

# **Los Angeles Unified School District: Measure EE Parcel Tax for Specified Spending Purposes**

*\$500 Million Annual Square-Footage Parcel Tax Appearing on the June 4, 2019, Ballot  
(Two-Thirds Voter Approval Required)*

## **DIGEST**

Measure EE imposes a parcel tax of \$0.16 per square foot of buildings and structures within the Los Angeles Unified School District (the District) for 12 years. It also establishes exemptions for the tax and limits how the money may be spent.

## **PROVISIONS**

### **Rate**

\$0.16 per square foot of “building improvements,” defined as “the square footage of all buildings or structures erected on or affixed to the land.” However, there is significant legal uncertainty regarding this definition (see below under “Property Subject to Tax”).

### **Operative Dates**

The tax would be effective July 1, 2019, through June 30, 2031.

The language of Measure EE does not specify lien dates. Therefore, it is unclear when a property’s square footage would be measured each year, or if supplemental assessments would cover any changes in ownership or new square footage.

### **Property Subject to Tax**

Measure EE states that the parcel tax “shall be levied on every parcel of taxable real property.” This is defined in the measure as “any unit of real property in the District that receives a separate tax bill for ad valorem property taxes from the Los Angeles County Treasurer-Tax Collector’s Office.”

Some properties within the District do not receive a separate tax bill for each unit. Instead, the owners receive one bill for multiple units. This raises a question of whether or not these property owners would be subject to tax for all of their properties, since they do not receive a “separate tax bill.”

### **Definition of Buildings and Structures**

Measure EE has no definition of “buildings or structures erected on or affixed to the land.” Under existing property tax laws:

- *Black’s Law Dictionary* defines a building as “a structure with walls and a roof, especially a permanent structure.”<sup>1</sup> This definition typically would include homes, office buildings, factories, sheds, greenhouses, gazebos, and detached garages.
- *Black’s Law Dictionary* defines a structure as “any construction, production, or piece of work artificially built up or composed of parts purposefully joined

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<sup>1</sup> HENRY CAMPBELL BLACK & BRYAN A. GARNER, *BLACK’S LAW DICTIONARY* (9th ed. 2009).

together.”<sup>2</sup> This definition is broader than the definition of a building, and may include fences, poles, sculptures, above-ground pools, playground equipment and other types of property.

- *Black’s Law Dictionary* defines affix to mean “to attach, add to, or fasten on permanently.”<sup>3</sup> Using this definition, almost anything placed on the land would count as “affixed.”

Since Measure EE defines building improvements as buildings and structures, the measure is not necessarily consistent with the county assessor’s definitions of improvements. According to the Section 410 of the Assessors’ Handbook – the guide to property tax assessment published by the State Board of Equalization as part of its duty to oversee property tax administration – “Improvements” includes all buildings, structures, fixtures, and fences erected on or affixed to the land.<sup>4</sup>

In Appendix A of Assessors’ Handbook Section 504, an improvement is further defined as being either a “structure item” or “fixture.” An improvement is a structure item “when its primary use or purpose is for housing or accommodation of personnel, personalty, or fixtures, or when the improvement has no direct application to the process or function of the trade, industry, or profession.”<sup>5</sup> (“Personalty” refers to personal, movable property.) An improvement is a fixture “if its use or purpose directly applies to or augments the process or function of a trade, industry, or profession.” Since Measure EE defines improvements as all buildings and structures, there could be questions as to whether or not the “fixtures” defined in the Assessors’ Handbook are subject to the parcel tax.

#### **What Does “Erected on or Affixed to” Mean?**

According to the Assessors’ Handbook Section 504, “a thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster nails, bolts, or screws ....”<sup>6</sup> However, there is a question of whether these definitions would apply, as the Assessors’ Handbook discusses this definition as it relates to fixtures, which, as previously discussed, are not included in the definition of improvements in the text of the measure. Furthermore, it is possible that none of the definitions from the Assessors’ Handbook will apply, since it is unclear who is going to be measuring the square footage of property within the District.

The definition of “erected on or affixed” could raise questions for how some homes and high-rise buildings are treated under Measure EE. Because the provisions are unclear, the District most likely will be tasked with addressing multiple issues.

