

ITEM 5

**MANDATE REDETERMINATION
SECOND HEARING: NEW TEST CLAIM DECISION**

**FINAL STAFF ANALYSIS AND
PROPOSED STATEMENT OF DECISION**

Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608

Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888);
Statutes 1996, Chapter 4 (AB 1496)

Sexually Violent Predators, (CSM-4509)

As Alleged to be Modified by:

Proposition 83, General Election, November 7, 2006

12-MR-01

Department of Finance, Requester

TABLE OF CONTENTS

Exhibit A

Request for Redetermination, dated January 15, 2013 4

Exhibit B

Test Claim Statement of Decision, dated June 25, 1998 105

Exhibit C

Parameters and Guidelines, dated September 24, 1998..... 118

Exhibit D

Amended Parameters and Guidelines, dated October 30, 2009 129

Exhibit E

SCO Comments on Request for Redetermination, dated February 15, 2013 135

Exhibit F

California District Attorneys' Association Comments on Request for Redetermination, dated
March 19, 2013 136

Exhibit G

California State Association of Counties Comments on Request for Redetermination, dated
March 22, 2013 146

Exhibit H

California Public Defenders’ Association Comments on Request for Redetermination, dated March 26, 2013 149

Exhibit I

County of San Bernardino District Attorney’s Office Comments on Request for Redetermination, dated March 25, 2013 162

Exhibit J

County of San Bernardino Comments on Request for Redetermination, dated March 26, 2013 166

Exhibit K

County of Sacramento District Attorney’s Office Comments on Request for Redetermination, dated March 26, 2013 167

Exhibit L

County of Los Angeles District Attorney’s Office Comments on Request for Redetermination, dated March 26, 2013 170

Exhibit M

County of Los Angeles Comments on Request for Redetermination, dated March 27, 2013.... 182

Exhibit N

Alameda County Public Defender Comments on Request for Redetermination, dated March 27, 2013..... 189

Exhibit O

County Counsel of San Diego Comments on Request for Redetermination, dated March 27, 2013..... 203

Exhibit P

County of Alameda District Attorney’s Office Comments on Request for Redetermination, dated March 29, 2013 218

Exhibit Q

Draft Staff Analysis and Proposed Statement of Decision, dated May 9, 2013 224

Exhibit R

Department of Finance Comments on Draft Staff Analysis, dated May 17, 2013 252

Exhibit S

CPDA Comments on Draft Staff Analysis, dated May 24, 2013 256

Exhibit T

LA County Comments on Draft Staff Analysis, received May 31, 2013 259

Exhibit U

Statement of Decision, First Hearing, July 26, 2013 262

Exhibit V

Draft Staff Analysis, Second Hearing, issued August 2, 2013	291
Exhibit W	
County of Orange Comments on DSA, Second Hearing, dated August 22, 2013	329
Exhibit Y	
District Attorney of County of Orange Comments on DSA, Second Hearing, dated August 27, 2013	335
Exhibit Z	
Public Defender of San Bernardino County Comments on DSA, Second Hearing, dated September 5, 2013	336
Exhibit AA	
CSAC Comments on DSA, Second Hearing, dated September 5, 2013	337
Exhibit BB	
County Counsel of San Diego Comments on DSA, Second Hearing, dated September 5, 2013	340
Exhibit CC	
Department of Finance Comments on DSA, Second Hearing, dated September 5, 2013	347
Exhibit DD	
County of Los Angeles Comments on DSA, Second Hearing, dated September 5, 2013.....	351
Exhibit X	
Supporting Documentation	
Ballot Pamphlet for Proposition 83.....	355



EDMUND G. BROWN JR. ■ GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

Exhibit A

January 15, 2013

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

Please find attached the Department of Finance's "Request to Adopt a New Test Claim Decision" on the Sexually Violent Predators mandate. As this request is linked to anticipated General Fund savings, we respectfully request the Commission on State Mandates expedite the review and hearing process of this request.

Sincerely,

Tom Dyer
Assistant Program Budget Manager

Enclosure

**COMMISSION ON STATE MANDATES
FORM TO REQUEST TO ADOPT A NEW TEST CLAIM DECISION
(Adopted November 9, 2010)**

GENERAL INSTRUCTIONS

- Type All Responses
- Complete sections 1 through 8, as indicated. Failure to complete any of these sections will result in this request to adopt a new test claim decision being returned as incomplete.
- Please submit by either of the following methods:
 1. By hard copy. The requester shall file, consistent with the Commission's regulations (CCR, tit. 2, § 1181.2), one original signed hard copy, and seven (7) copies, which shall include a table of contents, be unbound, double-sided, and shall not include tabs to:

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
 2. E-filing. The requester shall electronically file the request and any accompanying documents in pdf format to the e-filing system on the Commission's website, consistent with the Commission's regulations (CCR, tit.2, §1181.2). The requester is responsible for maintaining the paper request with original signature(s) for the duration of the redetermination process, including any period of appeal. No additional copies are required when e-filing the request.

Within ten (10) days of receipt of a request to adopt a new test claim decision, Commission staff will notify the requester if the request is complete or incomplete. Requests to adopt a new test claim decision will be considered incomplete if any of the required sections are not included or are illegible. If a completed request is not received within thirty (30) calendar days from the date the incomplete request was returned, the executive director may disallow the original request filing date. A new request may be accepted on the same subsequent change in law alleged to modify the state's liability pursuant to article XIII B, section 6, subdivision (a) of the California Constitution.

**You may download this form from our website at csm.ca.gov.
If you have questions, please contact us:**

Website: www.csm.ca.gov
 Telephone: (916) 323-3562
 Fax: (916) 445-0278
 E-Mail: csminfo@csm.ca.gov

1. TITLE OF REQUEST TO ADOPT A NEW TEST CLAIM DECISION

Sexually Violent Predators (CSM - 4509)

2. REQUESTER INFORMATION

Name of Local Agency, School District, Statewide Association of Local Agencies or School Districts, or State Agency
California Department of Finance

Requester Contact
Randall Ward

Title
Principal Program Budget Analyst

Organization
Department of Finance

Street Address
915 L Street, Room 1190

City, State, Zip Code
Sacramento, CA 95814

Telephone Number
(916) 445-3274

Fax Number
(916) 449-5252 E-Mail Address: randy.ward@dof.ca.gov

E-Mail Address

3. REPRESENTATIVE INFORMATION

If requester designates another person to act as its sole representative for this request, all correspondence and communications regarding this request shall be forwarded to this representative. Any change in representation must be authorized by the requester in writing, and sent to the Commission on State Mandates. Please complete information below if designating a representative.

Representative Name

Title

Organization

Street Address

City, State, Zip Code

Telephone Number

Fax Number

E-Mail Address

<i>For CSM Use Only</i>	
<i>Filing Date:</i> Received January 15, 2013 Commission on	
NTCD#	State Mandates

12-4509-MR-01

4. IDENTIFYING INFORMATION

Please identify the name(s) of the programs, test claim number(s), and the date of adoption of the Statement of Decision, for which you are requesting a new test claim decision, and the subsequent change in law that allegedly changes the state's liability.

On June 25, 1998, the Commission on State Mandates adopted the Statement of Decision for the Sexually Violent Predators mandate (CSM - 4509) and approved reimbursement for specified activities mandated under Welfare and Institutions Code sections 6601-6608. On September 24, 1998, the Commission on State Mandates adopted Parameters and Guidelines that were subsequently amended on October 30, 2009. These Parameters and Guidelines provide reimbursable activity detail.

On November 7, 2006, California voters approved Proposition 83, also known as Jessica's Law, which substantively amended and reenacted various sections of the Welfare and Institutions Code that had served as a basis for the Commission's Statement of Decision.

Based on the passage of Proposition 83, the state's obligation to provide reimbursement for this mandate has ceased pursuant to Government Code sections 17570 and 17556, subdivision (f).

Sections 5, 6 and 7 are attached as follows:

- 5. Detailed Analysis: Pages 1 to 5.
- 6. Declarations: Pages 6 to 7.
- 7. Documentation: Pages A to C.

Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the name of the request, requestor, section number (i.e., 5, 6, or 7), and a heading at the top of each page.

5. DETAILED ANALYSIS

Under the heading "5. Detailed Analysis," please provide a detailed analysis of how and why the state's liability for mandate reimbursement has been modified pursuant to article XIII B, section 6, subdivision (a) of the California Constitution based on a "subsequent change in law" as defined in Government Code section 17570. This analysis shall be more than a written narrative or simple statement of the facts at law. It requires the application of the law (Gov. Code, § 17570 (a) and (b)) to the facts (i.e., the alleged subsequent change in law) discussing, for each activity addressed in the prior test claim decision, how and why the state's liability for that activity has been modified. Specific references shall be made to chapters, articles, sections, or page numbers that are alleged to impose or not impose a reimbursable state-mandated program.

Also include all of the following elements:

The actual or estimated amount of the annual statewide changes in the state's liability for mandate reimbursement pursuant to Article XIII B, section 6 (subdivision (a)) on a subsequent change in the law.

- A. Identification of all of the following if relevant:
1. Dedicated state funds appropriated for the program.
 2. Dedicated federal funds appropriated for the program.
 3. Fee authority to offset the costs of the program.
 4. Federal law.
 5. Court decisions.
 6. State or local ballot measures and corresponding date of election.

6. DECLARATIONS

Under the heading "6. Declarations," support the detailed analysis with declarations that:

- A. Declare actual or estimated annual statewide costs that will or will not be incurred to implement the alleged mandate.
- B. Identify all local, state, or federal funds and fee authority that may or may not be used to offset the increased costs that will or will not be incurred by the claimants to implement the alleged mandate or result in a finding of no costs mandated by the state, pursuant to Government Code section 17556.
- C. Describe new activities performed to implement specified provisions of the statute or executive order alleged to impose a reimbursable state-mandated program.
- D. Make specific references to chapters, articles, sections, or page numbers alleged to impose or not impose a reimbursable state-mandated program.
- E. Are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

7. DOCUMENTATION

Under heading "7. Documentation," support the detailed analysis with copies of all of the following:

- A. Statutes, and administrative or court decisions cited in the detailed analysis.

Statements of Decision and published court decisions from a state mandate determination by the Board of Control or the Commission are exempt from this requirement. When an omnibus bill is pled or cited, the requester shall file only the relevant pages of the statute, including the Legislative Counsel's Digest and the specific statutory changes at issue.

8. CERTIFICATION

*Read, sign, and date this section and insert at the end of the request for a new test claim decision.**

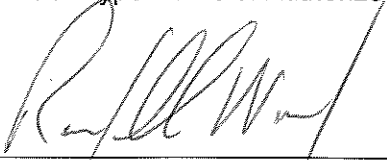
This request for a new test claim decision is true and complete to the best of my personal knowledge, information, or belief.

Randall Ward

Principal Program Budget Analyst

Print or Type Name of Authorized Official

Print or Type Title



1-15-13

Signature of Authorized Official

Date

*If declarant for this certification is different from the contact identified in section 2 of the form, please provide the declarant's address, telephone number, fax number and e-mail address.

Request to Adopt a New Test Claim Decision
Department of Finance
Sexually Violent Predators (CSM – 4509)
Section 5: Detailed Analysis

On June 25, 1998, the Commission on State Mandates (Commission) adopted the Statement of Decision for the Sexually Violent Predators (SVP) mandate (CSM-4509) and approved reimbursement for the following activities:

- **Activity 1** - Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601, subd. (i)).
- **Activity 2** - Initial review of reports and records by the county's designated counsel to determine if the county concurs with the state's recommendation. (Welf. & Inst. Code, § 6601, subd. (i)).
- **Activity 3** - Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601, subd. (j)*). * SOD and P&Gs reference to subdivision (j) is likely a typographical error and should be (i) because subdivision (j) lacks subject matter relevancy to this reimbursable activity.
- **Activity 4** - Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602).
- **Activity 5** - Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604).
- **Activity 6** - Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6605, subds. (b) through (d), and 6608, subds. (a) through (d)).
- **Activity 7** - Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6603 and 6605, subd. (d)).
- **Activity 8** - Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602).

Request to Adopt a New Test Claim Decision
Department of Finance
Sexually Violent Predators (CSM – 4509)
Section 5: Detailed Analysis

In 1998, the Commission on State Mandates adopted the Statement of Decision for the Sexually Violent Predators (SVP) mandate (CSM - 4509) and approved reimbursement for specified activities mandated under Welfare and Institutions Code sections 6601-6608.

On November 7, 2006, California voters approved Proposition 83 (Prop 83), also known as Jessica's Law, which substantively amended and reenacted sections of the Welfare and Institutions Code relative to the SVP mandate. Government Code section 17570 sets forth a process for adopting a new test claim decision based on a subsequent change in law. Section 17570 defines a subsequent change in law as a change in law that requires a finding that an incurred cost is a cost mandated by the state (Government Code section 17514) or is not a cost mandated by the state (Government Code section 17556).

The enactment of Prop 83 constituted a "subsequent change in law", as defined in Government Code section 17570, because all of the Welfare and Institutions Code sections of the SVP mandate are either expressly included in Prop 83 or are necessary to implement Prop 83. Pursuant to Government Code section 17556, subdivision (f), the cost incurred by a local agency to comply with the SVP mandate is no longer a cost mandated by the state. Therefore, the state's obligation to reimburse affected local agencies has ceased.

The entire text of the sections amended by voters in Prop 83, including the portions not amended, was reenacted by the voters pursuant to Article IV, section 9, of the California Constitution. Because voters approved all of the text in Prop 83, including subdivisions not amended, the sections that formed the SVP mandate are no longer reimbursable pursuant to Government Code section 17556, subdivision (f). These Welfare and Institutions Code sections of the mandate were expressly included in the ballot measure.

The remainder of the mandate's Welfare and Institutions Code sections that were not expressly included in the ballot measure are, nevertheless, necessary to implement the ballot measure. These, too, are no longer reimbursable under Government Code section 17556, subdivision (f). In summary, all activities found to be reimbursable by the Commission in the SVP mandate are no longer reimbursable pursuant to Government Code section 17556, subdivision (f) as they are either: (1) expressly included in Prop 83 or, (2) necessary for the implementation of Prop 83.

The following activities are expressly included in and reenacted by Prop 83 and are no longer reimbursable:

- Activity 1** - Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601, subd. (i)).
- The district attorney or county counsel is designated by the county board of supervisors to assume responsibility for the proceedings. Although subdivision (i) was not amended by Prop 83, all of section 6601 was reenacted by the voters and therefore, this is no longer a reimbursable activity under the SVP mandate.

Request to Adopt a New Test Claim Decision
Department of Finance
Sexually Violent Predators (CSM – 4509)
Section 5: Detailed Analysis

Activity 2 - Initial review of reports and records by the county's designated counsel to determine if the county concurs with the state's recommendation. (Welf. & Inst. Code, § 6601, subd. (i)).

- The district attorney or county counsel is designated by the county board of supervisors to assume responsibility for the initial review of reports and records. Although subdivision (i) was not amended by Prop 83, all of section 6601 was reenacted by the voters and therefore, this is no longer a reimbursable activity under the SVP mandate.

Activity 3 - Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601, subd. (j)).

- Although neither subdivision (i) nor (j) was amended by Prop 83, all of section 6601 was reenacted by the voters and therefore, this is no longer a reimbursable activity under the SVP mandate. **SOD and P&Gs reference to subdivision (j) is likely a typographical error and should be (i) because subdivision (j) lacks subject matter relevancy to this reimbursable activity.

Activity 6 - Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, § 6605, subds. (b) through (d), and Welf. & Inst. Code, § 6608, subds. (a) through (d)).

- Subsequent to a person being committed for an indeterminate term (Welfare and Institutions Code section 6604), Prop 83 requires hearings to determine whether or not the person is still considered to be an SVP. Welfare and Institutions Code section 6605, as amended and reenacted by Prop 83, in subdivision (d) restates the rights of the committed person during subsequent hearings to be the same constitutional protections provided to them at the initial commitment proceeding. Additionally, Prop 83 amends provisions in Welfare and Institutions Code section 6608 that set forth a process to allow the committed person to petition for conditional release or unconditional discharge. Because the aforementioned Welfare and Institutions Code sections were amended and reenacted by Prop 83, these activities are no longer reimbursable under the SVP mandate.

The following activities are necessary to implement Prop 83 and are no longer reimbursable:

Activity 4 - Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602).

