUTIVE SUMMARY

Proposition 2 authorizes \$10 billion in general obligation bonds to repair, upgrade, and construct K–12 public schools in California, including charter schools and community colleges.¹ If approved, the average repayment cost will be \$500 million annually for 35 years.²

California does not have a permanent funding source to repair its approximately 10,000 public school buildings.³ Many of the buildings are “not suitable or safe for children.”⁴ Several school buildings have leaky roofs, lead in their drinking water, and broken air conditioning.⁵ According to a study conducted by the Public Policy Institute of California, 38% of students attend schools that do not meet the state’s minimum safety standards.⁶

If the bond is approved, \$8.5 billion would be allocated to K–12 public schools. The funding would be divided between four types of facility projects: renovation of existing buildings (\$4.0 billion); new construction, including buying land (\$3.3 billion); facilities for career technical education programs (\$0.6 billion); and charter schools (\$0.6 billion).⁷ The renovation funding is subject to other earmarks, such as reducing lead levels in public schoolsites, creating a classroom for transitional kindergarten, and building or expanding gymnasiums, multipurpose rooms, libraries, or school kitchens.⁸

California community colleges would receive \$1.5 billion from the bonds and would not be subject to the same earmarks as K–12 schools. Instead, community colleges would develop a plan for their statewide project priorities to be approved by the Governor and the Legislature.⁹ Each community college campus would submit one project to the Community Colleges Chancellor’s Office.¹⁰ These projects are already part of community college districts’ Five-Year

¹ CAL. SEC’Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY NOVEMBER 5, 2024, at 14, *available at* <https://vig.cdn.sos.ca.gov/2024/general/pdf/prop2-title-summ-analysis.pdf> [NOVEMBER 2024 VOTER GUIDE].

² CAL. LEGISLATIVE ANALYST’S OFFICE, PROPOSITIONS, NOVEMBER 5, 2024, at 4.

³ Carolyn Jones, *Many Rural California Communities are Desperate for School Construction Money. Will a New Bond Measure Offer Enough Help?*, Cal Matters (November 27, 2023), <https://calmatters.org/education/2023/11/school-construction-2/#:~:text=Photos%20by%20Larry%20Valenzuela%2C%20CalMatters,an%20easier%20time%20raising%20funds> (last visited Oct. 9, 2024).

⁴ *Id.*

⁵ *Borrow \$10 Billion to Build Schools, Colleges*, Cal Matters, <https://calmatters.org/california-voter-guide-2024/propositions/prop-2-school-bond/> (last visited Oct. 9, 2024).

⁶ Julien Lafortune and Niu Gao, *Improving K–12 School Facilities in California*, Public Policy Institute of California 8 (August 2020), <https://www.ppic.org/publication/improving-K-12-school-facilities-in-california/> (last visited Oct. 9, 2024).

⁷ NOVEMBER 2024 VOTER GUIDE, at 16.

⁸ CAL. LEGISLATIVE ANALYST’S OFFICE, PROPOSITIONS, NOVEMBER 5, 2024, at 2.

⁹ *Id.*

¹⁰ Interview with Hoang Nguyen, Director of Facilities Planning for the California Community Colleges Chancellor’s Office (September 24, 2024) (on file with the *California Initiative Review*).

Capital Outlay Plans,¹¹ which are reviewed and approved by the Facilities Planning Unit of The California Communities Colleges Chancellor’s Office.¹² If Proposition 2 passes, the funds would be used for projects such as modernization of buildings that are around 50 years old.¹³

A “YES” vote on Proposition 2 authorizes \$10 billion in state general obligation bonds for repair, upgrade, and construction of facilities at K–12 public schools, charter schools, and community colleges.

A “NO” vote on Proposition 2 does not authorize \$10 billion in state general obligation bonds for repair, upgrade, and construction of facilities at K–12 public schools, charter schools, and community colleges.

Figure 1. Uses of Proposed Bond Funds (In Billions)¹⁴

Public School Facilities	\$8.5
Renovation of existing buildings	\$4.0
New construction (including buying land)	\$3.3
Facilities for career technical education programs	\$0.6
Charter Schools	\$0.6
Community College Facilities	\$1.5
Total	\$10.0

II. THE LAW

A. Background on School Funding Through Bonds

For over a century, California has used bonds to finance school facilities construction. In 1914, voters approved Proposition 38, which authorized \$1.8 million in state bonds to fund the construction of the University of California, Berkeley buildings such as the unfinished library, the college of agriculture building, and the college of sciences chemistry building.¹⁵

¹¹ *Id.* (clarifying that each district submits a Five-Year Plan in which the district prioritizes their need for projects by ranking them from highest to lowest priority).

¹² Cal. Cmty. Coll., *Facilities Planning*, <https://cocco.edu/About-Us/Chancellors-Office/Divisions/College-Finance-and-Facilities-Planning/Facilities-Planning> (last visited Oct. 15, 2024).

¹³ Nguyen Interview, *supra* note 10.

¹⁴ CAL. LEGISLATIVE ANALYST’S OFFICE, PROPOSITIONS, NOVEMBER 5, 2024, at 2.

¹⁵ University of California Building Bond Act, California Proposition 38 (1914), *available at* https://repository.uclawsf.edu/ca_ballot_props/71.

In the last 20 years, the majority of state facility funding for K–12 and community colleges originated from voter-approved bonds totaling \$31.8 billion.¹⁶ The last approved statewide educational facilities bond was Proposition 51 in 2016.¹⁷ The last attempted educational facilities bond was Proposition 13 in 2020.¹⁸

B. Assembly Bill 247

Proposition 2 originated as Assembly Bill (“AB”) 247. Assemblymember Muratuschi introduced the bill. AB 247 was approved by Governor Newsom and filed with the Secretary of State on July 3, 2024. AB 247 would set forth the “Kindergarten Through Grade 12 Schools and Local Community College Public Education Facilities Modernization, Repair, and Safety Bond Act of 2024.”