As noted above, *Black’s Law Dictionary* defines affix as “to attach, add to, or fasten on permanently.”<sup>7</sup>

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<sup>2</sup> HENRY CAMPBELL BLACK & BRYAN A. GARNER, *BLACK’S LAW DICTIONARY* (9th ed. 2009).

<sup>3</sup> HENRY CAMPBELL BLACK & BRYAN A. GARNER, *BLACK’S LAW DICTIONARY* (9th ed. 2009).

<sup>4</sup> California Board of Equalization, *Section 410: Assessment of Newly Constructed Property*, in *ASSESSOR’S HANDBOOK* (2014).

<sup>5</sup> California Board of Equalization, *Section 504: Assessment of Personal Property and Fixtures*, in *ASSESSOR’S HANDBOOK* (2014).

<sup>6</sup> California Board of Equalization, *Section 504: Assessment of Personal Property and Fixtures*, in *ASSESSOR’S HANDBOOK* (2014).

<sup>7</sup> HENRY CAMPBELL BLACK & BRYAN A. GARNER, *BLACK’S LAW DICTIONARY* (9th ed. 2009).

Therefore, one of the issues that the District would have to resolve would be treatment of buildings with multiple stories. Even using the definitions of “affix” from *Black’s Law Dictionary* or the Assessors’ Handbook, it is not clear whether a second story of a building is affixed to the land, since it is affixed to the first floor of the building.

Another issue the District would have to resolve would be how to treat non-habitable improvements. Examples of non-habitable improvements include attics; basements; and rooftop improvements such as helicopter pads, rooftop bars, or tennis courts.

### **Administration of Measure EE**

Measure EE states that the District “shall provide the Los Angeles County treasurer-tax collector a report indicating the parcel number and amount of tax for each parcel of taxable real property.” The measure also states that “L.A. Unified may request that the parcel tax be collected by the County of Los Angeles, or other designated agency.” No further information is provided within the language of Measure EE regarding which governmental entity would be responsible for determining the taxable square footage of parcels. It is unclear if the District would be required to measure taxable square footage of parcels within its boundaries.

### **Exemptions**

Measure EE contains several exemptions, including:

#### **Vacant Lots**

Since Measure EE states that the parcel tax would apply only to the “square footage of all buildings or structures erected on or affixed to the land,” it is possible that vacant lots may not be subject to the tax.

It is unclear how parcels would be treated when a building with taxable square footage is torn down, and whether the parcel would be subject to tax for a portion of the year or the entire year. It also is unclear if parcels undergoing new construction would be taxed when a building with taxable square footage is complete, or when the construction begins.

#### **Senior Exemption**

Property owners age 65 years and older who own and occupy a property may be exempt from Measure EE, if the owner applies for the exemption. The exemption application process is not specified, and it is unclear if the owner would have to apply for the exemption each year, or only once. It also is unclear to whom the taxpayer would have to submit an exemption application, and when applications would be due.

The language for the “Senior Citizen Exemption” states that the exemption “may be granted,” as opposed to “shall be granted” or “must be granted.” This provision could be interpreted to give the District discretion to not approve or offer exemptions.

#### **Low-Income Disabled Persons Exemption**

Property owners who receive assistance from the Supplemental Security Income program for a disability, or Social Security Disability Insurance benefits whose yearly income does not exceed 250 percent of the 2012 federal poverty guidelines issued by the U.S. Department of Health and Human Services may be exempt from the parcel tax if they apply for an exemption. The exemption

application process is not specified, and it is unclear if the owner would have to apply for the exemption each year. It is also unclear to whom or when the taxpayer would have to submit an exemption application.

The “Disability Benefit Recipient Exemption” states that the exemption “may be granted” rather than “shall be granted or “must be granted.” This provision could be interpreted to allow the District to not approve or offer an exemption.

#### **Property Exempt from Ad Valorem Taxes in California**

Measure EE exempts properties that are exempt from *ad valorem* taxes. Some examples of properties exempt from *ad valorem* property taxes include:

- Property Used for Libraries and Museums Open to the Public
- Nonprofit Cemetery
- Property Owned or Held by a Nonprofit Organization
- Public Schools and College Property
- Property Used Exclusively for Religious Purposes
- Property Owned by the State or Local Government
- Growing Crops
- Low-Value Properties

#### **Property Owned by Veterans**

Property owned and occupied by veterans may be partially exempt from *ad valorem* property taxes, up to \$4,000 of the property value. State law requires the veteran to have served either in a time of war, a time of peace in a campaign or expedition for which a medal has been issued by Congress, or in a time of peace and was released from active duty because of a service-connected disability.