- Welfare and Institutions Code section 6604 has been amended by Prop 83 to require an SVP be determined, beyond a reasonable doubt, to still be a sexually violent predator and be committed to an indeterminate term rather than the two-year term set forth in Welfare and Institutions Code section 6602. Because Prop 83 specifies the court or jury determination process regarding sentencing in Welfare and Institutions Code section 6604, it is clear the requirement to hold a probable cause hearing would have been a preceding event. In summary, the probable cause hearing held to determine if

Request to Adopt a New Test Claim Decision
Department of Finance
Sexually Violent Predators (CSM – 4509)
Section 5: Detailed Analysis

the individual is an SVP, as provided for in Welfare and Institutions Code section 6602, is necessary to implement Prop 83 and the subsequent hearing provisions in Welfare and Institutions Code section 6604. Further, the substance of section 6602 is referenced in Welfare and Institutions Code section 6605, subdivision (d) that was reenacted by Prop 83.

Activity 5 - Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604).

- Welfare and Institutions Code section 6603 establishes the criteria to meet obligations contained in sections 6604 and 6605, subdivision (d). Welfare and Institutions Code section 6603 recognizes the constitutional rights of the SVP and thus is an inherently necessary component of implementing Prop 83. Welfare and Institutions Code section 6604, through Prop 83, restates the person committed shall be entitled to the same constitutional protections afforded at the initial commitment proceeding. Moreover, Prop 83 reenacted provisions in Welfare and Institutions Code section 6601, subdivisions (h) through (l) that provide for specified state and local procedures regarding the original commitment process. The processes identified in Welfare and Institutions Code section 6601, subdivisions (h) through (l) require either the district attorney or county counsel to assume the responsibility for proceedings under the entire article. Therefore, it is necessary to provide an SVP, as with any defendant, specified constitutional protections. Because SVP defense-related processes are integral and inherently related to the function and intent of Prop 83, they are necessary statutory components of its implementation and are no longer reimbursable under the SVP mandate.
- The Commission attributed portions of this mandated activity to section 6604, and that section is expressly included in Prop 83.

Activity 7 - Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6603 and 6605, subd. (d)).

- Welfare and Institutions Code section 6603 establishes the criteria to meet obligations contained in Prop 83 as amended and reenacted under Welfare and Institutions Code sections 6604 and 6605, subdivision (d). Welfare and Institutions Code section 6603 recognizes the constitutional rights of the SVP and thus is an inherently necessary component of Prop 83. Therefore, it is necessary to provide an SVP, as with any defendant, specified constitutional protections. Because SVP defense-related processes are integral and inherently related to the function and intent of Prop 83, they are necessary statutory components of its implementation and are no longer reimbursable under the SVP mandate.
- The Commission attributed portions of this mandated activity to section 6605, and that section is expressly included in Prop 83.

**Request to Adopt a New Test Claim Decision
Sexually Violent Predators (CSM – 4509)
5: Detailed Analysis**

- Welfare and Institutions Code section 6604 includes specified jury and court procedures that occur subsequent to the probable cause process as set forth in Welfare and Institutions Code section 6602. Prop 83 reenacted subdivision (d) of Section 6605 that establishes the SVP is entitled to the same constitutional rights provided them at the original commitment proceeding and thus section 6602 is an integral component necessary for Prop 83's implementation. The initial probable cause hearing, as defined in section 6602, is necessary to determine if the person is an SVP. Therefore, subsequent hearings, as defined in Welfare and Institutions Code section 6601, subdivisions (h) through (l), and Welfare and Institutions Code section 6604, could only occur following the initial commitment procedures set forth in Welfare and Institutions Code section 6602. During this time, housing and transportation must be provided pursuant to section 6602. Therefore, Welfare and Institutions Code section 6602 is necessary to implement section 6604, which is part of the ballot measure. Activities, including transportation and housing, associated with the initial SVP determination process are necessary statutory components of Prop 83 implementation and are no longer reimbursable under the SVP mandate.

The preceding activities previously determined to be reimbursable in the Statement of Decision for the SVP mandate (CSM-4509) cease to be a reimbursable mandate pursuant to the amended, reenacted or referenced code sections expressly included in, or necessary to implement Prop 83, pursuant to Government Code section 17570, and Government Code section 17556, subdivision (f).

Request to Adopt a New Test Claim Decision
Department of Finance
Sexually Violent Predators (CSM – 4509)
6: Declarations

Enclosure

According to Schedule A-1 of the Controller's November 14, 2012, "State Mandated Program Cost Report As of September 30, 2012" (See Attachment C), the State provided \$20,754,301 General Fund in 2012-13 to reimburse eligible claimants for the cost of implementing the SVP mandate. Based on that data, the Department of Finance included an estimate of \$21,792,000 General Fund in the 2013-14 Governor's Budget for the cost of the mandate. As costs are paid two years in arrears, the estimate is to provide reimbursement for costs incurred in the 2011-12 fiscal year.

Based on the forgoing analysis, which provides substantiation that the eight previously reimbursable activities in the SVP Statement of Decision (CSM-4509) cease to be eligible for reimbursement, the State's liability for mandate reimbursement pursuant to Article XIII B, Section 6 of the California Constitution should be zero. Pursuant to Government Code section 17570, subdivision (f) and the pre-June 30, 2013 filing date of this request, the effective date of eliminating reimbursement for the SVP mandate will be July 1, 2011.

**Request to Adopt a New Test Claim Decision
Sexually Violent Predators (CSM – 4509)
6: Declarations**

Enclosure

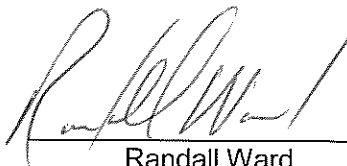
DECLARATION OF RANDALL WARD
DEPARTMENT OF FINANCE

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

1-15-13

at Sacramento, CA



Randall Ward

**Request to Adopt a New Test Claim Decision
Sexually Violent Predators (CSM – 4509)
7: Documentation**

Attachments

Text of Proposed Laws: Proposition 83.....	A
Welfare and Institutions Code sections 6601 through 6608.....	B
State Controller’s November 14, 2012 “State Mandated Program Cost Report (AB 3000)”.....	C

include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes under designated conditions, the Treasurer may maintain separate accounts for the bond proceeds invested and for the investment earnings on those proceeds, and may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds, as may be required or desirable under federal law in order to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

5096.963. For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, with interest at the rate earned by the money in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

5096.964. All money deposited in the fund that is derived from premium and accrued interest on bonds sold pursuant to this chapter shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

5096.965. Pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, the cost of bond issuance shall be paid out of the bond proceeds. These costs shall be shared proportionally by each program funded through this bond act.

5096.966. The bonds issued and sold pursuant to this chapter may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the electors of the state for the issuance of the bonds under this chapter shall include approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

5096.967. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

PROPOSITION 83

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and adds sections to the Penal Code and amends sections of the Welfare and Institutions Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. SHORT TITLE

This Act shall be known and may be cited as "The Sexual Predator Punishment and Control Act: Jessica's Law."

SEC. 2. FINDINGS AND DECLARATIONS

The People find and declare each of the following:

(a) The State of California currently places a high priority on maintaining public safety through a highly skilled and trained law enforcement as well as laws that deter and punish criminal behavior.

(b) Sex offenders have very high recidivism rates. According to a 1998 report by the U.S. Department of Justice, sex offenders are the least likely to be cured and the most likely to reoffend, and they prey on the most innocent members of our society. More than two-thirds of the victims of rape and sexual assault are under the age of 18. Sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon.

(c) Child pornography exploits children and robs them of their innocence. FBI studies have shown that pornography is very influential in the actions of sex offenders. Statistics show that 90% of the predators

who molest children have had some type of involvement with pornography. Predators often use child pornography to aid in their molestation.

(d) The universal use of the Internet has also ushered in an era of increased risk to our children by predators using this technology as a tool to lure children away from their homes and into dangerous situations. Therefore, to reflect society's disapproval of this type of activity, adequate penalties must be enacted to ensure predators cannot escape prosecution.

(e) With these changes, Californians will be in a better position to keep themselves, their children, and their communities safe from the threat posed by sex offenders.

(f) It is the intent of the People in enacting this measure to help Californians better protect themselves, their children, and their communities; it is not the intent of the People to embarrass or harass persons convicted of sex offenses.

(g) Californians have a right to know about the presence of sex offenders in their communities, near their schools, and around their children.

(h) California must also take additional steps to monitor sex offenders, to protect the public from them, and to provide adequate penalties for and safeguards against sex offenders, particularly those who prey on children. Existing laws that punish aggravated sexual assault, habitual sexual offenders, and child molesters must be strengthened and improved. In addition, existing laws that provide for the commitment and control of sexually violent predators must be strengthened and improved.

(i) Additional resources are necessary to adequately monitor and supervise sexual predators and offenders. It is vital that the lasting effects of the assault do not further victimize victims of sexual assault.

(j) Global Positioning System technology is an useful tool for monitoring sexual predators and other sex offenders and is a cost effective measure for parole supervision. It is critical to have close supervision of this class of criminals to monitor these offenders and prevent them from committing other crimes.

(k) California is the only state, of the number of states that have enacted laws allowing involuntary civil commitments for persons identified as sexually violent predators, which does not provide for indeterminate commitments. California automatically allows for a jury trial every two years irrespective of whether there is any evidence to suggest or prove that the committed person is no longer a sexually violent predator. As such, this act allows California to protect the civil rights of those persons committed as a sexually violent predator while at the same time protect society and the system from unnecessary or frivolous jury trial actions where there is no competent evidence to suggest a change in the committed person.

SEC. 3. Section 209 of the Penal Code is amended to read:

209. (a) Any person who seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away another person by any means whatsoever with intent to hold or detain, or who holds or detains, that person for ransom, reward or to commit extortion or to exact from another person any money or valuable thing, or any person who aids or abets any such act, is guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for life without possibility of parole in cases in which any person subjected to any such act suffers death or bodily harm, or is intentionally confined in a manner which exposes that person to a substantial likelihood of death, or shall be punished by imprisonment in the state prison for life with the possibility of parole in cases where no such person suffers death or bodily harm.

(b)(1) Any person who kidnaps or carries away any individual to commit robbery, rape, spousal rape, oral copulation, sodomy, or ~~sexual penetration~~ in any violation of Section 264.1, 288, or 289, shall be punished by imprisonment in the state prison for life with *the* possibility of parole.

(2) This subdivision shall only apply if the movement of the victim is beyond that merely incidental to the commission of, and increases the risk of harm to the victim over and above that necessarily present in, the intended underlying offense.

(c) In all cases in which probation is granted, the court shall, except in unusual cases where the interests of justice would best be served by a lesser penalty, require as a condition of the probation that the person be confined in the county jail for 12 months. If the court grants probation without requiring the defendant to be confined in the county jail for 12 months, it shall specify its reason or reasons for imposing a lesser penalty.

(d) Subdivision (b) shall not be construed to supersede or affect

1E

83

Section 667.61. A person may be charged with a violation of subdivision (b) and Section 667.61. However, a person may not be punished under subdivision (b) and Section 667.61 for the same act that constitutes a violation of both subdivision (b) and Section 667.61.

SEC. 4. Section 220 of the Penal Code is amended to read:

220. ~~Every~~ (a) *Except as provided in subdivision (b), any person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 is punishable shall be punished by imprisonment in the state prison for two, four, or six years.*

(b) *Any person who, in the commission of a burglary of the first degree, as defined in subdivision (a) of Section 460, assaults another with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for life with the possibility of parole.*

SEC. 5. Section 269 of the Penal Code is amended to read:

269. (a) Any person who commits any of the following acts upon a child who is under 14 years of age and ~~to~~ seven or more years younger than the person is guilty of aggravated sexual assault of a child:

(1) ~~A Rape, in violation of paragraph (2) or (6) of subdivision (a) of Section 261.~~

(2) ~~A Rape or sexual penetration, in concert, in violation of Section 264.1.~~

(3) ~~Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 286—when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.~~

(4) ~~Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 288a—when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.~~

(5) ~~A Sexual penetration, in violation of subdivision (a) of Section 289.~~

(b) Any person who violates this section is guilty of a felony and shall be punished by imprisonment in the state prison for 15 years to life.

(c) *The court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6.*

SEC. 6. Section 288.3 is added to the Penal Code, to read:

288.3. (a) *Every person who contacts or communicates with a minor, or attempts to contact or communicate with a minor, who knows or reasonably should know that the person is a minor, with intent to commit an offense specified in Section 207, 209, 261, 264.1, 273a, 286, 288, 288a, 288.2, 289, 311.1, 311.2, 311.4 or 311.11 involving the minor shall be punished by imprisonment in the state prison for the term prescribed for an attempt to commit the intended offense.*

(b) *As used in this section, “contacts or communicates with” shall include direct and indirect contact or communication that may be achieved personally or by use of an agent or agency, any print medium, any postal service, a common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications device or system.*

(c) *A person convicted of a violation of subdivision (a) who has previously been convicted of a violation of subdivision (a) shall be punished by an additional and consecutive term of imprisonment in the state prison for five years.*

SEC. 7. Section 290.3 of the Penal Code is amended to read:

290.3. (a) Every person who is convicted of any offense specified in subdivision (a) of Section 290 shall, in addition to any imprisonment or fine, or both, imposed for ~~violation~~ commission of the underlying offense, be punished by a fine of ~~two three~~ three hundred dollars (~~\$200~~) (\$300) upon the first conviction or a fine of ~~three five~~ five hundred dollars (~~\$300~~) (\$500) upon the second and each subsequent conviction, unless the court determines that the defendant does not have the ability to pay the fine.

An amount equal to all fines collected pursuant to this subdivision during the preceding month upon conviction of, or upon the forfeiture of bail by, any person arrested for, or convicted of, committing an offense specified in subdivision (a) of Section 290, shall be transferred once a month by the county treasurer to the Controller for deposit in the General Fund. Moneys deposited in the General Fund pursuant to this subdivision

shall be transferred by the Controller as provided in subdivision (b).

(b) ~~Out~~ *Except as provided in subdivision (d), out of the moneys deposited pursuant to subdivision (a) as a result of second and subsequent convictions of Section 290, one-third shall first be transferred to the Department of Justice Sexual Habitual Offender Fund, as provided in paragraph (1) of this subdivision. Out of the remainder of all moneys deposited pursuant to subdivision (a), 50 percent shall be transferred to the Department of Justice Sexual Habitual Offender Fund, as provided in paragraph (1), 25 percent shall be transferred to the Department of Justice DNA Testing Fund, as provided in paragraph (2), and 25 percent shall be allocated equally to counties that maintain a local DNA testing laboratory, as provided in paragraph (3).*

(1) Those moneys so designated shall be transferred to the Department of Justice Sexual Habitual Offender Fund created pursuant to paragraph (5) of subdivision (b) of Section 11170 and, when appropriated by the Legislature, shall be used for the purposes of Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4 for the purpose of monitoring, apprehending, and prosecuting sexual habitual offenders.

(2) Those moneys so designated shall be directed to the Department of Justice and transferred to the Department of Justice DNA Testing Fund, which is hereby created, for the exclusive purpose of testing deoxyribonucleic acid (DNA) samples for law enforcement purposes. The moneys in that fund shall be available for expenditure upon appropriation by the Legislature.

(3) Those moneys so designated shall be allocated equally and distributed quarterly to counties that maintain a local DNA testing laboratory. Before making any allocations under this paragraph, the Controller shall deduct the estimated costs that will be incurred to set up and administer the payment of these funds to the counties. Any funds allocated to a county pursuant to this paragraph shall be used by that county for the exclusive purpose of testing DNA samples for law enforcement purposes.

(c) Notwithstanding any other provision of this section, the Department of Corrections or the Department of the Youth Authority may collect a fine imposed pursuant to this section from a person convicted of a violation of any offense listed in subdivision (a) of Section 290, that results in incarceration in a facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority. All moneys collected by the Department of Corrections or the Department of the Youth Authority under this subdivision shall be transferred, once a month, to the Controller for deposit in the General Fund, as provided in subdivision (a), for transfer by the Controller, as provided in subdivision (b).

(d) *An amount equal to one hundred dollars for every fine imposed pursuant to subdivision (a) in excess of one hundred dollars shall be transferred to the Department of Corrections and Rehabilitation to defray the cost of the global positioning system used to monitor sex offender parolees.*

SEC. 8. Section 311.11 of the Penal Code is amended to read:

311.11. (a) Every person who knowingly possesses or controls any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a ~~public offense felony~~ and shall be punished by imprisonment in the state prison, or a county jail for up to one year, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both the fine and imprisonment.