If passed by California voters, the bill would take effect immediately as an urgency statute.¹⁹ The bill would authorize state funds for replacing school buildings that are at least 75 years old, small school districts, school facilities on military installations, seismic mitigation, testing and remediation of lead levels in water fountains and faucets, health and safety projects, and establishing infrastructure to provide internet access.²⁰

The bill originally authorized \$14 billion in state bonds, which would have made Proposition 2 the largest school bond act in California’s history.²¹ However, because several potential bonds were vying for a spot on the November ballot, the bond was reduced to \$10 billion.²²

1. *Proposed Law*

AB 247 adds Section 28 part 72 to establish the “Kindergarten Through Grade 12 Schools and Local Community College Public Education Facilities Modernization, Repair, and Safety Bond Act of 2024.”²³ This section is the proposed law in Proposition 2.²⁴

¹⁶ CAL. LEGISLATIVE ANALYST’S OFFICE, PROPOSITIONS, NOVEMBER 5, 2024, at 1–2.

¹⁷ Statement of Vote. November 8, 2016 General Election. Secretary of State Alex Padilla, at 12, available at <http://elections.cdn.sos.ca.gov/sov/2016-general/sov/2016-complete-sov.pdf>.

¹⁸ Statement of Vote. March 3, 2020 Presidential Primary Election. Secretary of State Alex Padilla, at 24, available at <https://elections.cdn.sos.ca.gov/sov/2020-primary/sov/15-sov-summary.pdf>.

¹⁹ AB 247, 2024 Leg., 2023–2024 Reg. Sess. (Cal. 2024).

²⁰ AB 247.

²¹ Carolyn Jones, *Lawmakers reach agreement on \$10 billion school bond to fix thousands of schools in disrepair*, CalMatters, June 30, 2024, available at <https://laist.com/news/education/lawmakers-reach-agreement-on-10-billion-school-bond> (last visited Oct. 9, 2024).

²² *Id.*

²³ AB 247.

²⁴ NOVEMBER 2024 VOTER GUIDE.

2. *Amending Existing Law*

AB 247 changes multiple sections of the California Education Code. The changes can be categorized into language, the points system, and the state School Facilities Fund. Chapter 4, Sec. 29 states that the provisions of the Act are severable, meaning that if one section of the bill is found unconstitutional, the bill will be amended to remove the unconstitutional portion.²⁵

a) Language

Section 17070.15(a) replaces “a reservation” with “an allocation” and defines assessed value, authority, gross bonding capacity, and small school district. Section 17074.25(a)(1) is amended to specify that technology includes infrastructure necessary to provide access to broadband internet within the school site. The new definition of technology allows a grant for new construction to be used for advancing state energy goals and supporting outdoor learning environments or shade for pupils by incorporating nature and natural materials.

Section 17077.35 subsection (a) is amended to explicitly include pollution reduction, and subsection (b) is amended to allow districts to include heating and cooling systems, renewable energy resources, and shade structures in their project.

Sections 17078.35, 17078.36, 17078.37, and 17078.38 are added to define the assistance and procedure for small school districts. Section 17078.45, 17078.46, 17078.47, and 17078.48 are added to define the assistance and procedure for priority school districts.

b) Points System

Section 17070.59 is added to establish the system for setting the amount of required matching funds from local sources. The section creates a point system that is based on a district’s total enrollment. Subsection 17074.16(b) is added to set forth the school district’s required local contribution. Subsection 17072.30(b) is amended to allow the state Allocation Board to adjust a school district’s local contribution based on total bonding capacity.

c) The 2024 State School Facilities Fund

AB 247 adds Section 17070.42 to create the “2024 State School Facilities Fund” (“the Fund”). Sections 17070.54, 17070.59, and 17070.87 are added, setting forth the requirements for the Fund. One requirement is that the State Department of Education develop guidelines for school districts to follow (e.g., year building was constructed, pupil capacity, square footage, year last modernized, and whether the school has a library, gymnasium, or cafeteria).

²⁵ AB 247.

Section 17075.10 sets forth the requirements that a school district must demonstrate for projects to upgrade school facilities that pose an unacceptable risk of injury to occupants during a seismic event.

Subsection 17075.15(d)(3)(A) is amended to increase the maximum level of bonding capacity from \$5 million to \$15 million. The amount is increased to allow school districts that are unable to raise \$15 million to apply for additional state funding.²⁶ The amount was previously \$5 million.²⁷ Subsection 17075.15(d)(3)(B) is added to allow the amount to be adjusted for inflation.

Section 17073.16 is added to specify what a school district may do with the grant. Examples of acceptable uses are expanding an existing gymnasium, multipurpose room, library, or school kitchen if it does not meet the recommended size for the school's enrollment, and constructing a new gymnasium, multipurpose room, library, or school kitchen if a site is lacking one. Under subsection 17073.16(b), sites may receive a supplemental grant for one project only. Subsections 17072.35(b) and 17072.35(c) are added to allow school districts to use a grant to construct a school kitchen, a transitional kindergarten classroom, and a facility for preschool.

Subsection 17073.15(b) is added to allow a school facility located on a military installation to receive an apportionment. Subsection (a)(4) is added to section 17078.52 to allow charter schools to qualify for the Fund.

Section 17078.74 is added to allow districts to use a modernization grant adjustment for career technical education to provide pupils with the skills and knowledge necessary for high-demand technical careers.

Section 17074.25(a)(2) is amended to clarify what a modernization apportionment may be used for, such as seismic mitigation and removal of lead. Section 17077.60 is added to allow funds to be used for the testing and remediation of lead levels in water at schoolsites.