California has not amended Revenue and Taxation Code section 205 to include more recent campaigns such as Desert Storm and the war on terror, and therefore it is possible that some veterans who have served more recently may not qualify for this exemption.

Alternatively, California law may fully exempt property owned and occupied by disabled veterans from the *ad valorem* property tax, so long as the veteran is fully disabled or compensated as fully disabled for unemployment. In 2018, the basic exemption provided an exemption of \$134,706 and the low-income exemption provided an exemption of \$202,060 for households with an annual income less than \$60,490.

#### **Restrictions on Use of Measure EE Revenue**

Measure EE specifies that funds may not be spent on purchasing lots, building or modernizing schools, funding legal settlements and liabilities, and operating schools outside the boundaries of the District.

#### **Legal Settlements**

Measure EE specifies that revenue from the tax may not be used for a “legal settlement or liability.” Based on a plain reading of the measure, it would appear that revenue may not be used to refund any taxes paid if a property owner successfully challenges the District in court over the amount of the tax.

### **Funding Pensions**

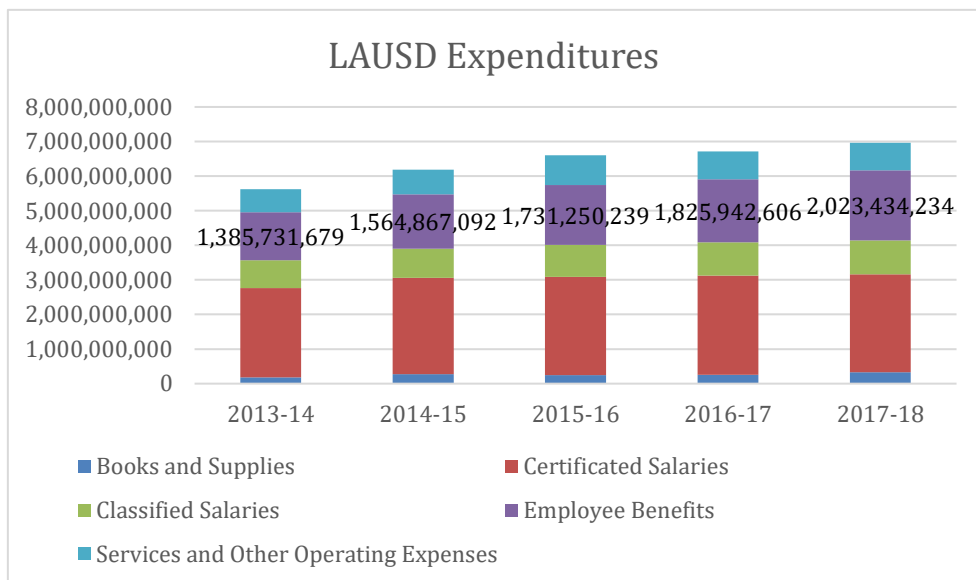
Draft language of Measure EE originally provided that the funds may not be used for “funding long-term healthcare or pension liabilities,” but the final version instead prohibits using revenue for “funding legal settlements and liabilities.”

*Black’s Law Dictionary* defines liability as “the quality or state of being legally obligated or accountable; legal responsibility to another or to society, enforceable by civil remedy or criminal punishment. Also termed legal liability.” A liability also is defined as “a financial or pecuniary obligation.”<sup>8</sup>

Applying these definitions to the healthcare or pension costs of the District, there is an unresolved question as to whether Measure EE funds may be used for these purposes.

Employee pensions and healthcare are negotiated between the District and its employees, which makes the District contractually obligated to fulfill agreements as a “legal responsibility” enforceable by “civil remedy.” Further evidence that these are liabilities can be demonstrated by the multitude of court cases in recent years between government employees and state and local governments disputing post-retirement benefits.