(b) ~~If a~~ *Every person who commits a violation of subdivision (a), and who has been previously convicted of a violation of this section, or of a violation of subdivision (b) of Section 311.2, or subdivision (b) of Section 311.4, he or she an offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, or an attempt to commit any of the above-mentioned offenses, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.*

(c) It is not necessary to prove that the matter is obscene in order to establish a violation of this section.

(d) This section does not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America, nor does it apply to live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

SEC. 9. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) ~~Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as defined in subdivision (c) or (d) of Section 286.~~

(5) ~~Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as defined in subdivision (c) or (d) of Section 288a.~~

(6) ~~Lewd acts on a child under the age of 14 years or lascivious act as defined in subdivision (a) or (b) of Section 288.~~

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in *subdivision (a) of Section 12022.3*, or Section 12022.5 or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) ~~The offense Sexual penetration as defined in subdivision (a) or (j) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.~~

(12) Attempted murder.

(13) A violation of Section 12308, 12309, or 12310.

(14) Kidnapping.

(15) ~~Assault with the intent to commit mayhem, rape, sodomy, or oral copulation a specified felony~~, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) ~~Rape, spousal rape, or sexual penetration, in concert~~, in violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.

(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 10. Section 667.51 of the Penal Code is amended to read:

667.51. (a) Any person who is ~~found guilty convicted~~ of violating Section 288 or 288.5 shall receive a five-year enhancement for a prior conviction of an offense listed *specified* in subdivision (b); ~~provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction.~~

(b) Section 261, 262, 264.1, 269, 285, 286, 288, 288a, 288.5, or 289, or any offense committed in another jurisdiction that includes all of the elements of any of the offenses *set forth specified* in this subdivision.

(c) ~~Section 261, 264.1, 286, 288, 288a, 288.5, or 289, or any offense committed in another jurisdiction that includes all of the elements of any of the offenses set forth in this subdivision.~~

(d) A violation of Section 288 or 288.5 by a person who has been

previously convicted two or more times of an offense listed specified in subdivision (e) is punishable as a felony (b) shall be punished by imprisonment in the state prison for 15 years to life. However, if the two or more prior convictions were for violations of Section 288, this subdivision is applicable only if the current violation or at least one of the prior convictions is for an offense other than a violation of subdivision (a) of Section 288. For purposes of this subdivision, a prior conviction is required to have been for charges brought and tried separately. The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term in a state prison imposed pursuant to this section, but that person shall not otherwise be released on parole prior to that time.

SEC. 11. Section 667.6 of the Penal Code is amended to read:

667.6. (a) Any person who is found guilty of violating paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, Section 288.5 or subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person convicted of an offense specified in subdivision (e) and who has been convicted previously of any of those offenses shall receive a five-year enhancement for each of those prior convictions provided that no enhancement shall be imposed under this subdivision for any conviction occurring prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. In addition to the five-year enhancement imposed under this subdivision, the court also may impose a fine not to exceed twenty thousand dollars (\$20,000) for anyone sentenced under these provisions. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837.

(b) Any person who is convicted of an offense specified in subdivision (a) (e) and who has served two or more prior prison terms as defined in Section 667.5 for any offense specified in subdivision (a), of those offenses shall receive a 10-year enhancement for each of those prior terms provided that no additional enhancement shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. In addition to the 10-year enhancement imposed under this subdivision, the court also may impose a fine not to exceed twenty thousand dollars (\$20,000) for any person sentenced under this subdivision. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837.

(c) In lieu of the term provided in Section 1170.1, a full, separate, and consecutive term may be imposed for each violation of Section 220, other than an assault with intent to commit mayhem, provided that the person has been convicted previously of violating Section 220 for an offense other than an assault with intent to commit mayhem, paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, Section 288.5 or subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person whether or not the crimes were committed during a single transaction an offense specified in subdivision (e) if the crimes involve the same victim on the same occasion. A term may be imposed consecutively pursuant to this subdivision if a person is convicted of at least one offense specified in subdivision (e). If the term is imposed consecutively pursuant to this subdivision, it shall be served consecutively to any other term of imprisonment, and shall commence from the time the person otherwise would have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but

shall commence at the time the person otherwise would have been released from prison.

(d) A full, separate, and consecutive term shall be served imposed for each violation of Section 220, other than an assault with intent to commit mayhem, provided that the person has been convicted previously of violating Section 220 for an offense other than an assault with intent to commit mayhem, paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person an offense specified in subdivision (e) if the crimes involve separate victims or involve the same victim on separate occasions.

In determining whether crimes against a single victim were committed on separate occasions under this subdivision, the court shall consider whether, between the commission of one sex crime and another, the defendant had a reasonable opportunity to reflect upon his or her actions and nevertheless resumed sexually assaultive behavior. Neither the duration of time between crimes, nor whether or not the defendant lost or abandoned his or her opportunity to attack, shall be, in and of itself, determinative on the issue of whether the crimes in question occurred on separate occasions.

The term shall be served consecutively to any other term of imprisonment and shall commence from the time the person otherwise would have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.

(e) This section shall apply to the following offenses:

- (1) Rape, in violation of paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261.
- (2) Spousal rape, in violation of paragraph (1), (4), or (5) of subdivision (a) of Section 262.
- (3) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.
- (4) Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) or (k), of Section 286.
- (5) Lewd or lascivious act, in violation of subdivision (b) of Section 288.
- (6) Continuous sexual abuse of a child, in violation of Section 288.5.
- (7) Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) or (k), of Section 288a.
- (8) Sexual penetration, in violation of subdivision (a) or (g) of Section 289.
- (9) As a present offense under subdivision (c) or (d), assault with intent to commit a specified sexual offense, in violation of Section 220.
- (10) As a prior conviction under subdivision (a) or (b), an offense committed in another jurisdiction that includes all of the elements of an offense specified in this subdivision.

(f) In addition to any enhancement imposed pursuant to subdivision (a) or (b), the court may also impose a fine not to exceed twenty thousand dollars (\$20,000) for anyone sentenced under those provisions. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837. If the court orders a fine to be imposed pursuant to this subdivision (a) or (b), the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 12. Section 667.61 of the Penal Code is amended to read:

667.61. (a) Any person who is convicted of an offense specified in subdivision (c) under one or more of the circumstances specified in subdivision (d) or under two or more of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for 25 years to life and shall not be eligible for release on parole for 25 years



except as provided in subdivision (j).

(b) Except as provided in subdivision (a), ~~any~~ any person who is convicted of an offense specified in subdivision (c) under one of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for 15 years to life and shall not be eligible for release on parole for 15 years except as provided in subdivision (j).

(c) This section shall apply to any of the following offenses:

(1) ★ Rape, in violation of paragraph (2) or (6) of subdivision (a) of Section 261.

(2) ★ Spousal rape, in violation of paragraph (1) or (4) of subdivision (a) of Section 262.

(3) ★ Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.

(4) ★ Lewd or lascivious act, in violation of subdivision (b) of Section 288.

(5) ★ Sexual penetration, in violation of subdivision (a) of Section 289.

(6) ~~Sodomy or oral copulation~~ Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 286 ~~or 288a~~ by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(7) ★ Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 288a.

(8) Lewd or lascivious act, in violation of subdivision (a) of Section 288; ~~unless the defendant qualifies for probation under subdivision (c) of Section 1203.066.~~

(9) Continuous sexual abuse of a child, in violation of Section 288.5.

(d) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) The defendant has been previously convicted of an offense specified in subdivision (c), including an offense committed in another jurisdiction that includes all of the elements of an offense specified in subdivision (c).

(2) The defendant kidnapped the victim of the present offense and the movement of the victim substantially increased the risk of harm to the victim over and above that level of risk necessarily inherent in the underlying offense in subdivision (c).

(3) The defendant inflicted aggravated mayhem or torture on the victim or another person in the commission of the present offense in violation of Section 205 or 206.

(4) The defendant committed the present offense during the commission of a burglary of the first degree, as defined in subdivision (a) of Section 460, with intent to commit an offense specified in subdivision (c).

(5) ~~The defendant committed the present offense in violation of Section 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 288a, and, in the commission of that offense, any person committed any act described in paragraph (2), (3), or (4) of this subdivision.~~

(e) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) Except as provided in paragraph (2) of subdivision (d), the defendant kidnapped the victim of the present offense in violation of Section 207, 209, or 209.5.

(2) Except as provided in paragraph (4) of subdivision (d), the defendant committed the present offense during the commission of a burglary, as defined in subdivision (a) of Section 460, or during the commission of a burglary of a building, including any commercial establishment, which was then closed to the public, in violation of Section 459.

(3) The defendant personally inflicted great bodily injury on the victim or another person in the commission of the present offense in violation of Section 12022.53, 12022.7, or 12022.8.

(4) The defendant personally used a dangerous or deadly weapon or a firearm in the commission of the present offense in violation of Section 12022, 12022.3, 12022.5, or 12022.53.

(5) The defendant has been convicted in the present case or cases of committing an offense specified in subdivision (c) against more than one victim.

(6) The defendant engaged in the tying or binding of the victim or

another person in the commission of the present offense.

(7) The defendant administered a controlled substance to the victim by force, violence, or fear in the commission of the present offense in violation of Section 12022.75.

(8) ~~The defendant committed the present offense in violation of Section 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 288a, and, in the commission of that offense, any person committed any act described in paragraph (1), (2), (3), (4), (6), or (7) of this subdivision.~~

(f) If only the minimum number of circumstances specified in subdivision (d) or (e) which that are required for the punishment provided in subdivision (a) or (b) to apply have been pled and proved, that circumstance or those circumstances shall be used as the basis for imposing the term provided in subdivision (a) or (b), whichever is greater, rather than being used to impose the punishment authorized under any other provision of law, unless another provision of law provides for a greater penalty or the punishment under another provision of law can be imposed in addition to the punishment provided by this section. However, if any additional circumstance or circumstances specified in subdivision (d) or (e) have been pled and proved, the minimum number of circumstances shall be used as the basis for imposing the term provided in subdivision (a), and any other additional circumstance or circumstances shall be used to impose any punishment or enhancement authorized under any other provision of law.

(g) Notwithstanding Section 1385 or any other provision of law, the court shall not strike any allegation, admission, or finding of any of the circumstances specified in subdivision (d) or (e) for any person who is subject to punishment under this section.

(g) ~~The term specified in subdivision (a) or (b) shall be imposed on the defendant once for any offense or offenses committed against a single victim during a single occasion. If there are multiple victims during a single occasion, the term specified in subdivision (a) or (b) shall be imposed on the defendant once for each separate victim. Terms for other offenses committed during a single occasion shall be imposed as authorized under any other law, including Section 667.6, if applicable.~~

(h) ~~Probation~~ Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is subject to punishment under this section for any offense specified in paragraphs (1) to (6), inclusive, of subdivision (c).

(i) ~~For the any offense specified in paragraphs (1) to (7), inclusive, of subdivision (c), the court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6.~~

(j) ~~The penalties provided in this section to shall apply; only if the existence of any fact required under circumstance specified in subdivision (d) or (e) shall be is alleged in the accusatory pleading pursuant to this section, and is either admitted by the defendant in open court or found to be true by the trier of fact.~~

(j) ~~Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce the minimum term of 25 years in the state prison imposed pursuant to subdivision (a) or 15 years in the state prison imposed pursuant to subdivision (b). However, in no case shall the minimum term of 25 or 15 years be reduced by more than 15 percent for credits granted pursuant to Section 2933, 4019, or any other law providing for conduct credit reduction. In no case shall any person who is punished under this section be released on parole prior to serving at least 85 percent of the minimum term of 25 or 15 years in the state prison.~~

SEC. 13. Section 667.71 of the Penal Code amended to read:

667.71. (a) For the purpose of this section, a habitual sexual offender is a person who has been previously convicted of one or more of the offenses listed specified in subdivision (c) and who is convicted in the present proceeding of one of those offenses.

(b) A habitual sexual offender is ~~punishable shall be punished~~ by imprisonment in the state prison for 25 years to life. ~~Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 25 years in the state prison imposed pursuant to this section. However, in no case shall the minimum term of 25 years be reduced by more than 15 percent for credits granted pursuant to Section 2933, 4019, or any other law providing for conduct credit reduction. In no case shall any person who is punished under this section be released on parole prior to serving at least 85 percent of the minimum term of 25~~



years in the state prison:

- (c) This section shall apply to any of the following offenses:
 - (1) ★ *Rape*, in violation of paragraph (2) or (6) of subdivision (a) of Section 261.
 - (2) ★ *Spousal rape*, in violation of paragraph (1) or (4) of subdivision (a) of Section 262.
 - (3) ★ *Rape, spousal rape, or sexual penetration, in concert*, in violation of Section 264.1.
 - (4) ★ *Lewd or lascivious act*, in violation of subdivision (a) or (b) of Section 288.
 - (5) ★ *Sexual penetration*, in violation of subdivision (a) or (j) of Section 289.
 - (6) ★ *Continuous sexual abuse of a child*, in violation of Section 288.5.
 - (7) ★ *Sodomy*, in violation of subdivision (c) or (d) of Section 286 by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
 - (8) ★ *Violation of subdivision (d) of Section 286.*
 - (9) ★ *Oral copulation*, in violation of subdivision (c) or (d) of Section 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
 - (10) ★ *(9) Kidnapping*, in violation of subdivision (b) of Section 207.
 - (11) ★ *(10) Kidnapping*, in violation of former subdivision (d) of Section 208 (kidnapping to commit specified sex offenses).
 - (12) ★ *(11) Kidnapping*, in violation of subdivision (b) of Section 209 with the intent to commit rape, spousal rape, oral copulation, or sodomy or sexual penetration in violation of Section 289 a specified sexual offense.
 - (13) ★ *(12) Aggravated sexual assault of a child*, in violation of Section 269.
 - (14) ★ *(13) An offense committed in another jurisdiction that has includes all of the elements of an offense specified in paragraphs (1) to (13), inclusive, of this subdivision.*
 - (d) *Notwithstanding Section 1385 or any other provision of law, the court shall not strike any allegation, admission, or finding of any prior conviction specified in subdivision (c) for any person who is subject to punishment under this section.*
 - (e) *Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is subject to punishment under this section.*
 - (f) This section shall apply only if the defendant's status as a habitual sexual offender is alleged in the information accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by court sitting without a jury trier of fact.
- SEC. 14. Section 1203.06 of the Penal Code is amended to read:
1203.06. ~~Notwithstanding Section 1203:~~
- (a) ~~Probation Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within this section be stricken pursuant to Section 1385 for, any of the following persons:~~
 - (1) Any person who personally used a firearm during the commission or attempted commission of any of the following crimes:
 - (A) Murder.
 - (B) Robbery, in violation of Section 211.
 - (C) Kidnapping, in violation of Section 207, 209, or 209.5.
 - (D) ~~Kidnapping in violation of Section 209 Lewd or lascivious act, in violation of Section 288.~~
 - (E) Burglary of the first degree, as defined in Section 460.
 - (F) ~~Except as provided in Section 1203.065, rape Rape~~, in violation of paragraph (2) of subdivision (a) of Section 261, 262, or 264.1.
 - (G) Assault with intent to commit rape or sodomy a specified sexual offense, in violation of Section 220.
 - (H) Escape, in violation of Section 4530 or 4532.
 - (I) Carjacking, in violation of Section 215.
 - (J) ~~Any person convicted of aggravated Aggravated mayhem, in~~

violation of Section 205.