Section 17074.265 is added to allow a school district to receive funding to demolish and construct a building or buildings if the building is at least 75 years old and the school district provides a cost-benefit analysis that shows the total cost of modernization is at least 50% of the current replacement cost.

Section 17075.20 is added and section 17075.10 is removed, which allows the Appropriations Board to assist districts impacted by natural disasters. The funds shall supplement funding from insurance or any other government disaster assistance. Section 101460 is added to permit an audit of any project funded in whole or in part of the bonds.

²⁶ NOVEMBER 2024 VOTER GUIDE, at 6.

²⁷ *Id.*

C. Similar Ballot Initiatives That Failed

1. *Proposition 13: Education Finance: School Facilities: Public Preschool, K–12, and College Health and Safety Bond Act (2020)*

Proposition 13 (2020) was a general obligation bond on the March 2020 primary ballot.²⁸ The proposition would have allowed the state to sell \$15 billion to fund school, community college, and university facility projects.²⁹ The measure failed with a vote of 47% in favor of Proposition 13 and 53% against the measure.³⁰

a) Why it Failed

Supporters of Proposition 13 argue that the measure failed because of the circumstances surrounding the bond. When voters went to the ballot in March on the proposition, they were on the precipice of the unprecedented COVID-19 pandemic. Additionally, voters may have confused Proposition 13 (2020) with Proposition 13 (1978), the notorious property tax measure.³¹ Furthermore, supporters of Proposition 13 do not believe that the failure of Proposition 13 is indicative of voters' changed sentiment regarding school bonds or that voters are disinterested in investing in education.³² Lastly, supporters of Proposition 2 claim that California voters were facing tax fatigue during the 2020 election.³³

Opponents of Proposition 13 argue that the measure failed because voters did not want an increase in property taxes. Howard Jarvis Taxpayers Association interpreted the measure's failure to mean that, because the measure would have raised the capacity on how much funding a school district can raise through property taxes, the measure itself would have raised property taxes.³⁴ Congressman Jay Obernolte, who was an Assemblymember at the time, was the only legislator to vote "no" on AB 48, the original bill of Proposition 13.³⁵ He stated that he had observed voter confusion on social media in the months before the election.³⁶

²⁸ CAL. LEGISLATIVE ANALYST'S OFFICE, PROPOSITIONS, MARCH 3, 2020, at 1.

²⁹ *Id.*

³⁰ Statement of Vote. *supra* note 18.

³¹ Interview with Susan Dixon, California Retired Teachers Association member (September 3, 2024) (on file with the *California Initiative Review*).

³² SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 247, at 7 (July 2, 2024).

³³ *Id.*

³⁴ *Id.*

³⁵ Ricardo Cano, *California's Prop. 13 school bond is officially defeated*, CalMatters, March 11, 2020, <https://calmatters.org/education/2020/03/california-prop-13-school-bond-defeated/> (last visited Oct. 9, 2024).

³⁶ *Id.*

b) Differences

Proposition 13 proposed changes to local bonds that could have increased local property taxes, which is not included in Proposition 2.³⁷ Additionally, unlike Proposition 2, Proposition 13 would have allocated \$4 billion to the California State University and University of California systems. The funding for higher education was removed from Proposition 2 as part of negotiations.³⁸ Furthermore, Proposition 2 has a different funding distribution than Proposition 13 and has more funding in general.³⁹

2. *Proposition 15: Property Tax to Fund Schools, Government Services (2020)*

Proposition 15 was a proposed constitutional amendment on the November 3, 2020 general election ballot that would have reassessed property taxes on commercial and industrial properties every three years based on the property's fair market value.⁴⁰ The additional tax revenue would have been distributed to schools and local communities.⁴¹ Proposition 15 failed with 48% votes in favor and 52% against.⁴²

D. Similar Ballot Initiatives That Passed

1. *Proposition 51: School Bonds. Funding for K–12 School and Community College Facilities (2016)*

Proposition 51 was a school facilities bond on the November 8, 2016 general election ballot.⁴³ Proposition 51 added four new Chapters to Title 3, Division 14 of the California Education Code.⁴⁴ Proposition 51 authorized \$9 billion in bond funding for new construction and

³⁷ Yes on 2 FAQ, at 2, available at https://www.yesprop2ca.com/files/7aa2e333-6865-4f0f-b7c9-30d18a8b7383/Prop_2_FAQ-e038.pdf (last visited Oct. 14, 2024).

³⁸ John Fensterwald, *\$10 billion school construction bond headed to Nov. 5 ballot: what's in it?*, EdSource, July 1, 2024. <https://edsources.org/2024/10-billion-school-construction-bond-headed-to-nov-5-ballot-whats-in-it/715153> (last visited Oct. 14, 2024) (stating that Proposition 2 settled with a smaller bond and no money for universities after weeks of negotiations).

³⁹ Interview with Molly Weedn, Communications Director for the Yes on Proposition 2 Campaign (September 9, 2024) (on file with the *California Initiative Review*).

⁴⁰ Mo Roeckl-Navarzio & Alexendar Lee, *Proposition 15: The California Schools and Local Communities Act of 2020*, CAL. INIT. REV., (Fall 2020) available at <https://scholarlycommons.pacific.edu/california-initiative-review/vol2020/iss1/3>.

⁴¹ *Id.*

⁴² Statement of Vote. November 3, 2020 General Election. Secretary of State Alex Padilla, at 14, available at <https://elections.cdn.sos.ca.gov/sov/2020-general/sov/complete-sov.pdf>.

⁴³ CAL. SEC'Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY NOVEMBER 8, 2016, at 18, available at <https://vigarchive.sos.ca.gov/2016/general/en/propositions/51/> ["NOVEMBER 2016 VOTER GUIDE"].