Below is graph illustrating how much money is spent by the District on these costs. Employee benefits have been steadily increasing throughout the years, and the growth in employee benefit costs has outpaced the growth of certificated salary costs.<sup>9</sup>



### **Building or Modernizing School Facilities**

Funding cannot be used to build or modernize school facilities. It is unclear if the District could use Measure EE funds to purchase a mobile classroom or other temporary facility, or lease additional office or classroom space. While the intent language specifies that the measure will be used to reduce class sizes, it is unknown how this will be achieved given the measure’s restrictions on how funds are spent on facilities.

<sup>8</sup> HENRY CAMPBELL BLACK & BRYAN A. GARNER, *BLACK’S LAW DICTIONARY* (9th ed. 2009).

<sup>9</sup> EdDATA, <http://www.ed-data.org/district/Los-Angeles/Los-Angeles-Unified>.

The intent language also states that Measure EE seeks to provide “safe, secure, clean, well-maintained, supportive and welcoming schools.” To the extent that the District is to ensure that these goals are met, it may not use Measure EE funds on modernization improvements.

#### **Administrative Salaries and Benefits**

In the past, certain school district parcel taxes have restricted new funds from being spent on administrative salaries and benefits. For example, in June 2010, Cabrillo Unified School District (near San Francisco) proposed a parcel tax of \$150 per year for five years. The measure specifically stated that “Under no circumstances shall any of the proceeds of the student achievement special tax be used for administrators’ salaries or benefits.” When the parcel tax was renewed in 2014, it included the same restriction on use of parcel tax funds for “administrators’ salaries or benefits.”

Measure EE does not prohibit the District from using this tax revenue to pay for administrators’ salaries or benefits. Therefore, the District may increase administrative salaries and benefits, or the salaries and benefits of other non-classroom personnel, using the funds from this new tax.

#### **Allows District to Spend Beyond the Constitutional Spending Limit**

Measure EE increases the District’s spending limit beyond what is allowed under Article XIII B of the California Constitution. Article XIII B generally limits year-to-year local government spending growth based on changes in population and the cost of living.

#### **Appeals Process**

Measure EE contains no standards, guidelines or protocols to establish an appeals process. Taxpayers who believe their parcels have been incorrectly assessed will have to appeal directly to Los Angeles County Superior Court.

In a 2014 study, the California Tax Foundation noted the following appeal trends among parcel taxes:

*Some local governments specifically authorize property owners to file an appeal to challenge the levy and imposition of a special tax. A city council or a special district’s governing board may act as the appeals board for the special tax, and will conduct hearings during public meetings. If the local government determines that the special tax was imposed erroneously, the local government may be authorized to refund excess amounts collected.*

*Other parcel tax ordinances and resolutions may authorize taxpayers to seek a refund of any tax paid if a taxpayer seeks to challenge the county assessor’s classification of a property pursuant to Section 4876.5 of the California Revenue and Taxation Code. However, not every parcel tax measure outlines a process for appealing or challenging the levy or imposition of the tax.*

Other parcel taxes imposed in Los Angeles County have specified the administrative entity that will preside over appeals.

- **Measure A of November 2016 – Los Angeles County Parks and Open Space Tax.** Measure A specified that “The Los Angeles County Regional Park and Open Space District shall establish and administer an appeals process to address and correct potential errors in the levy of the Special Tax.”

- **Measure W of November 2018 – Los Angeles County Stormwater Tax.** Measure W stated that “The District shall establish and administer an appeals process to address and correct errors in the levy of the Special Parcel Tax.”

In the absence of such language, it is possible that the appeals process for Measure EE could be administered through the courts. In such a scenario, the caseload for the Los Angeles County Superior Court would increase to resolve parcel tax disputes. The appeal process likely would take longer than typical administrative appeals. Furthermore, while taxpayers may represent themselves in administrative appeals, going through the court system without counsel can prove to be much more difficult. Therefore, not only would this process require more time for a taxpayer to comply with court procedures, it also could prove more costly, as taxpayers may seek representation from attorneys to navigate a complicated appellate process.

As previously mentioned, if a court finds that a taxpayer overpaid, the District cannot refund the taxpayer from revenue raised from the tax. Instead, the District would be legally required to use its General Fund.

### **Oversight**

The District is required to perform independent financial audit and oversight for Measure EE revenue. Since the District’s chief financial officer is responsible for hiring an auditor, the auditor may not have sufficient independence. If the auditor identifies problem areas or raises concerns, it is uncertain if the District is required to take corrective actions, since the language of the measure does not state that the District must correct any adverse findings by the auditor.