- (K) Torture, in violation of Section 206.
 - (L) ~~Kidnapping, in violation of Section 209.5 Continuous sexual abuse of a child, in violation of Section 288.5.~~
 - (M) A felony violation of Section 136.1 or 137.
 - (N) Sodomy, in violation of Section 286.
 - (O) Oral copulation, in violation of Section 288a.
 - (P) Sexual penetration, in violation of Section 289 or 264.1.
 - (Q) Aggravated sexual assault of a child, in violation of Section 269.
 - (2) Any person previously convicted of a felony specified in ~~subparagraphs (A) to (L), inclusive, of paragraph (1), or assault with intent to commit murder under former Section 217, who is convicted of a subsequent felony and who was personally armed with a firearm at any time during its commission or attempted commission or was unlawfully armed with a firearm at the time of his or her arrest for the subsequent felony.~~
 - (3) Aggravated arson, in violation of Section 451.5.
 - (b)(1) The existence of any fact ~~which that~~ would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt, by the court where guilt is established by plea of guilty or nolo contendere, or by trial by the court sitting without a jury trier of fact.
 - (2) ~~This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.~~
 - (3) As used in subdivision (a), "used a firearm" means to display a firearm in a menacing manner, to intentionally fire it, or to intentionally strike or hit a human being with it, or to use it in any manner that qualifies under Section 12022.5.
 - (4) (3) As used in subdivision (a), "armed with a firearm" means to knowingly carry or have available for use a firearm as a means of offense or defense.
- SEC. 15. Section 1203.065 of the Penal Code is amended to read:
1203.065. (a) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is convicted of violating paragraph (2) or (6) of subdivision (a) of Section 261, Section 264.1, 266h, 266i, or 266j, or 269, paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 286, paragraph (2) or (3) of subdivision (e), or subdivision (d), of Section 288a, subdivision (a) of Section 289, ~~of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, or of violating subdivision (c) of Section 311.4.~~
- (b)(1) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of ~~a violation of violating~~ paragraph (7) of subdivision (a) of Section 261, subdivision (k) of Section 286, subdivision (k) of Section 288a, ~~subdivision (g) of Section 289, or Section 220 for assault with intent to commit any of the following: rape, sodomy, oral copulation, or any violation of Section 264.1, subdivision (b) of Section 288, or Section 289 a specified sexual offense.~~
 - (2) When probation is granted, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.
- SEC. 16. Section 1203.075 of the Penal Code is amended to read:
1203.075. ~~Notwithstanding the provisions of Section 1203:~~
- (a) ~~Probation Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within this section be stricken pursuant to Section 1385 for, any person who, with the intent to inflict the injury, personally inflicts great bodily injury, as defined in Section 12022.7, on the person of another in the commission or attempted commission of any of the following crimes:~~
 - (1) Murder.
 - (2) Robbery, in violation of Section 211.
 - (3) Kidnapping, in violation of Section 207, 209, or 209.5.
 - (4) Kidnapping, in violation of Section 209 Lewd or lascivious act, in violation of Section 288.



- (5) Burglary of the first degree, as defined in Section 460.
- (6) Rape, in violation of paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 261, 262, or 264.1.
- (7) Assault with intent to commit rape or sodomy a specified sexual offense, in violation of Section 220.
- (8) Escape, in violation of Section 4530 or 4532.
- (9) ~~Sexual penetration, in violation of subdivision (a) of Section 289 or 264.1.~~
- (10) Sodomy, in violation of Section 286.
- (11) Oral copulation, in violation of Section 288a.
- (12) Carjacking, in violation of Section 215.
- (13) ~~Kidnapping, in violation of Section 209.5 Continuous sexual abuse of a child, in violation of Section 288.5.~~
- (14) ~~Aggravated sexual assault of a child, in violation of Section 269.~~

(b)(+) The existence of any fact which that would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury trier of fact.

~~(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.~~

~~(3) As used in subdivision (a), "great bodily injury" means "great bodily injury" as defined in Section 12022.7.~~

SEC. 17. Section 3000 of the Penal Code is amended to read:

3000. (a)(l) The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section.

(2) The Legislature finds and declares that it is not the intent of this section to diminish resources allocated to the Department of Corrections for parole functions for which the department is responsible. It is also not the intent of this section to diminish the resources allocated to the Board of Prison Terms to execute its duties with respect to parole functions for which the board is responsible.

(3) The Legislature finds and declares that diligent effort must be made to ensure that parolees are held accountable for their criminal behavior, including, but not limited to, the satisfaction of restitution fines and orders.

~~(4) Any finding made pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, that a person is The parole period of any person found to be a sexually violent predator shall not toll, discharge, or otherwise affect that person's be tolled until that person is found to no longer be a sexually violent predator, at which time the period of parole, or any remaining portion thereof, shall begin to run.~~

(b) Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter, the following shall apply:

(1) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, the inmate shall be released on parole for a period not exceeding three years, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding five years, unless in either case the parole authority for good cause waives parole and discharges the inmate from the custody of the department.

(2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause

waives parole and discharges the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(3) Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61 or 667.71, the period of parole shall be five 10 years. ~~Upon the request of the Department of Corrections, and on the grounds that the paroled inmate may pose a substantial danger to public safety, the Board of Prison Terms shall conduct a hearing to determine if the parolee shall be subject to a single additional five-year period of parole. The board shall conduct the hearing pursuant to the procedures and standards governing parole revocation. The request for parole extension shall be made no less than 180 days prior to the expiration of the initial five-year period of parole.~~

(4) The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(5) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1), (2), or (3), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and paragraphs (1), (2), and (3) shall be computed from the date of initial parole or from the date of extension of parole pursuant to paragraph (3) and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, in no case, ~~except the period of parole is subject to the following:~~

(A) Except as provided in Section 3064, in no case may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial parole, and, ~~except parole.~~

(B) Except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole or from the date of extension of parole pursuant to paragraph (3).

(C) Except as provided in Section 3064, in no case may a prisoner subject to 10 years on parole be retained under parole supervision or in custody for a period longer than 15 years from the date of his or her initial parole.

(6) The Department of Corrections shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections or the Board of Prison Terms may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

(7) For purposes of this chapter, the Board of Prison Terms shall be considered the parole authority.

(8) The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the Board of Prison Terms, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

(9) It is the intent of the Legislature that efforts be made with respect to persons who are subject to subparagraph (C) of paragraph (1) of subdivision (a) of Section 290 who are on parole to engage them in treatment.

SEC. 18. Section 3000.07 is added to the Penal Code, to read:

3000.07. (a) Every inmate who has been convicted for any felony violation of a "registerable sex offense" described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290 or any attempt to commit any of the above-mentioned offenses and who is committed to prison and released on parole pursuant to Section 3000 or 3000.1 shall be monitored by a global positioning system for the term of his or her parole, or for the duration or any remaining part thereof, whichever period of time is less.

(b) Any inmate released on parole pursuant to this section shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections shall waive any



or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for the global positioning monitoring. No inmate shall be denied parole on the basis of his or her inability to pay for those monitoring costs.

SEC. 19. Section 3001 of the Penal Code is amended to read:

3001. (a) Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was not imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison, and has been on parole continuously for one year since release from confinement, within 30 days, that person shall be discharged from parole, unless the Department of Corrections recommends to the Board of Prison Terms that the person be retained on parole and the board, for good cause, determines that the person will be retained. Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison for a period not exceeding three years and has been on parole continuously for two years since release from confinement, or has been released on parole from the state prison for a period not exceeding five years and has been on parole continuously for three years since release from confinement, the department shall discharge, within 30 days, that person from parole, unless the department recommends to the board that the person be retained on parole and the board, for good cause, determines that the person will be retained. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(b) Notwithstanding any other provision of law, when any person referred to in paragraph (2) ~~or (3)~~ of subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for three years since release from confinement ~~or since extension of parole~~, the board shall discharge, within 30 days, the person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(c) *Notwithstanding any other provision of law, when any person referred to in paragraph (3) of subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for six years since release from confinement, the board shall discharge, within 30 days, the person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.*

(d) In the event of a retention on parole, the parolee shall be entitled to a review by the parole authority each year thereafter until the maximum statutory period of parole has expired.

~~(d)~~ (e) The amendments to this section made during the 1987–88 Regular Session of the Legislature shall only be applied prospectively and shall not extend the parole period for any person whose eligibility for discharge from parole was fixed as of the effective date of those amendments.

SEC. 20. Section 3003 of the Penal Code is amended to read:

3003. (a) Except as otherwise provided in this section, an inmate who is released on parole shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration.

For purposes of this subdivision, “last legal residence” shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Prison Terms setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee’s permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following

factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate’s parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate’s parole would be successfully completed.

(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

(e)(l) The following information, if available, shall be released by the Department of Corrections to local law enforcement agencies regarding a paroled inmate who is released in their jurisdictions:

(A) Last, first, and middle name.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver’s license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the parolee’s residence location for use with a Geographical Information System (GIS) or comparable computer program.

(2) The information required by this subdivision shall come from the statewide parolee database. The information obtained from each source shall be based on the same timeframe.

(3) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(4) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(f) Notwithstanding any other provision of law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, of subdivision (c) of Section 667.5 or a

felony in which the defendant inflicts great bodily injury on any person other than an accomplice that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of a victim or witness.

~~(g)(i) Notwithstanding any other law, an inmate who is released on parole for any violation of Section 288 or 288.5 shall not be placed or reside, for the duration of his or her period of parole, within one-quarter mile of any public or private school, including any or all of kindergarten and grades 1 to 8, inclusive.~~

Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of his or her parole, within one-half mile of any public or private school including any or all of kindergarten and grades 1 to 12, inclusive.

~~(h)~~ Notwithstanding any other law, an inmate who is released on parole for an offense involving stalking shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of the victim.

~~(i)~~ (h) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

~~(j)~~ (i) An inmate may be paroled to another state pursuant to any other law.

~~(k)~~ (j)(1) Except as provided in paragraph (2), the Department of Corrections shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e).

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

SEC. 21. Section 3003.5 of the Penal Code is amended to read:

3003.5. (a) Notwithstanding any other provision of law, when a person is released on parole after having served a term of imprisonment in state prison for any offense for which registration is required pursuant to Section 290, that person may not, during the period of parole, reside in any single family dwelling with any other person also required to register pursuant to Section 290, unless those persons are legally related by blood, marriage, or adoption. For purposes of this section, "single family dwelling" shall not include a residential facility which serves six or fewer persons.

(b) Notwithstanding any other provision of law, it is unlawful for any person for whom registration is required pursuant to Section 290 to reside within 2000 feet of any public or private school, or park where children regularly gather.

(c) Nothing in this section shall prohibit municipal jurisdictions from enacting local ordinances that further restrict the residency of any person for whom registration is required pursuant to Section 290.

SEC. 22. Section 3004 of the Penal Code is amended to read:

3004. (a) Notwithstanding any other law, the parole authority may require, as a condition of release on parole or reinstatement on parole, or as an intermediate sanction in lieu of return to prison, that an inmate or parolee agree in writing to the use of electronic monitoring or supervising devices for the purpose of helping to verify his or her compliance with all other conditions of parole. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the parolee and the agent supervising the parolee which is to be used solely for the purposes of voice identification.

(b) Every inmate who has been convicted for any felony violation of a "registerable sex offense" described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290 or any attempt to commit any of the above-mentioned offenses and who is committed to prison and released on parole pursuant to Section 3000 or 3000.1 shall be monitored by a global positioning system for life.

(c) Any inmate released on parole pursuant to this section shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for the global positioning monitoring.

SEC. 23. Section 12022.75 of the Penal Code is amended to read:

12022.75. Any (a) Except as provided in subdivision (b), any person who, for the purpose of committing a felony, administers by injection, inhalation, ingestion, or any other means, any controlled substance listed in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code, against the victim's will by means of force, violence, or fear of immediate and unlawful bodily injury to the victim or another person, shall, in addition and consecutive to the penalty provided for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of three years.

(b)(1) Any person who, in the commission or attempted commission of any offense specified in paragraph (2), administers any controlled substance listed in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code to the victim shall be punished by an additional and consecutive term of imprisonment in the state prison for five years.

(2) This subdivision shall apply to the following offenses:

(A) Rape, in violation of paragraph (3) or (4) of subdivision (a) of Section 261.

(B) Sodomy, in violation of subdivision (f) or (i) of Section 286.

(C) Oral copulation, in violation of subdivision (f) or (i) of Section 288a.

(D) Sexual penetration, in violation of subdivision (d) or (e) of Section 289.

(E) Any offense specified in subdivision (c) of Section 667.61.

SEC. 24. Section 6600 of the Welfare and Institutions Code is amended to read:

6600. As used in this article, the following terms have the following meanings:

(a)(1) "Sexually violent predator" means a person who has been convicted of a sexually violent offense against two or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(2) For purposes of this subdivision any of the following shall be considered a conviction for a sexually violent offense:

(A) A prior or current conviction that resulted in a determinate prison sentence for an offense described in subdivision (b).

(B) A conviction for an offense described in subdivision (b) that was committed prior to July 1, 1977, and that resulted in an indeterminate prison sentence.

(C) A prior conviction in another jurisdiction for an offense that includes all of the elements of an offense described in subdivision (b).

(D) A conviction for an offense under a predecessor statute that includes all of the elements of an offense described in subdivision (b).

(E) A prior conviction for which the inmate received a grant of probation for an offense described in subdivision (b).

(F) A prior finding of not guilty by reason of insanity for an offense described in subdivision (b).

(G) A conviction resulting in a finding that the person was a mentally disordered sex offender.

(H) A prior conviction for an offense described in subdivision (b) for which the person was committed to the Department of the Youth Authority pursuant to Section 1731.5.

(I) A prior conviction for an offense described in subdivision (b) that resulted in an indeterminate prison sentence.

(3) Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of any prior convictions may be shown with documentary evidence. The details underlying the commission of an



offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of Mental Health. Jurors shall be admonished that they may not find a person a sexually violent predator based on prior offenses absent relevant evidence of a currently diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(4) The provisions of this section shall apply to any person against whom proceedings were initiated for commitment as a sexually violent predator on or after January 1, 1996.

(b) "Sexually violent offense" means the following acts when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as provided defined in subdivision (a): a felony violation of paragraph (2) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262, Section 264.1, 269, 286, subdivision (a) or (b) of Section 288, 288a, 288.5, or subdivision (a) of Section 289 of the Penal Code, or sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code any felony violation of Section 207, 209, or 220 of the Penal Code, committed with the intent to commit a violation of Section 261, 262, 264.1, 286, 288, 288a, or 289 of the Penal Code.

(c) "Diagnosed mental disorder" includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

(d) "Danger to the health and safety of others" does not require proof of a recent overt act while the offender is in custody.

(e) "Predatory" means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

(f) "Recent overt act" means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

(g) Notwithstanding any other provision of law and for purposes of this section, no more than one a prior juvenile adjudication of a sexually violent offense may constitute a prior conviction for which the person received a determinate term if all of the following applies apply:

(1) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(2) The prior offense is a sexually violent offense as specified in subdivision (b). Notwithstanding Section 6600.1, only an offense described in subdivision (b) shall constitute a sexually violent offense for purposes of this subdivision.

(3) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 because of the person's commission of the offense giving rise to the juvenile court adjudication.

(4) The juvenile was committed to the Department of the Youth Authority for the sexually violent offense.

(h) A minor adjudged a ward of the court for commission of an offense that is defined as a sexually violent offense shall be entitled to specific treatment as a sexual offender. The failure of a minor to receive that treatment shall not constitute a defense or bar to a determination that any person is a sexually violent predator within the meaning of this article.

SEC. 25. Section 6600.1 of the Welfare and Institutions Code is amended to read:

6600.1. (a) If the victim of an underlying offense that is specified in subdivision (b) of Section 6600 is a child under the age of 14 and the offending act or acts involved substantial sexual conduct, the offense shall constitute a "sexually violent offense" for purposes of Section 6600.

(b) "Substantial sexual conduct" means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender.

SEC. 26. Section 6601 of the Welfare and Institutions Code is

amended to read:

6601. (a)(1) Whenever the Director of Corrections determines that an individual who is in custody under the jurisdiction of the Department of Corrections, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the director shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the director may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and the Board of Prison Terms based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Director of Corrections or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and

83

shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) If the person is otherwise subject to parole, a finding or placement made pursuant to this article shall not toll, discharge, or otherwise affect the term of parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

(l) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

SEC. 27. Section 6604 of the Welfare and Institutions Code is amended to read:

6604. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for two years an indeterminate term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health, and the person shall not be kept in actual custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a petition for extended commitment under this article or unless the term of commitment changes pursuant to subdivision (c) of Section 6605. Time spent on conditional release shall not count toward the two-year term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the two-year term of commitment. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.

SEC. 28. Section 6604.1 of the Welfare and Institutions Code is amended to read:

6604.1. (a) The two-year indeterminate term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section. The initial two-year term shall not be reduced by any time spent in a secure facility prior to the order of commitment. For any subsequent extended commitments, the term of commitment shall be for two years commencing from the date of the termination of the previous commitment.

(b) The person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychologist and one practicing psychiatrist, designated by the State Department of Mental Health. The provisions of subdivisions (c) to (i), inclusive, of Section 6601 shall apply to evaluations performed for purposes of extended commitments. The rights, requirements, and procedures set forth in Section 6603 shall apply to extended all commitment proceedings.