⁴⁴ Maral Farsi, *Proposition 51: School Bonds. Funding for K–12 School and Community College Facilities*, CAL. INIT. REV., (Fall 2016) available at <https://scholarlycommons.pacific.edu/do/search/?q=author%3A%22Maral%20Farsi%22&start=0&context=3810603>

modernization for K–12 public school facilities, charter schools and vocational education facilities, and community college facilities.⁴⁵

The bonds were distributed as follows: \$6 billion for new construction and modernization of K–12 facilities; \$1 billion for facilities for Charter Schools and Career Technical Education programs; and \$2 billion for construction, renovation, site acquisition, and equipping facilities for community colleges.⁴⁶ The proposition passed with 55.2% votes in favor and 44.8% votes against Proposition 51.⁴⁷ The funds from Proposition 51 have already been depleted.⁴⁸

2. *Proposition 2: State Budget. Budget Stabilization Account (2014)*

Proposition 2 was an initiative on the November 4, 2014 general election ballot.⁴⁹ Proposition 2 (2014) was a legislatively referred constitutional amendment that addressed the state budget reserve.⁵⁰ Proposition 2 (2014) amended the State constitution in three ways: it mandated the state to deposit specified funds into the state’s Budget Stabilization Account (“B.S.A.”); it required the state to spend General Fund revenue to reduce State debts on pensions, retiree health benefits, local governments, and other state accounts; and it created a State reserve account for public schools and community colleges.

A notable difference between the old Proposition 2 and the new one is that Proposition 2 (2014) created a reserve account for public schools and community colleges, whereas Proposition 2 (2024) creates a bond.⁵¹ Additionally, Proposition 2 (2014) required school districts to reduce their reserve accounts to a specified level.⁵² Proposition 2 (2014) passed with 69.1% of the votes cast in favor and 30.9% of the votes cast against.⁵³

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Statement of Vote, *supra* note 17, at 12.

⁴⁸ *California school facilities needs make case for proposed bond measure*, Cal. School Board Ass’n Newsletter, Aug. 2019, available at [https://publications.csba.org/california-school-news/august-2019/california-school-facilities-needs-make-case-for-proposed-bond-measure/#:~:text=Proposition%2051%2C%20a%20\\$9%20billion%20bond%20approved,continuing%20to%20pile%20up%20in%20a%20backlog](https://publications.csba.org/california-school-news/august-2019/california-school-facilities-needs-make-case-for-proposed-bond-measure/#:~:text=Proposition%2051%2C%20a%20$9%20billion%20bond%20approved,continuing%20to%20pile%20up%20in%20a%20backlog) (last visited Oct. 9, 2024).

⁴⁹ CAL. SEC’Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY NOVEMBER 4, 2014, at 43, available at <https://vigarchive.sos.ca.gov/2014/general/en/propositions/2/>. [“NOVEMBER 2014 VOTER GUIDE”].

⁵⁰ Eric Riviera-Jurado & Robert Binning, *Proposition 2: State Budget – Budget Stabilization Account*, 12 CAL. INIT. REV. 18 (2014) available at <https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1022&context=california-initiative-review>.

⁵¹ *Id.* at 19.

⁵² *Id.* (citing 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. Part III(B)(3).

⁵³ Statement of Vote. November 4, 2014 General Election. Secretary of State Debra Bowen, at 14, available at <https://elections.cdn.sos.ca.gov/sov/2014-general/pdf/06-summary.pdf>.

E. Senate Bill 28

Senate Bill (“SB”) 28 is similar to Assembly Bill 247. It was introduced by Senator Glazer on December 5, 2020 as a form of negotiation to address the demand and need to fix school and university facilities.⁵⁴ Although Proposition 13 (2020) failed, the Legislature wanted to “keep a vehicle moving.”⁵⁵ In doing so, Senator Glazer introduced SB 28, and Assemblymember Muratsuchi introduced AB 247.⁵⁶ Nothing in SB 28 was settled, not even the amount.⁵⁷ SB 28 was different from Proposition 2 because it addressed higher education facilities; however, the substance was the same.⁵⁸

However, unlike AB 247, SB 28 was opposed by the California Taxpayers Association, BizFed Central Valley, Plumbing-Heating-Cooling Contractors Association of California, and Western Electrical Contractors Association.⁵⁹ The California Taxpayers Association opposed SB 28 because it increased the amount of money that school districts could borrow, which would lead to higher property taxes.⁶⁰ The BizFed Central Valley and the contractors’ associations opposed SB 28 because it prioritized projects that use union labor.⁶¹ The bill was postponed by the committee in September 2023.⁶² California Taxpayers Association, BizFed Central Valley, and the two contractors’ associations do not oppose AB 247.⁶³

F. Assembly Bill 2831

AB 2831 is a bill sponsored by Assemblymember Josh Hoover, a Republican from Folsom.⁶⁴ The bill would add section 17070.56 to the Education Code, which would require the State Department of Education to establish the Office of Small School Facilities and Construction to assist small school districts. These districts are defined as a school district or county office of education with an average attendance of 2,500 pupils or fewer.⁶⁵ The bill is only operative if voters approve “a statewide bond act that provides money for school facilities.”⁶⁶

⁵⁴ *Hearing on S.B. 28 Before the Assembly Education Committee*, 2023 Leg. (Cal. 2023) (statement by Sen. Glazer) <https://digitaldemocracy.calmatters.org/hearings/256839?t=990&f=de2bdf8a00c098fb3f93431671835815>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* (stating “[W]hat’s in this bond is exactly the same as what was in the measure that went on the ballot”).

⁵⁹ ASSEMBLY COMMITTEE ON HIGHER EDUCATION, COMMITTEE HEARING OF SB 28, at 8 (June 27, 2023).

⁶⁰ Carolyn Jones, *supra* note 3.