## **FISCAL IMPACT**

The fiscal impact of Measure EE on homeowners and taxpayers is currently unknown. The District estimates that this new tax would cost taxpayers an additional \$500 million annually (for a total of \$6 billion over the tax’s 12-year lifespan), but there is no evidence that the estimate was based upon the actual square footage that would be subject to the tax.

Based on information obtained from PropertyShark, the median home size in Los Angeles is approximately 1,800 square feet.<sup>10</sup> After multiplying the median square footage by the proposed \$0.16 per square foot rate, we estimate that this measure would impose an additional tax of more than \$200 annually (for a total of over \$2,400 over the tax’s 12-year lifespan) on most taxpayers in the District. While estimating the overall impact of the tax may be difficult, it is clear that this parcel tax will have a widespread fiscal impact on property owners.

Based on the District’s revenue data obtained from EdData<sup>11</sup>, a \$500 million increase in revenue would amount to a 6.89 percent increase over 2017-18 revenue. Since the District spent \$633 million on “pupil services” in 2017-18, \$500 million could almost double what the District spends for pupil services.

<sup>10</sup> The Growth of the Average US Home Size in the Past 100 Years, PROPERTYSHARK REAL ESTATE BLOG (2017), <https://www.propertyshark.com/Real-Estate-Reports/2016/09/08/the-growth-of-urban-american-homes-in-the-last-100-years/>.

<sup>11</sup> EdData, <http://www.ed-data.org/district/Los-Angeles/Los-Angeles-Unified>.

## EXISTING LAW

### **Government Code Section 50079**

While Government Code Section 50079 gives school districts the authority to impose qualified special taxes within the district, two court cases could affect the viability of how a school district structures its qualified special tax.

This code section specifies that “‘qualified special taxes’ means special taxes that apply uniformly to all taxpayers or all real property within the school district, except that unimproved property may be taxed at a lower rate than improved property.”

### **Serrano v. Priest**

In 1971, the California Supreme Court decided in *John Serrano, Jr., et al. v. Ivy Baker Priest, et al*, 5 Cal.3d 584 (1971), that the California public school financing system in place at that time “discriminates against the poor because it makes the quality of a child’s education a function of the wealth of his parents and neighbors.” At that time, California’s public schools received different amounts of funding based on the value of real property in each school district. The Supreme Court declared this system unconstitutional, as it violated the equal protection clause by funding schools in some areas at much higher level than those in areas where property values were low.

### **Borikas v. Alameda Unified School District**

The First District California Court of Appeal in 2012 decided *George Borikas v. Alameda Unified School District* 211 Cal.App.4th (2012), which further clarified the limits on school districts’ authority to impose special taxes. Alameda School District imposed a parcel tax that placed different tax burdens on property depending on the classification and size of the property. Residential properties were taxed at \$120 per year; commercial and industrial parcels less than 2,000 square feet also were taxed at \$120 per year; but commercial and industrial property whose square footage was greater than 2,000 square feet were taxed at \$0.15 per square foot, up to a maximum of \$9,500 per year. Because of this disparate treatment of commercial and industrial property whose area exceeded 2,000 square feet, the First District Court of Appeal declared the Alameda district’s parcel tax unconstitutional.

### **Howard Jarvis Taxpayers Association v. Los Angeles Unified School District**

The Howard Jarvis Taxpayers Association filed a lawsuit against the District on May 7 arguing that Measure EE should be either removed from the ballot or have its results not certified because the District school board did not hold a public meeting or vote to approve the definition that appears on the ballot.

The board voted for and approved a different version of the measure that defined taxable property as “habitable main square footage as measured by the Los Angeles County Assessor and as maintained in the Assessor’s electronic reports.” HJTA disputes the validity of the measure, because the original approved language was replaced with new language by Superintendent Austin Beutner without a public meeting or vote as required by the state’s Open Meetings Act.

The Los Angeles Superior Court is scheduled to hold a hearing for this lawsuit on June 6, which is not until after the Measure EE election.