SEC. 29. Section 6605 of the Welfare and Institutions Code is

amended to read:

6605. (a) A person found to be a sexually violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. The annual report shall include consideration of whether the committed person currently meets the definition of a sexually violent predator and whether conditional release to a less restrictive alternative or an unconditional release is in the best interest of the person and conditions can be imposed that would adequately protect the community. The Department of Mental Health shall file this periodic report with the court that committed the person under this article. The report shall be in the form of a declaration and shall be prepared by a professionally qualified person. A copy of the report shall be served on the prosecuting agency involved in the initial commitment and upon the committed person. The person may retain, or if he or she is indigent and so requests, the court may appoint, a qualified expert or professional person to examine him or her, and the expert or professional person shall have access to all records concerning the person.

(b) The director shall provide the committed person with an annual written notice of his or her right to petition the court for conditional release under Section 6608. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report. If the person does not affirmatively waive his or her right to petition the court for conditional release, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she would not be a danger to the health and safety of others if discharged. The committed person shall have the right to be present and to have an attorney represent him or her at the show cause hearing. If the Department of Mental Health determines that either: (1) the person's condition has so changed that the person no longer meets the definition of a sexually violent predator, or (2) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the director shall authorize the person to petition the court for conditional release to a less restrictive alternative or for an unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall order a show cause hearing at which the court can consider the petition and any accompanying documentation provided by the medical director, the prosecuting attorney or the committed person.

(c) If the court at the show cause hearing determines that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, then the court shall set a hearing on the issue.

(d) At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged.

(e) If the court or jury rules against the committed person at the hearing conducted pursuant to subdivision (d), the term of commitment of the person shall run for a an indeterminate period of two years from the date of this ruling. If the court or jury rules for the committed person, he or she shall be unconditionally released and unconditionally discharged.

(f) In the event that the State Department of Mental Health has reason to believe that a person committed to it as a sexually violent predator is no longer a sexually violent predator, it shall seek judicial review of the person's commitment pursuant to the procedures set forth in Section 7250 in the superior court from which the commitment was made. If the superior court determines that the person is no longer a sexually violent predator, he



or she shall be unconditionally released and unconditionally discharged.

SEC. 30. Section 6608 of the Welfare and Institutions Code is amended to read:

6608. (a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release ~~and subsequent or an~~ unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel.

(b) The court shall give notice of the hearing date to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed person, and the Director of Mental Health at least 15 court days before the hearing date.

(c) No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.

(d) The court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.

(e) Before placing a committed person in a state-operated forensic conditional release program, the community program director designated by the State Department of Mental Health shall submit a written recommendation to the court stating which forensic conditional release program is most appropriate for supervising and treating the committed person. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the record. The procedures described in Sections 1605 to 1610, inclusive, of the Penal Code shall apply to the person placed in the forensic conditional release program.

(f) If the court determines that the person should be transferred to a state-operated forensic conditional release program, the community program director, or his or her designee, shall make the necessary placement arrangements and, within 21 days after receiving notice of the court's finding, the person shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court.

(g) If the court rules against the committed person at the trial for unconditional release from commitment, the court may place the committed person on outpatient status in accordance with the procedures described in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(h) If the court denies the petition to place the person in an appropriate forensic conditional release program or if the petition for unconditional discharge is denied, the person may not file a new application until one year has elapsed from the date of the denial.

(i) In any hearing authorized by this section, the petitioner shall have the burden of proof by a preponderance of the evidence.

(j) If the petition for conditional release is not made by the director of the treatment facility to which the person is committed, no action on the petition shall be taken by the court without first obtaining the written recommendation of the director of the treatment facility.

(k) Time spent in a conditional release program pursuant to this section shall not count toward the term of commitment under this article unless the person is confined in a locked facility by the conditional release program, in which case the time spent in a locked facility shall count toward the term of commitment.

SEC. 31. Intent Clause

It is the intent of the People of the State of California in enacting this measure to strengthen and improve the laws that punish and control sexual offenders. It is also the intent of the People of the State of California that if any provision in this act conflicts with any other provision of law that provides for a greater penalty or longer period of imprisonment the latter provision shall apply.

SEC. 32. Severability Clause

If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

SEC. 33. Amendment Clause

The provisions of this act shall not be amended by the Legislature except by a statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters. However, the Legislature may amend the provisions of this act to expand the scope of their application or to increase the punishments or penalties provided herein by a statute passed by majority vote of each house thereof.

PROPOSITION 84

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure adds sections to the Public Resources Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Division 43 is added to the Public Resources Code, to read:

DIVISION 43. THE SAFE DRINKING WATER, WATER QUALITY AND SUPPLY, FLOOD CONTROL, RIVER AND COASTAL PROTECTION BOND ACT OF 2006

CHAPTER I. GENERAL PROVISIONS

75001. This Division shall be known and may be cited as the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.

75002. The people of California find and declare that protecting the state's drinking water and water resources is vital to the public health, the state's economy, and the environment.

75002.5. The people of California further find and declare that the state's waters are vulnerable to contamination by dangerous bacteria, polluted runoff, toxic chemicals, damage from catastrophic floods and the demands of a growing population. Therefore, actions must be taken to ensure safe drinking water and a reliable supply of water for farms, cities and businesses, as well as to protect California's rivers, lakes, streams, beaches, bays and coastal waters, for this and future generations.

75003. The people of California further find and declare that it is

83

84

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bill or other legislation. The State Department of Mental Health shall be responsible for operation of the facility, including the provision of treatment.

6600.1. If the victim of an underlying offense that is specified in subdivision (b) of Section 6600 is a child under the age of 14, the offense shall constitute a "sexually violent offense" for purposes of Section 6600.

6601. (a) (1) Whenever the Secretary of the Department of Corrections and Rehabilitation determines that an individual who is in custody under the jurisdiction of the Department of Corrections and Rehabilitation, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the secretary shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the secretary may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and Rehabilitation and the Board of Parole Hearings based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections and Rehabilitation. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections and Rehabilitation shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health, one or both of whom may be independent professionals as defined in subdivision (g). If both evaluators

concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Secretary of the Department of Corrections and Rehabilitation or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections and Rehabilitation. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) An order issued by a judge pursuant to Section 6601.5, finding that the petition, on its face, supports a finding of probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or

her release, shall toll that person's parole pursuant to paragraph (4) of subdivision (a) of Section 3000 of the Penal Code, if that individual is determined to be a sexually violent predator.

(1) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

(m) (1) The department shall provide the fiscal and policy committees of the Legislature, including the Chairperson of the Joint Legislative Budget Committee, and the Department of Finance, with a semiannual update on the progress made to hire qualified state employees to conduct the evaluation required pursuant to subdivision (d). The first update shall be provided no later than July 10, 2009.

(2) On or before January 2, 2010, the department shall report to the Legislature on all of the following:

(A) The costs to the department for the sexual offender commitment program attributable to the provisions in Proposition 83 of the November 2006 general election, otherwise known as Jessica's Law.

(B) The number and proportion of inmates evaluated by the department for commitment to the program as a result of the expanded evaluation and commitment criteria in Jessica's Law.

(C) The number and proportion of those inmates who have actually been committed for treatment in the program.

(3) This section shall remain in effect and be repealed on the date that the director executes a declaration, which shall be provided to the fiscal and policy committees of the Legislature, including the Chairperson of the Joint Legislative Budget Committee, and the Department of Finance, specifying that sufficient qualified state employees have been hired to conduct the evaluations required pursuant to subdivision (d), or January 1, 2013, whichever occurs first.

6601. (a) (1) Whenever the Secretary of the Department of Corrections and Rehabilitation determines that an individual who is in custody under the jurisdiction of the Department of Corrections and Rehabilitation, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the secretary shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the secretary may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and Rehabilitation and the Board of Parole Hearings based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history.

This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections and Rehabilitation. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections and Rehabilitation shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Secretary of the Department of Corrections and Rehabilitation or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the

Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections and Rehabilitation. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) An order issued by a judge pursuant to Section 6601.5, finding that the petition, on its face, supports a finding of probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release, shall toll that person's parole pursuant to paragraph (4) of subdivision (a) of Section 3000 of the Penal Code, if that individual is determined to be a sexually violent predator.

(l) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

(m) This section shall become operative on the date that the director executes a declaration, which shall be provided to the fiscal and policy committees of the Legislature, including the Chairperson of the Joint Legislative Budget Committee, and the Department of Finance, specifying that sufficient qualified state employees have been hired to conduct the evaluations required pursuant to subdivision (d), or January 1, 2013, whichever occurs first.

6601.3. (a) Upon a showing of good cause, the Board of Prison Terms may order that a person referred to the State Department of Mental Health pursuant to subdivision (b) of Section 6601 remain in custody for no more than 45 days beyond the person's scheduled release date for full evaluation pursuant to subdivisions (c) to (i), inclusive, of Section 6601.

(b) For purposes of this section, good cause means circumstances where there is a recalculation of credits or a restoration of denied or lost credits, a resentencing by a court, the receipt of the prisoner into custody, or equivalent exigent circumstances which result in there being less than 45 days prior to the person's scheduled release date for the full evaluation described in subdivisions (c) to (i), inclusive, of Section 6601.

6601.5. Upon filing of the petition and a request for review under this section, a judge of the superior court shall review the petition and determine whether the petition states or contains sufficient facts that, if true, would constitute probable cause to believe that the individual named in the petition is likely to engage in sexually

violent predatory criminal behavior upon his or her release. If the judge determines that the petition, on its face, supports a finding of probable cause, the judge shall order that the person be detained in a secure facility until a hearing can be completed pursuant to Section 6602. The probable cause hearing provided for in Section 6602 shall commence within 10 calendar days of the date of the order issued by the judge pursuant to this section.

6602. (a) A judge of the superior court shall review the petition and shall determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. The person named in the petition shall be entitled to assistance of counsel at the probable cause hearing. Upon the commencement of the probable cause hearing, the person shall remain in custody pending the completion of the probable cause hearing. If the judge determines there is not probable cause, he or she shall dismiss the petition and any person subject to parole shall report to parole. If the judge determines that there is probable cause, the judge shall order that the person remain in custody in a secure facility until a trial is completed and shall order that a trial be conducted to determine whether the person is, by reason of a diagnosed mental disorder, a danger to the health and safety of others in that the person is likely to engage in acts of sexual violence upon his or her release from the jurisdiction of the Department of Corrections or other secure facility.

(b) The probable cause hearing shall not be continued except upon a showing of good cause by the party requesting the continuance.

(c) The court shall notify the State Department of Mental Health of the outcome of the probable cause hearing by forwarding to the department a copy of the minute order of the court within 15 days of the decision.

6602.5. (a) No person may be placed in a state hospital pursuant to the provisions of this article until there has been a determination pursuant to Section 6601.3 or 6602 that there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior.

(b) The State Department of Mental Health shall identify each person for whom a petition pursuant to this article has been filed who is in a state hospital on or after January 1, 1998, and who has not had a probable cause hearing pursuant to Section 6602. The State Department of Mental Health shall notify the court in which the petition was filed that the person has not had a probable cause hearing. Copies of the notice shall be provided by the court to the attorneys of record in the case. Within 30 days of notice by the State Department of Mental Health, the court shall either order the person removed from the state hospital and returned to local custody or hold a probable cause hearing pursuant to Section 6602.

(c) In no event shall the number of persons referred pursuant to subdivision (b) to the superior court of any county exceed 10 in any 30-day period, except upon agreement of the presiding judge of the superior court, the district attorney, the public defender, the sheriff, and the Director of Mental Health.

(d) This section shall be implemented in Los Angeles County pursuant to a letter of agreement between the Department of Mental Health, the Los Angeles County district attorney, the Los Angeles

County public defender, the Los Angeles County sheriff, and the Los Angeles County superior court. The number of persons referred to the superior court of Los Angeles County pursuant to subdivision (b) shall be governed by the letter of agreement.

6603. (a) A person subject to this article shall be entitled to a trial by jury, to the assistance of counsel, to the right to retain experts or professional persons to perform an examination on his or her behalf, and to have access to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall appoint counsel to assist him or her, and, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf. Any right that may exist under this section to request DNA testing on prior cases shall be made in conformity with Section 1405 of the Penal Code.

(b) The attorney petitioning for commitment under this article shall have the right to demand that the trial be before a jury.

(c) (1) If the attorney petitioning for commitment under this article determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the State Department of Mental Health to perform updated evaluations. If one or more of the original evaluators is no longer available to testify for the petitioner in court proceedings, the attorney petitioning for commitment under this article may request the State Department of Mental Health to perform replacement evaluations. When a request is made for updated or replacement evaluations, the State Department of Mental Health shall perform the requested evaluations and forward them to the petitioning attorney and to the counsel for the person subject to this article. However, updated or replacement evaluations shall not be performed except as necessary to update one or more of the original evaluations or to replace the evaluation of an evaluator who is no longer available to testify for the petitioner in court proceedings. These updated or replacement evaluations shall include review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated, either voluntarily or by court order. If an updated or replacement evaluation results in a split opinion as to whether the person subject to this article meets the criteria for commitment, the State Department of Mental Health shall conduct two additional evaluations in accordance with subdivision (f) of Section 6601.

(2) For purposes of this subdivision, "no longer available to testify for the petitioner in court proceedings" means that the evaluator is no longer authorized by the Director of Mental Health to perform evaluations regarding sexually violent predators as a result of any of the following:

(A) The evaluator has failed to adhere to the protocol of the State Department of Mental Health.

(B) The evaluator's license has been suspended or revoked.

(C) The evaluator is unavailable pursuant to Section 240 of the Evidence Code.

(d) Nothing in this section shall prevent the defense from presenting otherwise relevant and admissible evidence.

(e) If the person subject to this article or the petitioning attorney does not demand a jury trial, the trial shall be before the court without a jury.

(f) A unanimous verdict shall be required in any jury trial.

(g) The court shall notify the State Department of Mental Health of the outcome of the trial by forwarding to the department a copy of the minute order of the court within 72 hours of the decision.

(h) Nothing in this section shall limit any legal or equitable right that a person may have to request DNA testing.

6603.3. (a) (1) Except as provided in paragraph (2), no attorney may disclose or permit to be disclosed to a person subject to this article, family members of the person subject to this article, or any other person, the name, address, telephone number, or other identifying information of a victim or witness whose name is disclosed to the attorney pursuant to Section 6603 and Chapter 1 (commencing with Section 2016.010) of Part 4 of Title 4 of the Code of Civil Procedure, unless specifically permitted to do so by the court after a hearing and showing of good cause.

(2) Notwithstanding paragraph (1), an attorney may disclose or permit to be disclosed, the name, address, telephone number, or other identifying information of a victim or witness to persons employed by the attorney or to a person hired or appointed for the purpose of assisting the person subject to this article in the preparation of the case, if that disclosure is required for that preparation. Persons provided this information shall be informed by the attorney that further dissemination of the information, except as provided by this section, is prohibited.

(3) A willful violation of this subdivision by an attorney, persons employed by an attorney, or persons appointed by the court is a misdemeanor.

(b) If the person subject to this article is acting as his or her own attorney, the court shall endeavor to protect the name, address, telephone number, or other identifying information of a victim or witness by providing for contact only through a private investigator licensed by the Department of Consumer Affairs and appointed by the court or by imposing other reasonable restrictions, absent a showing of good cause as determined by the court.

6603.5. No employee or agent of the Department of Corrections and Rehabilitation, the Board of Parole Hearings, or the State Department of Mental Health shall disclose to any person, except to employees or agents of each named department, the prosecutor, the respondent's counsel, licensed private investigators hired or appointed for the respondent, or other persons or agencies where authorized or required by law, the name, address, telephone number, or other identifying information of a person who was involved in a civil commitment hearing under this article as the victim of a sex offense except where authorized or required by law.

6603.7. (a) Except as provided in Section 6603.3, the court, at the request of the victim of a sex offense relevant in a proceeding under this article, may order the identity of the victim in all records and during all proceedings to be either Jane Doe or John Doe, if the court finds that the order is reasonably necessary to protect the privacy of the person and will not unduly prejudice the party petitioning for commitment under this article or the person subject to this article.

(b) If the court orders the victim to be identified as Jane Doe or John Doe pursuant to subdivision (a), and if there is a jury trial, the court shall instruct the jury at the beginning and at the end of the trial that the victim is being so identified only for the purposes of protecting his or her privacy.

6604. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for an indeterminate term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.

6604.1. (a) The indeterminate term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section.