⁶¹ *Id.*

⁶² Current Bill Status of SB 28, https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=202320240SB28 (last visited Oct. 10, 2024).

⁶³ *Borrow \$10 Billion to Build Schools, Colleges*, *supra* note 5.

⁶⁴ AB 2831, 2023 Leg., 2023–2024 Reg. Sess. (Cal. 2024).

⁶⁵ *Id.*

⁶⁶ *Id.* Section 17070.56 (insinuating that AB 2831 will only go into effect if voters approve Proposition 2).

The Department of Finance is opposed to AB 2831 “notwithstanding the merits of the bill” because AB 2831 will likely create ongoing pressures to fund the program if Proposition 2 bond funding is not available.⁶⁷ As of August 15, 2024, the bill is in committee: Held under submission.⁶⁸

III. DRAFTING ISSUES

Proposition 2 is silent as to the distribution of funds to districts.⁶⁹ Many parties who are neutral about Proposition 2 are concerned about which schools will receive the bond funds and believe that lower income schools and school districts should get more money.⁷⁰ Community College League of California lead Jeff Gozzo has explained that this is not an issue that the state can control.⁷¹ Local districts must pass their own legislation to use the funds.⁷²

IV. CONSTITUTIONAL AND STATUTORY ISSUES

In February 2024, Public Advocates sent a demand letter to Governor Newsom and several state agencies demanding that they end the state’s system for funding school facilities or else they will face lawsuits challenging Proposition 2.⁷³ Public Advocates argues that California’s system of funding school facilities through local and state bonds is based on district wealth.⁷⁴ For instance, if a low income district raises \$10 million for school facilities, the state will provide \$15 million in matching funds.⁷⁵ On the other hand, if a higher income district raises \$80 million for school facilities, the state will provide \$120 million in matching funds.⁷⁶ This system results in an unequal distribution in which students in low income districts receive a lesser quality of infrastructure support, which in turn could lead to a lesser quality of education than students in higher income districts, which violates California’s Equal Protection Clause.⁷⁷

In one case, the *Williams* Settlement legislation established new standards and accountability mechanisms to ensure that all California public school students have textbooks and

⁶⁷ *Hearing on A.B. 2831 Before the Senate Appropriations Committee*, 2023 Leg. (Cal. 2024) (statement by Department of Finance)

<https://digitaldemocracy.calmatters.org/hearings/258196?t=1214&f=af7549e033aaba019b50faf7c1c5b590>.

⁶⁸ AB 2831.

⁶⁹ *Borrow \$10 Billion to Build Schools, Colleges*, *supra* note 5.

⁷⁰ *See id.*

⁷¹ Interview with Jeff Gozzo, Community College League of California Proposition 2 campaign lead (September 4, 2024) (on file with the *California Initiative Review*).

⁷² *Id.*

⁷³ Letter from Public Advocates to Governor Newsom, state legislature, and state Department of Finance (June 21, 2024), available at <https://publicadvocates.org/our-work/education/school-bond-financing-2024/?source=email>.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

instructional materials and that their schools are clean, safe, and functional.⁷⁸ The *Williams* case was in part premised on the principle that California has a responsibility to ensure that all students have the basic resources they need to learn, including decent facilities.⁷⁹ The parties announced a settlement agreement on August 13, 2004.⁸⁰ The Settlement provided about \$1 billion for California to deliver textbooks and other materials and to maintain clean, safe, and functional schools.⁸¹

The *Williams* standard applies to all California public schools.⁸² Therefore, every student has a right to “sufficient textbooks,” a school in “good repair,” and a qualified teacher.⁸³ Additionally, the *Williams* settlement provides that the lowest performing schools in the state receive additional funds and oversight.⁸⁴ California provides \$800 million to pay for emergency repairs in these “decile 1-3 schools.”⁸⁵ In the first year of implementation, school districts received \$25 million to assess facility conditions and needs in the schools.⁸⁶

Despite these lawsuits, Gozzo believes that there are no foreseeable constitutional issues should Proposition 2 pass.⁸⁷ His first reason is that California has a long history of passing education bonds. Secondly, the California Constitution grants California the ability to pass bonds.⁸⁸

V. PUBLIC POLICY ISSUES

A. Proponents’ Arguments

One of the main arguments of proponents of Proposition 2 is that there is an urgent need for funding in many schools.⁸⁹ Thirty-eight percent of students attend schools that do not meet the minimum health and safety standards—there is mold, extreme heat, lead, asbestos, etcetera.⁹⁰ As Molly Weedn, the Communications Director for Yes on Prop 2, said, starting the school year with record breaking heat waves in a classroom without air conditioning is both dangerous and disruptive for students.⁹¹ Many school buildings were built more than seventy years ago without

⁷⁸ Public, *Williams v. California*, Public Advocates, <https://publicadvocates.org/our-work/education/williams-v-california/#:~:text=The%20Williams%20Settlement%20Legislation%20established.all%20students%20have%20qualified%20teachers> (last visited Oct. 9, 2024).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Gozzo Interview, *supra* note 71.

⁸⁸ *Id.*

⁸⁹ NOVEMBER 2024 VOTER GUIDE, at 18.

⁹⁰ Weedn Interview, *supra* note 39.