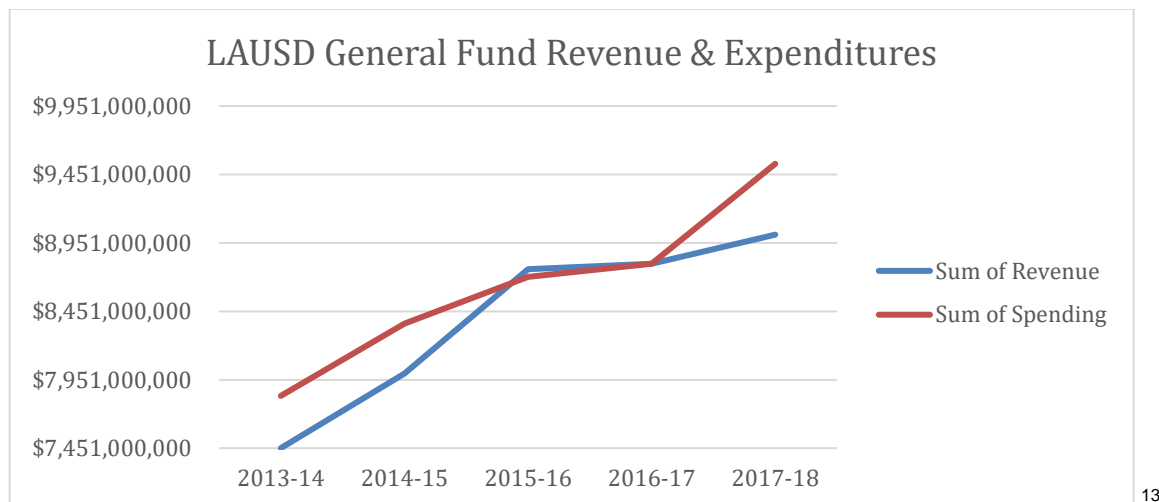


## BACKGROUND

The District has stated that enrollment has steadily declined since the 2002-03 school year. The graphs below demonstrate that over the past few years, the District's budget expenditures and revenue have increased with, expenditures outpacing revenue. These illustrations demonstrate that expenditures and revenue have been increasing, while enrollment has been decreasing.

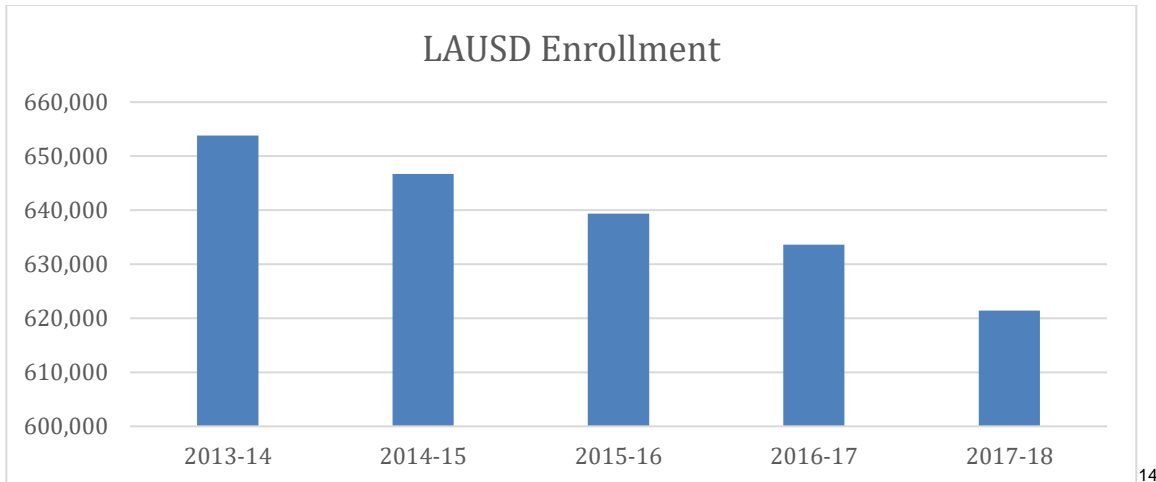
According to the newly released state budget numbers for California in the May revision of the Governor's proposed budget, school funding has also increased at the state level. Governor Gavin Newsom noted that the May revision allocates an additional \$1.1 billion for K-14 education due to Proposition 98 requirements. In presenting the revised budget proposal, Governor Newsom said that this proposed budget represents the highest investment in K-14 education in the state's history.

