



## Transportation Ballot Measures To Watch In The Midterms

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Law360 (November 2, 2018, 5:51 PM EDT) -- U.S. voters will consider more than 200 state and local transportation-related ballot initiatives on Tuesday, including gas tax increases, bond issuances and so-called lockbox measures ensuring that transportation and infrastructure funds are used exclusively for their intended purpose.

The mixed bag of proposals, representing billions of dollars in transportation and shared infrastructure investments that voters are considering in the midterm election, signals that state and local governments are taking the reins on prioritizing the redevelopment of aging roads, bridges, highways, airports and other infrastructure nationwide, experts say.

“I think it reflects a somber realization among many state legislators that help from Washington is not likely to arrive anytime soon and, even if it does, there's likely to be an increased burden upon state and local governments to cost share in many of those initiatives,” said Brandt Hershman, of counsel at [Barnes & Thornburg LLP](#) and former Indiana Senate majority leader. “They want to get out front because they recognize that infrastructure in many states is in significant need of repair and improvement.”

Here are several transportation ballot initiatives to watch on Tuesday.

### California Gas Tax Repeal

Golden State residents will vote on whether to repeal recently enacted statewide gas taxes and require any future fuel or vehicle tax hikes to also go before voters.

Proposition 6 seeks to unravel the increased excise and sales taxes on various gasoline and diesel products that California lawmakers passed in last year's Senate Bill 1, which outgoing Democratic Gov. Jerry Brown signed into law in April 2017.

S.B. 1 marked the state's first gas tax hike in 23 years. Officials estimated that the revenues collected from S.B. 1 would raise more than \$52 billion over the next decade to fund road, highway and bridge repairs, as well as public transit and other mobility or congestion-easing projects around the state.

"Not only because of the size of the state's economy but because the state already sustains a high tax burden relative to most other states, the question is: Is the public willing to shoulder an additional burden?" Hershman said.

The repeal effort is backed by Republicans, including GOP gubernatorial candidate John Cox, who has made Proposition 6 a key fixture of his campaign. They argue that residents already grapple with a high tax burden and that the "blank check" tax hike contains zero accountability for how the state spends the money.

Democrats and a broad coalition of more than 450 public safety organizations, engineers, local transportation agencies, cities, counties, environmental groups, and business and labor organizations throughout California are behind the "No on Prop 6" fight to beat back the repeal effort, calling it "dangerous" and a "bad deal." They say it jeopardizes over \$5 billion in annual funding and more than 6,500 transportation projects that have already been pegged for funding and are already underway.

"There was a bold move to impose the tax increase [last year] and there's clearly those that have made paying taxes and user fees — just that statement alone — a bad idea," said Robert Freeman, government relations principal with [Cozen O'Connor](#). "Then you add on top of that those who are frustrated by the conditions of roads who then question why invest more [because] what we have doesn't work and we should look at pulling away from those."

"But those increases haven't been in place long enough for them to make a difference," Freeman added. "Infrastructure investment and the associated work, it takes a little time and certainly takes more than a year."

### **Colorado Road Improvement Funding**

Colorado's Proposition 110, or the "Let's Go Colorado" measure, asks voters to allow the state to issue \$6 billion in bonds to fund road and bridge repairs and upgrades, and to raise the sales and use tax rate by 0.62 percentage points — from 2.9 percent to 3.52 percent — to pay for those repairs.

According to the secretary of state's ballot issue analysis, 45 percent of the subsequent road work revenue would be spent on state roads, with 40 percent going to local projects and 15 percent to mass transit or multimodal projects. If passed, the new sales tax would be effective for no more than 20 years, starting Jan. 1, and is estimated to raise some \$766 million a year.

But there's also a competing measure on the ballot called Proposition 109 backed by the Independence Institute and its president Jon Caldara, a local anti-tax crusader, that would fund road improvements using existing revenue, meaning no tax increase. The "Fix Our Damn Roads" initiative wants the state to issue \$3.5 billion in bonds and use surplus revenues to fix state roads. Proposition 109 would cost an estimated \$260 million a year to pay back the borrowed money, without any defined taxes or fees, state analysts said.