⁹¹ *Id.*

established long-term funding.⁹² The issues may likely build upon each other and get exponentially worse; if we do not address the issues that exist now, they will only continue to get worse.⁹³ Making the upgrades now would help ensure that students have a safe, healthy environment to learn in so that they can succeed.⁹⁴

Weedn has described Proposition 2 as “a generational opportunity to make sure there’s stability and resources that go into facilities that have done without critical updates for decades.... It will help students succeed in life and their communities. It’s an opportunity to make an investment in the future that they deserve.”⁹⁵

Additionally, proponents argue that Proposition 2 will help retain and attract quality teachers.⁹⁶ The funds would help create safer schools because the spending could go towards door locks, emergency communications and security systems, and fire and smoke alarms.⁹⁷ Proponents further argue that the bond could help fund learning technology, labs, and vocational classrooms for science, technology, engineering, and mathematics (“STEM”) subjects, which will help prepare students to enter the workforce.⁹⁸

Proponents highlight the fact that Proposition 2 funds will help more Californians acquire a quality post-secondary education because more individuals would be able to attend community colleges and transfer to four-year universities.⁹⁹ Veterans may also benefit from upgrades to community college facilities that can expand veteran services, job training, and support for veterans who rely on community colleges for job and educational training to enter the civilian workforce.¹⁰⁰ All California Community Colleges have a Veteran Resource Center to support veterans in college.¹⁰¹

Proponents of Proposition 2 respond to concerns about funds being used inappropriately by explaining that the proposition enforces local control.¹⁰² The initiative requires that funding only go to projects approved by local school and community college districts with local community input.¹⁰³ Similarly, Proposition 2 enforces taxpayer accountability by requiring that every dollar is publicly disclosed.¹⁰⁴ All funds will be spent locally so that taxpayers can provide input on how

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ NOVEMBER 2024 VOTER GUIDE, at 18.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ See generally [California Community Colleges, Veterans Resource Centers Help People Returning From Active Duty](#) (explaining the benefits of veteran resources at California community colleges (last visited Oct. 9, 2024)).

¹⁰² NOVEMBER 2024 VOTER GUIDE, at 18.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

the funds are spent.¹⁰⁵ These safeguards will help ensure that the funds are only being used to upgrade school buildings.¹⁰⁶ Lastly, proponents argue that Proposition 2 does not raise taxes because it would be an indirect effect—property taxes may be raised by the improvements to school facilities.¹⁰⁷

B. Opponents’ Arguments

1. *Concerns About Increased Taxes*

Several individuals and organizations that oppose Proposition 2 have expressed concerns about bonds in general. Senate Minority Leader Brian Jones, for instance, said in his floor statement on July 3, 2024 that “[he’s] opposing the mechanism of bonds in general.”¹⁰⁸ Senator Jones clarified that he is not opposed to funding school facilities. He noted that there was recently a \$100 billion surplus that could have been used to fund the facilities projects.¹⁰⁹ He proposed that instead of paying for items with bonds, which is “the most expensive way for the government to pay for things,”¹¹⁰ the state could divert funding from other issues that are not as high of a priority in voters’ minds.¹¹¹

Howard Jarvis Taxpayers Association’s Legislative Director, Scott Kaufman has expressed concerns because statewide bonds are paid out of the General Fund, which mostly comes from income, sales, and corporate taxes.¹¹² Additionally, there are fiscal concerns regarding Proposition 2. The estimated cost to repay the bond is about \$500 million annually for thirty-five years.¹¹³ Opponents argue that future generations should not be stuck with debt that current voters take on.¹¹⁴ Governor Newsom has recently declared a budget emergency, and adding to the debt that California already has will increasingly burden new generations.¹¹⁵

¹⁰⁵ Cal. Legislative Analyst’s Office, Propositions, November 5, 2014, at 1, *available at* <https://lao.ca.gov/ballot/2024/prop2-110524.pdf>.

¹⁰⁶ NOVEMBER 2024 VOTER GUIDE, at 18.

¹⁰⁷ Dixon Interview, *supra* note 31.

¹⁰⁸ Senate Floor, Committee Analysis of AB 247 (July 3, 2024).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* See also Brian W. Jones (@SenBrianJones), X (Mar. 14, 2024, 12:54 PM), <https://x.com/SenBrianJones/status/1768364978736620020> (criticizing the High-Speed Rail Project).

¹¹² Email from Scott Kaufman, Howard Jarvis Legislative Director (September 3, 2024) (on file with the *California Initiative Review*).

¹¹³ CAL. LEGISLATIVE ANALYST’S OFFICE, PROPOSITIONS, NOVEMBER 5, 2024.

¹¹⁴ NOVEMBER 2024 VOTER GUIDE, at 19.

¹¹⁵ *Id.*

2. Local Match Requirements

Opponents of Proposition 2 are nervous about the unclear effects of local match requirements.¹¹⁶ The availability of state bond funds could affect some districts' local costs.¹¹⁷ For instance, some districts could seek new local bonds that would help them meet project matching requirements.¹¹⁸ As a result, these districts would incur increases in their local taxes.¹¹⁹ Other districts may borrow less because the bond funds could pay costs that the districts would have otherwise covered.¹²⁰ In these cases, the districts would see a decrease in their local costs.¹²¹ Due to ambiguities regarding how funds might be allocated in local districts, opponents are worried about the possibility that higher income districts will get more money than lower income districts that need the funding more.¹²²

3. Concerns About Decreasing Enrollment

Opponents are also concerned that Proposition 2 ignores the declining enrollment at schools and community colleges, and, therefore, would be allocating money for facilities that fewer students are using.¹²³ According to the California Department of Finance, the 2022–23 school year marked the sixth consecutive decrease in public school enrollment for kindergarten through twelfth grade.¹²⁴ If the current trend continues, by the 2032–33 school year, there will be a decline of 661,500 students enrolled.¹²⁵

There has been a similar decline in community college enrollment since 2019.¹²⁶ The Public Policy Institute of California has predicted that community college enrollment in California will not get back to the numbers of students enrolled before the COVID-19 pandemic began.¹²⁷

¹¹⁶ CAL. LEGISLATIVE ANALYST'S OFFICE, PROPOSITIONS, NOVEMBER 5, 2024.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* See generally Ballotpedia, Local School Bonds on the Ballot available at https://ballotpedia.org/Local_school_bonds_on_the_ballot (highlighting 500 local ballot measures passed between 2000 and 2020 that sought to authorize school districts to increase their debt by issuing general obligation bonds) (last visited Oct. 9, 2024).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Dixon Interview, *supra* note 31.