(b) The person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychologist and one practicing psychiatrist, designated by the State Department of Mental Health. The provisions of subdivisions (c) to (i), inclusive, of Section 6601 shall apply to evaluations performed for purposes of extended commitments. The rights, requirements, and procedures set forth in Section 6603 shall apply to all commitment proceedings.

6605. (a) A person found to be a sexually violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. The annual report shall include consideration of whether the committed person currently meets the definition of a sexually violent predator and whether conditional release to a less restrictive alternative or an unconditional release is in the best interest of the person and conditions can be imposed that would adequately protect the community. The State Department of Mental Health shall file this periodic report with the court that committed the person under this article. The report shall be in the form of a declaration and shall be prepared by a professionally qualified person. A copy of the report shall be served on the prosecuting agency involved in the initial commitment and upon the committed person. The person may retain, or if he or she is indigent and so requests, the court may appoint, a qualified expert or professional person to examine him or her, and the expert or professional person shall have access to all records concerning the person.

(b) If the State Department of Mental Health determines that either: (1) the person's condition has so changed that the person no longer meets the definition of a sexually violent predator, or (2) conditional release to a less restrictive alternative is in the best

interest of the person and conditions can be imposed that adequately protect the community, the director shall authorize the person to petition the court for conditional release to a less restrictive alternative or for an unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall order a show cause hearing at which the court can consider the petition and any accompanying documentation provided by the medical director, the prosecuting attorney, or the committed person.

(c) If the court at the show cause hearing determines that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, then the court shall set a hearing on the issue.

(d) At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged. Where the person's failure to participate in or complete treatment is relied upon as proof that the person's condition has not changed, and there is evidence to support that reliance, the jury shall be instructed substantially as follows:

"The committed person's failure to participate in or complete the State Department of Mental Health Sex Offender Commitment Program (SOCP) are facts that, if proved, may be considered as evidence that the committed person's condition has not changed. The weight to be given that evidence is a matter for the jury to determine."

(e) If the court or jury rules against the committed person at the hearing conducted pursuant to subdivision (d), the term of commitment of the person shall run for an indeterminate period from the date of this ruling. If the court or jury rules for the committed person, he or she shall be unconditionally released and unconditionally discharged.

(f) In the event that the State Department of Mental Health has reason to believe that a person committed to it as a sexually violent predator is no longer a sexually violent predator, it shall seek judicial review of the person's commitment pursuant to the procedures set forth in Section 7250 in the superior court from which the commitment was made. If the superior court determines that the person is no longer a sexually violent predator, he or she shall be unconditionally released and unconditionally discharged.

6606. (a) A person who is committed under this article shall be provided with programming by the State Department of Mental Health

which shall afford the person with treatment for his or her diagnosed mental disorder. Persons who decline treatment shall be offered the opportunity to participate in treatment on at least a monthly basis.

(b) Amenability to treatment is not required for a finding that any person is a person described in Section 6600, nor is it required for treatment of that person. Treatment does not mean that the treatment be successful or potentially successful, nor does it mean that the person must recognize his or her problem and willingly participate in the treatment program.

(c) The programming provided by the State Department of Mental Health in facilities shall be consistent with current institutional standards for the treatment of sex offenders, and shall be based on a structured treatment protocol developed by the State Department of Mental Health. The protocol shall describe the number and types of treatment components that are provided in the program, and shall specify how assessment data will be used to determine the course of treatment for each individual offender. The protocol shall also specify measures that will be used to assess treatment progress and changes with respect to the individual's risk of reoffense.

(d) Notwithstanding any other provision of law, except as to requirements relating to fire and life safety of persons with mental illness, and consistent with information and standards described in subdivision (c), the department is authorized to provide the programming using an outpatient/day treatment model, wherein treatment is provided by licensed professional clinicians in living units not licensed as health facility beds within a secure facility setting, on less than a 24-hour a day basis. The department shall take into consideration the unique characteristics, individual needs, and choices of persons committed under this article, including whether or not a person needs antipsychotic medication, whether or not a person has physical medical conditions, and whether or not a person chooses to participate in a specified course of offender treatment. The department shall ensure that policies and procedures are in place that address changes in patient needs, as well as patient choices, and respond to treatment needs in a timely fashion. The department, in implementing this subdivision, shall be allowed by the State Department of Health Services to place health facility beds at Coalinga State Hospital in suspense for a period of up to six years. Coalinga State Hospital may remove all or any portion of its voluntarily suspended beds into active license status by request to the State Department of Health Services. The facility's request shall be granted unless the suspended beds fail to comply with current operational requirements for licensure.

(e) The department shall meet with each patient who has chosen not to participate in a specific course of offender treatment during monthly treatment planning conferences. At these conferences the department shall explain treatment options available to the patient, offer and re-offer treatment to the patient, seek to obtain the patient's cooperation in the recommended treatment options, and document these steps in the patient's health record. The fact that a patient has chosen not to participate in treatment in the past shall not establish that the patient continues to choose not to participate.

6607. (a) If the Director of Mental Health determines that the person's diagnosed mental disorder has so changed that the person is not likely to commit acts of predatory sexual violence while under supervision and treatment in the community, the director shall

forward a report and recommendation for conditional release in accordance with Section 6608 to the county attorney designated in subdivision (i) of Section 6601, the attorney of record for the person, and the committing court.

(b) When a report and recommendation for conditional release is filed by the Director of Mental Health pursuant to subdivision (a), the court shall set a hearing in accordance with the procedures set forth in Section 6608.

6608. (a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release or an unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel. The person petitioning for conditional release or unconditional discharge shall serve a copy of the petition on the State Department of Mental Health at the time the petition is filed with the court.

(b) The court shall give notice of the hearing date to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed person, and the Director of Mental Health at least 30 court days before the hearing date.

(c) No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.

(d) The court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in

sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.

(e) Before placing a committed person in a state-operated forensic conditional release program, the community program director designated by the State Department of Mental Health shall submit a written recommendation to the court stating which forensic conditional release program is most appropriate for supervising and treating the committed person. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the record. The procedures described in Sections 1605 to 1610, inclusive, of the Penal Code shall apply to the person placed in the forensic conditional release program.

(f) If the court determines that the person should be transferred to a state-operated forensic conditional release program, the community program director, or his or her designee, shall make the necessary placement arrangements and, within 30 days after receiving notice of the court's finding, the person shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court.

(g) If the court rules against the committed person at the trial for unconditional release from commitment, the court may place the committed person on outpatient status in accordance with the procedures described in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(h) If the court denies the petition to place the person in an appropriate forensic conditional release program or if the petition for unconditional discharge is denied, the person may not file a new application until one year has elapsed from the date of the denial.

(i) In any hearing authorized by this section, the petitioner shall have the burden of proof by a preponderance of the evidence.

(j) If the petition for conditional release is not made by the director of the treatment facility to which the person is committed, no action on the petition shall be taken by the court without first obtaining the written recommendation of the director of the treatment facility.

(k) Time spent in a conditional release program pursuant to this section shall not count toward the term of commitment under this article unless the person is confined in a locked facility by the conditional release program, in which case the time spent in a locked facility shall count toward the term of commitment.

6608.5. (a) A person who is conditionally released pursuant to this article shall be placed in the county of the domicile of the person prior to the person's incarceration, unless the court finds that extraordinary circumstances require placement outside the county of domicile.

(b) (1) For the purposes of this section, "county of domicile" means the county where the person has his or her true, fixed, and permanent home and principal residence and to which he or she has manifested the intention of returning whenever he or she is absent. For the purposes of determining the county of domicile, the court may consider information found on a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or information contained in an

arrest record, probation officer's report, trial transcript, or other court document. If no information can be identified or verified, the county of domicile of the individual shall be considered to be the county in which the person was arrested for the crime for which he or she was last incarcerated in the state prison or from which he or she was last returned from parole.

(2) In a case where the person committed a crime while being held for treatment in a state hospital, or while being confined in a state prison or local jail facility, the county wherein that facility was located shall not be considered the county of domicile unless the person resided in that county prior to being housed in the hospital, prison, or jail.

(c) For the purposes of this section, "extraordinary circumstances" means circumstances that would inordinately limit the department's ability to effect conditional release of the person in the county of domicile in accordance with Section 6608 or any other provision of this article, and the procedures described in Sections 1605 to 1610, inclusive, of the Penal Code.

(d) The county of domicile shall designate a county agency or program that will provide assistance and consultation in the process of locating and securing housing within the county for persons committed as sexually violent predators who are about to be conditionally released under Section 6608. Upon notification by the department of a person's potential or expected conditional release under Section 6608, the county of domicile shall notify the department of the name of the designated agency or program, at least 60 days before the date of the potential or expected release.

(e) In recommending a specific placement for community outpatient treatment, the department or its designee shall consider all of the following:

(1) The concerns and proximity of the victim or the victim's next of kin.

(2) The age and profile of the victim or victims in the sexually violent offenses committed by the person subject to placement. For purposes of this subdivision, the "profile" of a victim includes, but is not limited to, gender, physical appearance, economic background, profession, and other social or personal characteristics.

(f) Notwithstanding any other provision of law, a person released under this section shall not be placed within one-quarter mile of any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if either of the following conditions exist:

(1) The person has previously been convicted of a violation of Section 288.5 of, or subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 of, the Penal Code.

(2) The court finds that the person has a history of improper sexual conduct with children.

6608.7. The State Department of Mental Health may enter into an interagency agreement or contract with the Department of Corrections or with local law enforcement agencies for services related to supervision or monitoring of sexually violent predators who have been conditionally released into the community under the forensic conditional release program pursuant to this article.

6608.8. (a) For any person who is proposed for community outpatient

treatment under the forensic conditional release program, the department shall provide to the court a copy of the written contract entered into with any public or private person or entity responsible for monitoring and supervising the patient's outpatient placement and treatment program. This subdivision does not apply to subcontracts between the contractor and clinicians providing treatment and related services to the person.

(b) The terms and conditions of conditional release shall be drafted to include reasonable flexibility to achieve the aims of conditional release, and to protect the public and the conditionally released person.

(c) The court in its discretion may order the department to, notwithstanding Section 4514 or 5328, provide a copy of the written terms and conditions of conditional release to the sheriff or chief of police, or both, that have jurisdiction over the proposed or actual placement community.

(d) (1) Except in an emergency, the department or its designee shall not alter the terms and conditions of conditional release without the prior approval of the court.

(2) The department shall provide notice to the person committed under this article and the district attorney or designated county counsel of any proposed change in the terms and conditions of conditional release.

(3) The court on its own motion, or upon the motion of either party to the action, may set a hearing on the proposed change. The hearing shall be held as soon as is practicable.

(4) If a hearing on the proposed change is held, the court shall state its findings on the record. If the court approves a change in the terms and conditions of conditional release without a hearing, the court shall issue a written order.

(5) In the case of an emergency, the department or its designee may deviate from the terms and conditions of the conditional release if necessary to protect public safety or the safety of the person. If a hearing on the emergency is set by the court or requested by either party, the hearing shall be held as soon as practicable. The department, its designee, and the parties shall endeavor to resolve routine matters in a cooperative fashion without the need for a formal hearing.

(e) Notwithstanding any provision of this section, including, but not limited to, subdivision (d), matters concerning the residential placement, including any changes or proposed changes in the residence of the person, shall be considered and determined pursuant to Section 6609.1.

6609. Within 10 days of a request made by the chief of police of a city or the sheriff of a county, the State Department of Mental Health shall provide the following information concerning each person committed as a sexually violent predator who is receiving outpatient care in a conditional release program in that city or county: name, address, date of commitment, county from which committed, date of placement in the conditional release program, fingerprints, and a glossy photograph no smaller than 3 1/8 x 3 1/8 inches in size, or clear copies of the fingerprints and photograph.

6609.1. (a) (1) When the State Department of Mental Health makes a recommendation to the court for community outpatient treatment for



JOHN CHIANG
California State Controller

November 14, 2012

The Honorable Mark Leno, Chair
Senate Budget and Fiscal Review Committee
Joint Legislative Budget Committee
State Capitol, Room 5100
Sacramento, CA 95814

The Honorable Robert Blumenfeld, Chair
Assembly Budget Committee
State Capitol, Room 6026
Sacramento, CA 95814

Re: State Mandated Program Cost Report (AB3000)
Chapter 179, Statutes of 2007, Government Code Section 17562(b)(1)

Dear Senator Leno and Assembly Member Blumenfeld:

This report provides the information required pursuant to Government Code (GC) section 17562(b)(1). It summarizes mandate payments by fiscal year (FY) and reports the deficiencies and surpluses. This report consists of three parts, as follows:

1. FY 2012-13 State Mandated Program Appropriations and Payments (Schedules A and A1)
2. FY 2010-11 and Prior Years' State Mandated Program Claims Data, including Net Deficiencies and Surpluses (Schedules B through B4)
3. List of Incorrect Reduction Claims Filed with the Commission on State Mandates (Schedule C)

As reflected on Schedule B, as of September 30, 2012, the amount owed to local agencies, school and community college districts is \$5.6 billion:

Local Agencies	\$1.6 billion
School Districts	\$3.7 billion
Community College Districts	<u>\$0.3 billion</u>
Total	\$5.6 billion

Accrued interest as of June 30, 2012, at the Pooled Money Investment Account rates, due to local agencies, school and community college districts is estimated to be \$251.5 million (\$175

The Honorable Mark Leno
The Honorable Robert Blumenfield
November 14, 2012
Page 2

million, \$67.9 million, and \$8.6 million, respectively). The accrued interest is not included in the enclosed report, nor in the \$5.6 billion amount identified on page one. Pursuant to GC section 17561.5, interest begins to accrue as of the 366th day after adoption of the statewide cost estimate for the initial claims. For subsequent claims, interest begins to accrue on August 16th following the filing deadline. The interest on unpaid claims will continue to accrue until the claims are fully paid.

Pending litigation listed below and incorrect reduction claims on mandates (Schedule C) may have a significant impact on accounts payable when decisions are rendered:

- Graduation Requirements
- Discharge of Storm Water Runoff
- Municipal Storm Water and Urban Runoff Discharges
- 2010-11 Budget Trailer Bills, Mandates Process for K-12 Schools, Redetermination Process

In addition to the State Mandated Program Cost Report, a disk containing an electronic version is enclosed. If you have any questions, you may contact Jay Lal at (916) 324-0256.

Sincerely,

(Original Signed By)

JOHN CHIANG
California State Controller

Enclosures

cc: Ms. Ana J. Matosantos, Department of Finance
Ms. Marianne O'Malley, Office of Legislative Analyst
Ms. Heather Halsey, Commission on State Mandates

STATE MANDATED PROGRAM COST REPORT

(AB 3000)

As of September 30, 2012



Prepared by

**Division of Accounting and Reporting
Local Reimbursements Section**

Note: This report provides information on State Mandated Program costs for local agencies, school and community college districts pursuant to Government Code section 17562 (b)(1).