It is also important to note that according to the Los Angeles County Assessor's 2018 Annual Report, the assessor notes that 2018 had the "largest assessment value in history" at \$1.51 trillion.<sup>12</sup> The report also states that approximately 40.40 percent of local property tax revenue is used to fund school districts.



<sup>12</sup> *Annual Report 2018*, L.A. CNTY. ASSESSOR, [https://assessor.lacounty.gov/wp-content/flipbook/annual\\_report\\_2018/](https://assessor.lacounty.gov/wp-content/flipbook/annual_report_2018/).

<sup>13</sup> EDData, <http://www.ed-data.org/district/Los-Angeles/Los-Angeles-Unified>.



14

## ARGUMENTS

### Proponents' Official Ballot Argument

Vote YES on Measure EE to help our neighborhood schools retain and attract quality teachers, counselors, school nurses, librarians, support staff and principals.

Measure EE is a critical part of the solution to the public education funding crisis that was highlighted by the recent teachers' strike in the Los Angeles area. Teachers and school district leaders agree that Measure EE will lower class sizes and provide needed resources for local schools, and pay salaries to retain and attract quality teachers and student support staff.

Even though it is the fifth-largest economy in the world, California ranks 44th in the United States in per-pupil funding for education. Measure EE is desperately needed to get our LOCAL schools the resources they need to educate our students, an investment which will help bring many more students up to grade level in math and reading.

The key to a strong economy is a well-educated workforce. By voting YES on Measure EE and investing in quality academic programs such as language arts, math, science, technology, the arts, vocational and career education, and preschool, we can provide students with safe and healthy schools and the quality education they'll need for college and a career in a competitive economy.

Measure EE is subject to strict accountability requirements. It requires that every dollar will be used to support local schools and cannot be taken by the state or federal government. Measure EE will have public oversight and requires annual independent audits to ensure that all dollars are spent as promised.

Educators, teachers, parents, and community leaders are united in support of Measure EE. Now is the time to invest in public education! We cannot afford to wait and let our schools fall further behind.

Vote Yes on Measure EE!

<sup>14</sup> EDData, <http://www.ed-data.org/district/Los-Angeles/Los-Angeles-Unified>.

### **Opponents' Official Ballot Argument**

Vote NO on Measure EE.

We all want an effective public education system for our children and support greater funding to get there. Unfortunately, LAUSD's proposed parcel tax isn't the answer. It includes no guarantee to spend our tax dollars in the classroom to improve education.

Voters approved tax increases in 2012 and again in 2016 to fund schools. LAUSD continues to shortchange our children with poor student achievement scores in English and math, low graduation rates and declining enrollment.

DON'T BE FOOLED. Money from the tax won't add resources to classrooms. It will be used to temporarily fix a budget deficit and to pay for LAUSD's over-promised pension and health insurance costs.

A 2018 Reason Foundation report found that over the last 15 years, the district has lost more than 245,000 students. But, the cost of the district's employee benefits have increased 44% since 2014. Its spending on outside consulting services rose 110% since 2014.

The Daily News wrote, "Parcel taxes tend to take a greater percentage of income from lower-income taxpayers." This tax "will add hundreds of dollars annually to homeowners' property tax bills and thousands of dollars to the annual expenses of supermarkets, retail stores, office buildings, warehouses and commercial facilities."

This tax includes apartment buildings. High rents will increase more!

Families are getting crushed with unaffordable housing. A new tax of 16-cents per sq.ft. of building space (\$537 per parcel average) makes matters worse.

Needlessly, this June 4<sup>th</sup> Special Election is costing taxpayers \$12.5 million.

LAUSD WASTES OUR MONEY.

District bureaucrats and defenders of the failed status quo want taxpayers to bailout a school district with a history of red ink, appalling education results, declining enrollment, runaway administrative hiring and exploding retirement and health care costs.

REFORMS MUST COME FIRST.

Vote NO on Measure EE.

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*This analysis was prepared by the California Tax Foundation. The CalTax Foundation is a non-partisan, not-for-profit 501(c)3 charitable organization established by the California Taxpayers Association in 1980 to conduct research on tax policy. The CalTax Foundation does not support or oppose legislation or ballot measures at the state or local-level of government, nor does it endorse candidates.*