¹²³ NOVEMBER 2024 VOTER GUIDE, at 18.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

C. Impact on Small and Rural School Districts

Proposition 2 sets aside 10% of new construction and modernization funds for small school districts.¹²⁸ The education code defines small school districts as districts with fewer than 2,501 pupils.¹²⁹ Rural school districts are districts with fewer than 600 students and located more than 25 miles from a city,¹³⁰ or as districts located in an area with less than 2,500 residents.¹³¹

Rural school districts already face challenges unrelated to facilities. They are below the state average in English language arts and math standards, they are 12 percentage points below the state average for graduation rates, and the rate of students who attend college is almost 20 percentage points below the state average.¹³²

Part of the challenge is the geographic nature of rural schools. They face geographic isolation, inadequate housing for teachers, and challenges in recruiting qualified teachers.¹³³ Moreover, the cost associated with updating school facilities is more expensive because of the geographic location of rural districts. For instance, it is more difficult for Modoc County Joint Unified School District (“MJUSD”) to obtain qualified contractors because of the district’s remote location.¹³⁴

MJUSD Superintendent Tom O’Malley noted that rural schools are typically understaffed and do not have the dedicated staff to apply for grant writing like their urban counterparts.¹³⁵ According to the Public Policy Institute of California, rural districts receive 30% less modernization funding per student than districts in cities and 37% less than districts in suburbs.¹³⁶

¹²⁸ Yes on 2 FAQ, at 3, available at https://www.yesprop2ca.com/files/7aa2e333-6865-4f0f-b7c9-30d18a8b7383/Prop_2_FAQ-e038.pdf (last visited Oct. 9, 2024).

¹²⁹ Cal. Ed. Code § 23 Art. 11.5(e).

¹³⁰ Carolyn Jones, *Rural California Schools are Desperate for State Help, From Special Education to Construction*, CalMatters, Mar. 4, 2024, available at <https://calmatters.org/education/K-12-education/2024/03/rural-schools-california/> (last visited Oct. 9, 2024).

¹³¹ Doug Geverdt, *Education Demographic and Geographic Estimates (EDGE) Program*, National Center for Education Statistics, available at https://nces.ed.gov/programs/edge/docs/EDGE_NCES_LOCALE_2015.pdf (last visited Oct. 9, 2024).

¹³² *Id.*

¹³³ Hailey Branson-Potts, ‘No one is coming to our rescue’: Inside rural California’s alarming teacher shortage, L.A. Times, August 1, 2023, available at <https://www.latimes.com/california/story/2023-08-01/rural-california-school-teaching-shortage-transitional-kindergarten> (last visited Oct. 9, 2024).

¹³⁴ Interview with Tom O’Malley, Modoc Joint Unified School District Superintendent (September 24, 2024) (on file with the *California Initiative Review*) (stating that Modoc Joint Unified School District is unable to reinstate a geothermal well because “no one will come out [here] to test the well” since the qualified contractors “have enough work” in closer districts).

¹³⁵ *Id.*

¹³⁶ Lafortune and Gao, *supra* note 6.

Another potential concern for rural school districts is the points system for obtaining funding.¹³⁷ Many rural districts are located in areas that are predominantly government land.¹³⁸ For example, over 70% of Trinity County is owned by the United States Forest Service.¹³⁹ Rural districts do not have a tax base to rely on like urban school districts.¹⁴⁰ By relying on total gross bonding capacity to calculate the required matching funds from local sources, rural communities might be at a disadvantage. Moreover, rural counties often have less enrollment.¹⁴¹ Thus, the state might not match as much funding as it would in more populated districts.¹⁴² Although school districts with lower bonding capacity receive more state funding, rural districts are still required to match the minimum of 45%.

D. Campaign Finances

As of October 15, 2024, supporters of Proposition 2 have raised \$7.72 million. The largest contributors are California Teachers Association with \$2.21 million, California Building Industry Association Issues Committee with \$1.73 million, and Yes on Proposition 2 - Coalition for Adequate School Housing Issues Committee with \$1.5 million.¹⁴³ Opponents have no reported contributions.¹⁴⁴

E. Alternative Methods of Funding

1. *Comparison to Other States*

California is different from other states regarding funding public schools. California does not have a permanent funding stream for repairing school facilities.¹⁴⁵ In California, funds for public school repairs come from state and local bonds, which leads to higher income districts having more funds for their schools.¹⁴⁶

Contrastingly, nineteen states have dedicated revenue sources for school construction funding including sales and use of taxes, lottery revenue, and proceeds from the sale and use of

¹³⁷ O'Malley Interview, *supra* note 134.

¹³⁸ Carolyn Jones, *A 'lifeline' for California's rural schools is about to expire. Why is it stalled in Congress?*, CalMatters, June 27, 2024, available at <https://calmatters.org/education/K-12-education/2024/06/rural-schools/> (last visited Oct. 9, 2024).

¹³⁹ *Id.*

¹⁴⁰ O'Malley Interview, *supra* note 134.

¹⁴¹ *Id.* (noting that Modoc Joint Unified School District had to close the elementary school in Likely, California because of low enrollment, and State Line Elementary School in New Pine Creek, CA has had zero enrollment in the past two years).

¹⁴² *Id.*

¹⁴³ *Borrow \$10 Billion to Build Schools, Colleges*, *supra* note 5.

¹⁴⁴ *Id.*

¹⁴⁵ Carolyn Jones, *supra* note 3 (detailing AB 247 and comparing this funding method to other states' funding methods).