CONTENTS

SCHEDULE A: SUMMARY OF STATE MANDATED PROGRAM APPROPRIATIONS AND PAYMENTS MADE IN FISCAL YEAR 2012-13	1
SCHEDULE A1: DETAILS OF STATE MANDATED PROGRAM PAYMENTS MADE IN FISCAL YEAR 2012-13 FOR LOCAL AGENCIES, SCHOOL AND COMMUNITY COLLEGE DISTRICTS	2
SCHEDULE B: SUMMARY OF STATE MANDATED PROGRAMS FOR FISCAL YEAR 2010-11 AND PRIOR YEARS: CLAIMS RECEIVED /ADJUSTED, PAYMENTS, RECEIVABLES, NET DEFICIENCIES AND SURPLUSES	8
SCHEDULE B1: LOCAL AGENCIES	9
SCHEDULE B2: LOCAL AGENCIES FOR 15-YEAR PAYMENT PURSUANT TO PROPOSITION 1A	18
SCHEDULE B3: SCHOOL DISTRICTS	23
SCHEDULE B4: COMMUNITY COLLEGE DISTRICTS	39
SCHEDULE C: LIST OF INCORRECT REDUCTION CLAIMS FILED WITH THE COMMISSION ON STATE MANDATES	A1

**Schedule A:
Summary of State Mandated Program
Appropriations and Payments
Made in Fiscal Year 2012-13**

State Controller's Office
 Division of Accounting and Reporting
 Summary of State Mandated Programs Appropriations and Payments Made in Fiscal Year 2012-13
 As of September 30, 2012

Account Number	Legal Reference	Fiscal Year of Claims Paid	Appropriations Reverted as of 6/30/2012	Appropriation Balances as of 07/01/2012	Add: Receipts and Recovered Amounts	Less: Mandated Program Payments (see Schedule A1)	Appropriation Balances as of 09/30/2012
LOCAL AGENCIES							
General Fund							
0001-8885-2012-295-11	Ch. 21,29/12	2010-11	\$ -	\$ 48,786,000	\$ 9,544,185	\$ 46,055,232	\$ 12,274,953
0001-8885-2011-295-11	Ch. 33/11	2009-10	\$ -	\$ 9,894,584	\$ 23,109	\$ 262,319	\$ 9,655,374
0001-8885-2010-295-11	Ch. 712/10		\$ -	\$ 30,466,522	\$ 572,230	\$ -	\$ 31,038,752
0001-8885-2009-295-11	Ch. 1/09		\$ 861,757	\$ -	\$ -	\$ -	\$ -
Total General Fund			\$ 861,757	\$ 89,147,106	\$ 10,139,524	\$ 46,317,551	\$ 52,969,079
Non - General Fund							
Department of Motor Vehicle							
0044-8885-2012-295-98-00-146-089	Ch. 21,29/12	2010-11	\$ -	\$ 2,501,000	\$ -	\$ 2,402,441	\$ 98,559
0044-8885-2011-295-98-00-146-089	Ch. 33/11		\$ -	\$ 1,091,819	\$ -	\$ -	\$ 1,091,819
0044-8885-2010-295-98-00-146-089	Ch. 712/10		\$ -	\$ 1,615,381	\$ -	\$ -	\$ 1,615,381
0044-8885-2009-295-98-00-146-089	Ch. 1/09		\$ 212,049	\$ -	\$ -	\$ -	\$ -
Subtotal			\$ 212,049	\$ 5,208,200	\$ -	\$ 2,402,441	\$ 2,805,759
Department of Pesticide Regulations							
0106-8885-2012-295-98-01-120-089	Ch. 21,29/12	2010-11	\$ -	\$ 35,000	\$ -	\$ 18,076	\$ 16,924
0106-8885-2011-295-98-01-120-089	Ch. 33/11		\$ -	\$ 49,975	\$ -	\$ -	\$ 49,975
0106-8885-2010-295-98-01-120-089	Ch. 712/10		\$ -	\$ 84,911	\$ -	\$ -	\$ 84,911
Subtotal			\$ -	\$ 169,886	\$ -	\$ 18,076	\$ 151,810
Total Non General Fund			\$ 212,049	\$ 5,378,086	\$ -	\$ 2,420,517	\$ 2,957,569
Total Local Agencies			\$ 1,073,806	\$ 94,525,192	\$ 10,139,524	\$ 48,738,068	\$ 55,926,648
SCHOOL DISTRICTS							
0001-6100-2012-295-98	Ch. 21,29/12	2010-11 and Prior	\$ -	\$ 36,000	\$ 13,000	\$ 35,000	\$ 14,000
0001-6100-2011-295-98	Ch. 33/11	2009-10 and Prior	\$ -	\$ 6,632,077	\$ 435,383	\$ 6,632,032	\$ 435,428
0001-6100-2010-295-98	Ch. 712/10		\$ -	\$ 7,630,942	\$ 22,311	\$ -	\$ 7,653,253
0001-6100-2009-295-98	Ch. 1/09		\$ 30,001	\$ -	\$ -	\$ -	\$ -
Total School Districts			\$ 30,001	\$ 14,299,019	\$ 470,694	\$ 6,667,032	\$ 8,102,681
COMMUNITY COLLEGE DISTRICTS							
0001-6870-2012-295-98	Ch. 21,29/12	2010-11 and Prior	\$ -	\$ 17,000	\$ 2,000	\$ 11,000	\$ 8,000
0001-6870-2011-295-98	Ch. 33/11	2009-10 and Prior	\$ -	\$ 4,699,767	\$ 1,876,691	\$ 4,693,502	\$ 1,882,956
0001-6870-2010-295-98	Ch. 712/10		\$ -	\$ 915,773	\$ 381,373	\$ -	\$ 1,297,146
0001-6870-2009-295-98	Ch. 1/09		\$ 3,000	\$ -	\$ -	\$ -	\$ -
Total Community College Districts			\$ 3,000	\$ 5,632,540	\$ 2,260,064	\$ 4,704,502	\$ 3,188,102
Total School and Community College Districts			\$ 33,001	\$ 19,931,559	\$ 2,730,758	\$ 11,371,534	\$ 11,290,783
Grand Total Local Agencies, School and Community College Districts			\$ 1,106,807	\$ 114,456,751	\$ 12,870,282	\$ 60,109,602	\$ 67,217,431

**Schedule A1:
Details of State Mandated Program Payments
Made in Fiscal Year 2012-13 for Local Agencies,
School and Community College Districts**

State Controller's Office
 Division of Accounting and Reporting
 Detail of State Mandated Programs Appropriations and Payments Made in Fiscal Year 2012-13
 As of September 30, 2012

Program Name	Legal Reference	Program Number	Total Payments
Local Agencies			
0001-8885-2012-295-11			
Fiscal Year 2010-11			
Allocation of Property Tax Revenues	Ch. 697/92	152	\$ 495,047
Child Abduction and Recovery	Ch. 1399/76	13	\$ 11,406,520
Countywide Tax Rates	Ch. 921/87	90	\$ 242,747
Crime Victim's Domestic Violence Incident Reports	Ch. 1022/99	262	\$ 167,000
Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	\$ 6,984,998
Domestic Violence Arrests and Victims Assistance	Ch. 698/98	274	\$ 1,368,714
Domestic Violence Treatment Services - Authorization and Case Management	Ch. 183/92	177	\$ 1,944,000
Health Benefits for Survivors of Peace Officers and Firefighters	Ch. 1120/96	197	\$ 1,695,000
Medi-Cal Beneficiary Probate	Ch. 102/81	43	\$ 9,436
Peace Officers Personnel Records: Unfounded Complaints and Discovery	Ch. 630/78	264	\$ 656,999
Rape Victim Counseling Center Notices	Ch. 999/91	127	\$ 327,684
Sexually Violent Predators	Ch. 762/95	175	\$ 20,754,301
Threats Against Peace Officers	Ch. 1249/92	163	\$ 2,786
Fiscal Year 2010-11 Total			\$ 46,055,232
0001-8885-2011-295-11			
Fiscal Year 2009-10			
Child Abduction and Recovery	Ch. 1399/76	13	\$ 1,882
Crime Victim's Domestic Violence Incident Reports	Ch. 1022/99	262	\$ 1,281
Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	\$ 129,767
Domestic Violence Arrests and Victims Assistance	Ch. 698/98	274	\$ 79,740
Health Benefits for Survivors of Peace Officers and Firefighters	Ch. 1120/96	197	\$ 24,073
Peace Officers Personnel Records: Unfounded Complaints and Discovery	Ch. 630/78	264	\$ 12,636
Rape Victim Counseling Center Notices	Ch. 999/91	127	\$ 12,940
Fiscal Year 2009-10 Total			\$ 262,319
0044-8885-2012-295			
Fiscal Year 2010-11			
Administrative License Suspension	Ch. 1460/89	246	\$ 2,402,441
Fiscal Year 2010-11 Total			\$ 2,402,441
0044-8885-2012-295 Total			
0106-8885-2012-295			
Fiscal Year 2010-11			
Pesticide Use Reports	Ch. 1200/89	121	\$ 18,076
Fiscal Year 2010-11 Total			\$ 18,076
0106-8885-2012-295 Total			\$ 18,076
Local Agencies Total			\$ 48,738,068

State Controller's Office
 Division of Accounting and Reporting
 Detail of State Mandated Programs Appropriations and Payments Made in Fiscal Year 2012-13
 As of September 30, 2012

Program Name	Legal Reference	Program Number	Total Payments
School Districts			
0001-6100-2012-295			
Fiscal Year 2010-11			
Agency Fee Arrangements	Ch. 893/00	269	\$ 1,000
AIDS Prevention Instruction II	Ch. 818/91	250	\$ 1,000
California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	286	\$ 1,000
Caregiver Affidavits to Establish Residence for School Attendance	Ch. 987/94	172	\$ 1,000
Charter Schools I, II, III	Ch. 781/92	278	\$ 1,000
Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75; Ch. 1213/91	11	\$ 1,000
Comprehensive School Safety Plans I and II	Ch. 736/97; Ch. 996/99	313	\$ 1,000
Consolidation of Annual Parent Notification/Schoolsite Discipline Rules/Alternative Schools	Ch. 367/77, et.al.	272	\$ 1,000
Consolidation of Law Enforcement Agency Notification and Missing Children Reports	Ch. 1117/89	276	\$ 1,000
Consolidation of Notification to Teachers: Pupils Subject to Suspension or Expulsion			\$ 1,000
County Office of Education Fiscal Accountability Reporting	Ch. 1306/89	292	\$ 1,000
Criminal Background Checks	Ch. 917/87	209	\$ 1,000
Criminal Background Checks II	Ch. 588/97	183	\$ 1,000
Differential Pay and Reemployment	Ch. 594/98	251	\$ 1,000
Financial and Compliance Audits	Ch. 30/98	253	\$ 1,000
Habitual Truant	Ch. 367/77	192	\$ 1,000
High School Exit Examination	Ch. 1184/75	166	\$ 1,000
Immunization Records	Ch. 1/99	268	\$ 1,000
Immunization Records - Hepatitis B	Ch. 1176/77	32	\$ 1,000
Intradistrict Attendance	Ch. 325/78	230	\$ 1,000
Juvenile Court Notices II	Ch. 161/93	153	\$ 1,000
Mandate Reimbursement Process	Ch. 1423/84	155	\$ 1,000
Notification of Truancy	Ch. 486/75	42	\$ 1,000
Open Meetings Act/Brown Act Reform	Ch. 498/83	48	\$ 1,000
Physical Performance Tests	Ch. 641/86	218	\$ 1,000
Prevailing Wage Rate	Ch. 975/95	173	\$ 1,000
Pupil Health Screenings	Ch. 1249/78	304	\$ 1,000
Pupil Promotion and Retention	Ch. 1208/76	261	\$ 1,000
Pupil Safety Notices	Ch. 100/91	244	\$ 1,000
Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 498/83	280	\$ 1,000
School Accountability Report Cards	Ch. 498/83, et al.	176	\$ 1,000
School District Fiscal Accountability Reporting and Employee Benefits Disclosure	Ch. 1463/89	171	\$ 1,000
School District Reorganization	Ch. 100/81	258	\$ 1,000
The Stull Act	Ch. 1192/80	228	\$ 1,000
	Ch. 498/83	260	\$ 1,000
Fiscal Year 2010-11 Total			\$ 34,000
Fiscal Year 2007-08			
Absentee Ballots	Ch. 77/78	170	\$ 1,000
Fiscal Year 2007-08 Total			\$ 1,000
0001-6100-2012-295 Total			\$ 35,000

State Controller's Office
 Division of Accounting and Reporting
 Detail of State Mandated Programs Appropriations and Payments Made in Fiscal Year 2012-13
 As of September 30, 2012

Program Name	Legal Reference	Program Number	Total Payments
0001-6100-2011-295			
Fiscal Year 2009-10			
Comprehensive School Safety Plans I and II	Ch. 736/97; Ch. 996/99	313	\$ 19,282
Fiscal Year 2009-10 Total			\$ 19,282
Fiscal Year 2008-09			
Consolidation of Notification to Teachers: Pupils Subject to Suspension or Expulsion and Pupil Discipline Records, Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 1306/89	292	\$ 140,964
Fiscal Year 2008-09 Total			\$ 140,964
Fiscal Year 2007-08			
Charter Schools I, II, III	Ch. 781/92	278	\$ 32,978
Fiscal Year 2007-08 Total			\$ 32,978
Fiscal Year 2006-07			
Physical Performance Tests	Ch. 975/95	173	\$ 391,380
Fiscal Year 2006-07 Total			\$ 391,380
Fiscal Year 2005-06			
Consolidation of Annual Parent Notification/Schoolsite Discipline Rules/Alternative Schools	Ch. 36/77, et al.	272	\$ 1,042,210
Caregiver Affidavits to Establish Residence for School Attendance	Ch. 98/94	172	\$ 24,234
Notification of Truancy	Ch. 498/83	48	\$ 177,302
Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 1253/75	176	\$ 208,924
AIDS Prevention Instruction II	Ch. 818/91	250	\$ 89,163
Pupil Health Screenings	Ch. 1208/76	261	\$ 60,588
Physical Performance Tests	Ch. 975/95	173	\$ 1,711,162
Juvenile Court Notices II	Ch. 1423/84	155	\$ 51,718
Immunization Records	Ch. 1176/77	32	\$ 703,800
Habitual Truant	Ch. 1184/75	166	\$ 10,039
Criminal Background Checks	Ch. 588/97	183	\$ 166,751
Financial and Compliance Audits	Ch. 36/77	192	\$ 57,181
School District Fiscal Accountability Reporting and Employee Benefits Disclosure	Ch. 1007/81	258	\$ 44,661
Immunization Records - Hepatitis B	Ch. 325/78	230	\$ 869,616
Criminal Background Checks II	Ch. 584/98	251	\$ 5,374
Pupil Promotion and Retention	Ch. 1007/91	244	\$ 14,664
Differential Pay and Reemployment	Ch. 30/98	253	\$ 968
Fiscal Year 2005-06 Total			\$ 5,238,355
Fiscal Year 2002-03			
Agency Fee Arrangements	Ch. 893/00	269	\$ 1,976
Fiscal Year 2002-03 Total			\$ 1,976
Fiscal Year 2001-02			
Notification of Truancy	Ch. 498/83	48	\$ 34,625
Agency Fee Arrangements	Ch. 893/00	269	\$ 8,200
California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	286	\$ 31,669
Fiscal Year 2001-02 Total			\$ 74,494

State Controller's Office
 Division of Accounting and Reporting
 Detail of State Mandated Programs Appropriations and Payments Made in Fiscal Year 2012-13
 As of September 30, 2012

Program Name	Legal Reference	Program Number	Total Payments
Fiscal Year 2000-01			
Notification of Truancy	Ch. 498/83	48	\$ 10,223
Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75; Ch. 1213/91	11	\$ 137,065
Agency Fee Arrangements	Ch. 893/00	269	\$ 2,469
Fiscal Year 2000-01 Total			\$ 149,757
Fiscal Year 1999-00			
Notification of Truancy	Ch. 498/83	48	\$ 8,647
Intradistrict Attendance	Ch. 161/93	153	\$ 36,098
Fiscal Year 1999-00 Total			\$ 44,745
Fiscal Year 1997-98			
The Stull Act	Ch. 498/83	260	\$ 538,101
Fiscal Year 1997-98 Total			\$ 538,101
0001-6100-2011-295 Total			\$ 6,632,032
School Districts Total			\$ 6,667,032

State Controller's Office
 Division of Accounting and Reporting
 Detail of State Mandated Programs Appropriations and Payments Made in Fiscal Year 2012-13
 As of September 30, 2012

Program Name	Legal Reference	Program Number	Total Payments
Community College Districts			
0001-6870-2012-295			
Fiscal Year 2010-11			
Agency Fee Arrangements	Ch. 893/00	270	\$ 1,000
California Grants	Ch. 403/00	302	\$ 1,000
California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	287	\$ 1,000
Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	\$ 1,000
Enrollment Fee Collection and Waivers	Title 5	267	\$ 1,000
Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	\$ 1,000
Mandate Reimbursement Process	Ch. 486/75	237	\$ 1,000
Open Meetings/Brown Act Reform	Ch. 641/86	238	\$ 1,000
Prevailing Wage Rate	Ch. 1249/78	303	\$ 1,000
Tuition Fee Waivers	Ch. 36/77	301	\$ 1,000
Fiscal Year 2010-11 Total			\$ 10,000
Fiscal Year 2008-09			
Reporting Improper Governmental Activities	Ch. 416/01	294	\$ 1,000
Fiscal Year 2008-09 Total			\$ 1,000
0001-6870-2012-295 Total			\$ 11,000
0001-6870-2011-295			
Fiscal Year 2009-10			
Tuition Fee Waivers	Ch. 36/77	301	\$ 13,000
Fiscal Year 2009-10 Total			\$ 13,000
Fiscal Year 2006-07			
Reporting Improper Governmental Activities	Ch. 416/01	294	\$ 11,708
Fiscal Year 2006-07 Total			\$ 11,708
Fiscal Year 2004-05			
Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	\$ 2,086,643
Fiscal Year 2004-05 Total			\$ 2,086,643
Fiscal Year 2003-04			
Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	\$ 1,225,152
Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	\$ 158,351
Agency Fee Arrangements	Ch. 603/94	287	\$ 7,708
California State Teachers' Retirement System (CalSTRS) Service Credit			\$
Fiscal Year 2003-04 Total			\$ 1,391,211
Fiscal Year 2002-03			
Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	\$ 10,203
Agency Fee Arrangements	Ch. 893/00	270	\$ 11,504
California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	287	\$ 44,751
Fiscal Year 2002-03 Total			\$ 66,458