"The 110 supporters say 109 doesn't even fund its own spending and that the state would have to cut K-12, higher education, health care to come up with \$260 million a year to defuse those \$3.5 billion in bonds," said Trey Rogers, a Denver-based partner with [Lewis Roca Rothgerber Christie LLP](#) and former member of the Colorado Transportation Commission. "The 109 supporters, on the other hand, say that there's plenty of waste, fraud and abuse in the state budget and the state can certainly find \$260 million a year to pay for these bonds."

Rogers explained that in the 26 years since Colorado's Taxpayer's Bill of Rights was enacted in 1992 — which requires all tax increases and state debt be put to voters and puts spending limits on the state — only three statewide tax measures have passed. Two were marijuana taxes and one was a tobacco tax. That just underscores Colorado's distaste for any tax hikes, much less those dedicated for transportation and infrastructure.

"It's a big ask," Rogers said. "It's tough to sell."

## **Missouri Gas Tax**

Missouri voters have the final say on whether to raise their gas tax by 10 cents a gallon when they take up Proposition D on Tuesday, which aims to help fund Missouri state law enforcement and maintenance for roads, highways and bridges.

On the last day of the 2018 legislative session, the [Missouri General Assembly](#) passed H.B. 1460, calling for a referendum to incrementally increase the state gas tax by 2.5 cents per gallon per year for four years, going from 17 cents a gallon to 27 cents a gallon. If approved, the tax is expected to provide \$288 million a year for the Missouri Highway Patrol and \$123 million a year for local transportation needs. Proposition D also sanctions an "Emergency State Freight Bottleneck Fund" to help pay for eliminating rush-hour bottlenecks and state road improvement projects.

A coalition of farmers, businesses, professional associations, labor, city and county leaders and law enforcement back Proposition D for advancing "safer roads and safer streets," while critics and opponents

of the measure say it just throws more money at a dysfunctional transportation system or will mostly benefit law enforcement and not roads anyway.

“States and local municipalities recognize there’s only so many avenues you can go to fund infrastructure projects and you can raise taxes across the general base, but that’s never a popular thing,” Michael Zicherman, a New Jersey-based partner with [Peckar & Abramson PC](#), told Law360. “And so the most palatable means of addressing a particular situation, particularly infrastructure, is effectively a use tax, like tolls on a road, or a gas tax that is along the same lines and thought process.”

### **Connecticut and Louisiana 'Lockboxes'**

At least two states will weigh so-called lockbox measures ensuring that transportation and infrastructure funds are used exclusively for their intended purpose to prevent those funds from being diverted to plug budget holes elsewhere.

Connecticut’s Amendment 1 requires that all revenue placed in the state’s Special Transportation Fund — paid for by gas and vehicle taxes and a tax on petroleum products — be used for transportation, including the payment of transportation-related debts. It’ll block the state legislature from spending monies from the fund on non-transportation purposes.

And voters in Louisiana are considering whether to put a stop to using a portion of monies in the state’s transportation trust fund toward the state police for traffic control purposes. Currently, the fund can be used for the construction and maintenance of highways, roads and bridges; the statewide flood-control program; ports; airports; transit; as well as for state police for traffic control purposes.

Louisiana’s Amendment 4 asks voters if they’d support a constitutional amendment “to remove authority to appropriate or dedicate monies in the transportation trust fund to state police for traffic control purposes.” A yes vote would ensure that 100 percent of the funds be dedicated exclusively to infrastructure improvement projects.

“Politicians are politicians. If they see cash available from somewhere regardless of the source and original intent [and] if there’s nothing restraining them from using it for some other pressing need in their mind, they’ll use it,” Zicherman said. “If there’s a dedicated source of funds that’s not specifically locked down by statute, they’ll raid it. So that’s why you start to see these lockbox approaches, where you’re having dedicated revenues obtained through these use taxes and you know it’s going for the purpose for which it was intended.”

--Additional reporting by Philip Rosenstein and Maria Koklanaris. Editing by Emily Kokoll and Alanna Weissman.