¹⁴⁶ *Id.*

state lands.¹⁴⁷ Thirty-eight states provide aid to school districts for upfront planning and construction through appropriations.¹⁴⁸ Twenty-eight states have an equity component in their appropriation policies, which guarantees more funding for lower income school districts.¹⁴⁹ Appropriation payments do not require school districts to repay the state.¹⁵⁰

Thirty-five states and the District of Columbia have various financing mechanisms, such as bonds, to fund school construction costs.¹⁵¹ This financial support includes state issued bonds, locally issued bonds, and state funded loan programs.¹⁵² These programs allow schools to obtain loans for the construction of their buildings.¹⁵³

2. Sources of Federal Funding

a) Department of Energy

(i) “Renew America’s Schools” Grant

In November 2022, the United States Department of Energy launched the “Renew America’s Schools” grant.¹⁵⁴ The grant is the “first-of-its-kind” investment in clean energy improvements at K–12 public schools around the country.¹⁵⁵ The grant is funded by President Biden’s Bipartisan Infrastructure Law. The grant helps school communities make energy upgrades that will “decrease energy use and costs, improve indoor air quality, and foster healthier learning environments.”¹⁵⁶

The Renew America’s Schools Grant has invested \$372.5 million in public school districts in 36 states at approximately 410 facilities. The grant has helped 197,000 students and 14,000 teachers.¹⁵⁷ The demand was “unprecedented.” Over 1,000 concept papers from 48 states and 2 territories were submitted. Applicants requested \$5.5 billion in total.

¹⁴⁷ Adrienne Fischer, Chris Duncombe, and Eric Syverson, 50-State Comparison: K–12 School Construction Funding, (June 6, 2023), <https://www.ecs.org/50-state-comparison-K-12-school-construction-funding-2023/#:~:text=Revenue.lower%20levels%20of%20property%20wealth> (showing how each state funds public school construction) (last visited Oct. 9, 2024).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Renew America’s Schools Grant 2022-23*, Office of State and Community Energy Programs, <https://www.energy.gov/scep/renew-americas-schools-grant-2022-23> (last visited Oct. 9, 2024).

¹⁵⁵ *Id.*; *Renew America’s Schools*, Office of State and Community Energy Programs, <https://www.energy.gov/scep/renew-americas-schools> (last visited Oct. 9, 2024).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

One school district in California, Porterville Unified School District (“PUSD”), requested and received funding from the Renew America’s Schools Program.¹⁵⁸ PUSD received \$5,824,894 with a \$1,775,881 proposed cost share of 23% to upgrade seven buildings. PUSD was the only district in California to receive funding from this federal grant.

- (ii) Department of Energy “Energy Champions Leading the Advancement of Sustainable Schools (‘Energy CLASS’) Prize”

The Energy CLASS Prize is a \$4.5 million prize that was launched in tandem with the Department of Energy’s Renew America’s School Program. It is a two-phase award that establishes and trains energy managers in school districts to build institutional knowledge for long-term, energy efficient opportunities. The Energy CLASS Prize provides up to 50 school districts 1:1 expert advice on project development, strategic energy management, and similar topics to promote that district’s sustainability goals.¹⁵⁹

Additionally, on August 5, 2024, the Renew America’s Schools program released a free library containing over 35 hours of Energy CLASS trainings on topics such as building science, energy management, indoor air quality, and procurement strategies.¹⁶⁰ All school districts can access these on-demand trainings regardless if they received the Energy CLASS Prize.¹⁶¹

b) Federal Funding for Small School Districts

In January 2024, the California Department of Education received \$4.99 million through the Supporting America’s School Infrastructure (“SASI”) Grant Program.¹⁶² The SASI Grant funds will go towards programs for supporting small and rural districts to assess facility needs, such as a direct technical assistance program.¹⁶³ School facility professionals can visit districts to assess facility needs, estimate costs, and identify funding options.¹⁶⁴ Additionally, the SASI grant funds will allow the California Department of Education to create a centralized online resource for school facilities staff and will create a network of facility practitioners to support small and rural districts.¹⁶⁵

¹⁵⁸ *Porterville Unified School District (Porterville, CA)*, Office of State and Community Energy Programs, available at <https://www.energy.gov/scep/porterville-unified-school-district-porterville-ca> (last visited Oct. 9, 2024).

¹⁵⁹ *Renew America’s Schools*, *supra* note 155.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Tony Thurmond, *California Receives \$4.99 Million in Federal Grant Funds to Improve School Facilities in Small School Districts*, California Department of Education News Release, available at <https://www.cde.ca.gov/nr/ne/yr24/yr24rel02.asp> (last visited Oct. 9, 2024).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

3. *California General Fund*

Education advocates have tried previously to obtain more money from the General Fund to cover school facilities, but the General Fund is barely enough to cover basics such as school supplies, teacher salaries, textbooks, and Chromebooks. According to Susan Dixon, President of the California Retired Teachers Association, funding from the General Fund “doesn’t come close enough to cover what is needed.”¹⁶⁶ Moreover, the General Fund is unstable. Some fiscal years have large surpluses, while other years have deficits.¹⁶⁷

VI. CONCLUSION

Proposition 2 is an initiative that authorizes \$10 billion in state general obligation bonds for facilities at K–12 public schools, charter schools, and community colleges. The funds would be used to renovate existing buildings, construct new facilities, reduce lead levels, and other similar activities. If approved, the average repayment cost will be \$500 million annually for 35 years.

A **YES** vote on Proposition 2 authorizes \$10 billion in state general obligation bonds for repair, upgrade, and construction of facilities at K–12 public schools, charter schools, and community colleges.

A **NO** vote on Proposition 2 does not authorize \$10 billion in state general obligation bonds for repair, upgrade, and construction of facilities at K–12 public schools, charter schools, and community colleges.

¹⁶⁶ Dixon Interview, *supra* note 31.

¹⁶⁷ *Id.*