State Controller's Office
 Division of Accounting and Reporting
 Detail of State Mandated Programs Appropriations and Payments Made in Fiscal Year 2012-13
 As of September 30, 2012

Program Name	Legal Reference	Program Number	Total Payments
Fiscal Year 2001-02			
Agency Fee Arrangements	Ch. 893/00	270	\$ 29,244
California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	287	\$ 28,466
Fiscal Year 2001-02 Total			\$ 57,710
Fiscal Year 2000-01			
Agency Fee Arrangements	Ch. 893/00	270	\$ 6,999
Fiscal Year 2000-01 Total			\$ 6,999
Fiscal Year 1998-99			
Enrollment Fee Collection and Waivers	Title 5	267	\$ 1,059,773
Fiscal Year 1998-99 Total			\$ 1,059,773
0001-6870-2011-295 Total			\$ 4,693,502
Community College Districts Total			\$ 4,704,502
School and Community College Districts Total			\$ 11,371,534
Grand Total Local Agencies, School and Community College Districts			\$ 60,109,602

Schedule B:
Summary of State Mandated Programs for
Fiscal Year 2010-11 and Prior Years:
Claims Received/Adjusted,
Payments, Receivables,
Net Deficiencies and Surpluses

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs for Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

GENERAL GOVERNMENT	Fiscal Year	Schedules	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance ⁵
			Program Costs	Less: Net Payments ¹	A/P Balance ²	Established A/R ³	Less: Recovered Amount	A/R Balance ⁴	
LOCAL AGENCIES									
Initial and Annual Claims	2010-11 and Prior	B1	\$ 1,294,248,596	\$ 427,684,313	\$ 866,564,283	\$ 97,168,039	\$ 67,908,815	\$ 29,259,224	\$ 837,305,059
Initial and Annual Claims (Proposition 1A) ⁶	2003-04 and Prior	B2	\$ 1,031,763,361	\$ 303,939,963	\$ 727,823,398	\$ 58,432,333	\$ 49,410,334	\$ 9,021,999	\$ 718,801,399
Total Local Agencies			\$ 2,326,011,957	\$ 731,624,276	\$ 1,594,387,681	\$ 155,600,372	\$ 117,319,149	\$ 38,281,223	\$ 1,556,106,458
EDUCATION									
SCHOOL DISTRICTS	2010-11 and Prior	B3	\$ 5,167,317,567	\$ 1,416,030,688	\$ 3,751,286,879	\$ 202,703,682	\$ 152,321,190	\$ 50,382,492	\$ 3,700,904,387
COMMUNITY COLLEGE DISTRICTS	2010-11 and Prior	B4	\$ 384,049,240	\$ 66,312,963	\$ 317,736,277	\$ 13,632,728	\$ 9,680,257	\$ 3,952,471	\$ 313,783,806
Total School and Community College Districts			\$ 5,551,366,807	\$ 1,482,343,651	\$ 4,069,023,156	\$ 216,336,410	\$ 162,001,447	\$ 54,334,963	\$ 4,014,688,193
Grand Total Local Agencies, School and Community College Districts			\$ 7,877,378,764	\$ 2,213,967,927	\$ 5,663,410,837	\$ 371,936,782	\$ 279,320,596	\$ 92,616,186	\$ 5,570,794,651

Footnotes:
 1 Total Payments less Overpayments equals Net Payments.
 2 Amount Due to Local Agencies, School and Community College Districts.
 3 Total accounts receivable established due to desk review and field audit claim adjustments.
 4 Amount Due from Local Agencies, School and Community College Districts.
 5 Net Amount of Deficiencies and Surpluses. A/P Balance less A/R Balance equals Net Balance.
 6 Claims filed for fiscal year 2003-04 and prior payable in 15-years must be paid by 2020-21 pursuant to Government Code section 17617.

Schedule B1: Local Agencies

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2010-11	Absentee Ballots	Ch. 777/78	2	\$ 24,839,999	\$ -	\$ 24,839,999	\$ -	\$ -	\$ 24,839,999	
2010-11	Absentee Ballots: Tabulation by Precinct	Ch. 697/99	248	\$ 35,138	\$ -	\$ 35,138	\$ -	\$ -	\$ 35,138	
2010-11	Administrative License Suspension	Ch. 1460/89	246	\$ 2,407,825	\$ 2,402,441	\$ 5,384	\$ -	\$ -	\$ 5,384	
2010-11	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	\$ 16,181,454	\$ -	\$ 16,181,454	\$ -	\$ -	\$ 16,181,454	
2010-11	Crime Victim's Domestic Violence Incident Reports	Ch. 1022/99	262	\$ 167,693	\$ 167,000	\$ 693	\$ -	\$ -	\$ 693	
2010-11	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	\$ 57,816	\$ -	\$ 57,816	\$ -	\$ -	\$ 57,816	
2010-11	Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	\$ 6,993,913	\$ 6,984,998	\$ 8,915	\$ -	\$ -	\$ 8,915	
2010-11	Domestic Violence Arrests and Victims Assistance	Ch. 698/98	274	\$ 1,497,023	\$ 1,368,714	\$ 128,309	\$ -	\$ -	\$ 128,309	
2010-11	Domestic Violence Background Checks	Ch. 713/01	322	\$ 2,208,200	\$ -	\$ 2,208,200	\$ -	\$ -	\$ 2,208,200	
2010-11	Domestic Violence Treatment Services - Authorization and Case Management	Ch. 183/92	177	\$ 1,987,049	\$ 1,944,000	\$ 43,049	\$ -	\$ -	\$ 43,049	
2010-11	Handicapped and Disabled Students; Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils; Out of State Mental Health Services	Ch. 1747/84	273	\$ 20,442,289	\$ -	\$ 20,442,289	\$ -	\$ -	\$ 20,442,289	
2010-11	Health Benefits for Survivors of Peace Officers and Firefighters	Ch. 1120/96	197	\$ 1,751,313	\$ 1,695,000	\$ 56,313	\$ -	\$ -	\$ 56,313	
2010-11	Identity Theft	Ch. 956/00	321	\$ 9,792,559	\$ -	\$ 9,792,559	\$ -	\$ -	\$ 9,792,559	
2010-11	In-Home Support Services II	Ch. 90/99	289	\$ 15,567	\$ -	\$ 15,567	\$ -	\$ -	\$ 15,567	
2010-11	Local Government Employee Relations	Ch. 901/00	298	\$ 1,157,287	\$ -	\$ 1,157,287	\$ -	\$ -	\$ 1,157,287	
2010-11	Local Recreational Areas; Background Screenings	Ch. 777/01	285	\$ 77,349	\$ -	\$ 77,349	\$ -	\$ -	\$ 77,349	
2010-11	Mandate Reimbursement Process	Ch. 486/75	41	\$ 1,415,047	\$ -	\$ 1,415,047	\$ -	\$ -	\$ 1,415,047	
2010-11	Modified Primary Election	Ch. 898/00	323	\$ 2,509	\$ -	\$ 2,509	\$ -	\$ -	\$ 2,509	
2010-11	Municipal Storm Water and Urban Runoff Discharges	Title 2	314	\$ 2,774,562	\$ -	\$ 2,774,562	\$ -	\$ -	\$ 2,774,562	
2010-11	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	\$ 16,181,289	\$ -	\$ 16,181,289	\$ -	\$ -	\$ 16,181,289	
2010-11	Peace Officers Personnel Records: Unfounded	Ch. 630/78	264	\$ 661,245	\$ 656,999	\$ 4,246	\$ -	\$ -	\$ 4,246	
2010-11	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	\$ 6,334,127	\$ -	\$ 6,334,127	\$ -	\$ -	\$ 6,334,127	
2010-11	Permanent Absent Voters II	Ch. 922/01	324	\$ 2,012,753	\$ -	\$ 2,012,753	\$ -	\$ -	\$ 2,012,753	
2010-11	Voter Registration Procedures	Ch. 704/75	56	\$ 1,275,498	\$ -	\$ 1,275,498	\$ -	\$ -	\$ 1,275,498	
2010-11 Total				\$ 120,269,504	\$ 15,219,152	\$ 105,050,352	\$ -	\$ -	\$ 105,050,352	
2009-10	Absentee Ballots	Ch. 777/78	2	\$ 24,710,823	\$ -	\$ 24,710,823	\$ -	\$ -	\$ 24,710,823	
2009-10	Absentee Ballots: Tabulation by Precinct	Ch. 697/99	248	\$ 32,562	\$ -	\$ 32,562	\$ -	\$ -	\$ 32,562	
2009-10	Administrative License Suspension	Ch. 1460/89	246	\$ 2,442,853	\$ 2,363,040	\$ 79,813	\$ 2,933	\$ -	\$ 76,880	
2009-10	Airport Land Use Commission/Plans	Ch. 644/94	178	\$ 1,263,401	\$ -	\$ 1,263,401	\$ -	\$ -	\$ 1,263,401	
2009-10	Animal Adoption	Ch. 752/98	213	\$ 1,639,542	\$ -	\$ 1,639,542	\$ -	\$ -	\$ 1,639,542	
2009-10	Conservatorship; Developmentally Disabled Adults	Ch. 1304/80	67	\$ 12,927	\$ -	\$ 12,927	\$ -	\$ -	\$ 12,927	
2009-10	Coroner's Costs	Ch. 498/77	88	\$ 8,996	\$ -	\$ 8,996	\$ -	\$ -	\$ 8,996	
2009-10	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	\$ 16,504,011	\$ -	\$ 16,504,011	\$ -	\$ -	\$ 16,504,011	

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2009-10	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	\$ 297,792	\$ -	\$ 297,792	\$ -	\$ -	\$ 297,792	
2009-10	Crime Victims' Rights	Ch. 411/95	158	\$ 25,577	\$ -	\$ 25,577	\$ -	\$ -	\$ 25,577	
2009-10	Developmentally Disabled: Attorneys' Services	Ch. 694/75	87	\$ 37,798	\$ -	\$ 37,798	\$ -	\$ -	\$ 37,798	
2009-10	Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	\$ 7,309,559	\$ 7,309,559	\$ -	\$ 65,723	\$ 34,281	\$ (31,442)	
2009-10	Domestic Violence Arrests and Victims Assistance	Ch. 698/98	274	\$ 1,366,505	\$ 1,366,505	\$ -	\$ 7,643	\$ -	\$ (7,643)	
2009-10	Domestic Violence Background Checks	Ch. 713/01	322	\$ 1,871,143	\$ -	\$ 1,871,143	\$ -	\$ -	\$ 1,871,143	
2009-10	Firearm Hearing for Discharged Inpatients Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services	Ch. 578/99	293	\$ 4,732	\$ -	\$ 4,732	\$ -	\$ -	\$ 4,732	
2009-10	Identity Theft	Ch. 1747/84	273	\$ 134,478,404	\$ -	\$ 134,478,404	\$ -	\$ -	\$ 134,478,404	
2009-10	In-Home Support Services II	Ch. 956/00	321	\$ 9,361,799	\$ -	\$ 9,361,799	\$ -	\$ -	\$ 9,361,799	
2009-10	Local Agency Formation Commissions (LAFCO)	Ch. 90/99	289	\$ 20,569	\$ -	\$ 20,569	\$ -	\$ -	\$ 20,569	
2009-10	Local Government Employee Relations	Ch. 761/00	300	\$ 7,017	\$ -	\$ 7,017	\$ -	\$ -	\$ 7,017	
2009-10	Local Recreational Areas: Background Screenings	Ch. 901/00	298	\$ 703,728	\$ -	\$ 703,728	\$ -	\$ -	\$ 703,728	
2009-10	Mandate Reimbursement Process	Ch. 777/01	285	\$ 518,685	\$ -	\$ 518,685	\$ -	\$ -	\$ 518,685	
2009-10	Mentally Disordered Offenders: Treatment as a Conditions of Parole	Ch. 486/75	41	\$ 5,494,668	\$ -	\$ 5,494,668	\$ -	\$ -	\$ 5,494,668	
2009-10	Mentally Disordered Offenders' Extended Commitment Proceedings	Ch. 1419/85	281	\$ 17,935	\$ -	\$ 17,935	\$ -	\$ -	\$ 17,935	
2009-10	Mentally Disordered Sex Offenders: Extended Commitment Proceedings	Ch. 1418/85	203	\$ 219,819	\$ -	\$ 219,819	\$ -	\$ -	\$ 219,819	
2009-10	Mentally Retarded Defendants: Diversion Modified Primary Election	Ch. 1036/78	39	\$ 3,011	\$ -	\$ 3,011	\$ -	\$ -	\$ 3,011	
2009-10	Municipal Storm Water and Urban Runoff Discharges Not Guilty by Reason of Insanity	Ch. 1253/80	66	\$ 1,345	\$ -	\$ 1,345	\$ -	\$ -	\$ 1,345	
2009-10	Open Meetings Act/Brown Act Reform	Ch. 898/00	323	\$ 468,288	\$ -	\$ 468,288	\$ -	\$ -	\$ 468,288	
2009-10	Pacific Beach Safety: Water Quality and Closures	Title 2	314	\$ 2,806,076	\$ -	\$ 2,806,076	\$ -	\$ -	\$ 2,806,076	
2009-10	Peace Officers Procedural Bill of Rights	Ch. 1114/79	200	\$ 120,902	\$ -	\$ 120,902	\$ -	\$ -	\$ 120,902	
2009-10	Perinatal Services	Ch. 641/86	219	\$ 16,636,791	\$ -	\$ 16,636,791	\$ -	\$ -	\$ 16,636,791	
2009-10	Permanent Absent Voters	Ch. 961/92	122	\$ 1,466	\$ -	\$ 1,466	\$ -	\$ -	\$ 1,466	
2009-10	Permanent Absent Voters II	Ch. 465/76	187	\$ 6,657,034	\$ -	\$ 6,657,034	\$ -	\$ -	\$ 6,657,034	
2009-10	Pesticide Use Reports	Ch. 1603/90	124	\$ 47,464	\$ -	\$ 47,464	\$ -	\$ -	\$ 47,464	
2009-10	Photographic Record of Evidence	Ch. 1422/82	83	\$ 1,310,491	\$ -	\$ 1,310,491	\$ -	\$ -	\$ 1,310,491	
2009-10	Post Conviction: DNA Court Proceedings	Ch. 922/01	324	\$ 121,578	\$ -	\$ 121,578	\$ -	\$ -	\$ 121,578	
2009-10	Search Warrant: AIDS	Ch. 1200/89	121	\$ 47,069	\$ 33,025	\$ 14,044	\$ -	\$ -	\$ 14,044	
2009-10	Search Warrant: AIDS	Ch. 875/85	215	\$ 2,177	\$ -	\$ 2,177	\$ -	\$ -	\$ 2,177	
2009-10	Stolen Vehicle Notification	Ch. 821/00	279	\$ 7,804	\$ -	\$ 7,804	\$ -	\$ -	\$ 7,804	
2009-10	Stolen Vehicle Notification	Ch. 1088/88	73	\$ 48,090	\$ -	\$ 48,090	\$ -	\$ -	\$ 48,090	
2009-10	Stolen Vehicle Notification	Ch. 337/90	120	\$ 13,379	\$ -	\$ 13,379	\$ -	\$ -	\$ 13,379	
2009-10	Stolen Vehicle Notification	Ch. 704/75	56	\$ 1,205,598	\$ -	\$ 1,205,598	\$ -	\$ -	\$ 1,205,598	
2009-10 Total				\$ 237,849,408	\$ 11,072,129	\$ 226,777,279	\$ 76,299	\$ 34,281	\$ 226,735,261	
2008-09	Absentee Ballots	Ch. 77/78	2	\$ 25,668,036	\$ 25,668,036	\$ -	\$ 1,012,417	\$ 468,082	\$ (544,335)	
2008-09	Administrative License Suspension	Ch. 1460/89	246	\$ 2,674,609	\$ 2,674,609	\$ -	\$ 103,932	\$ 2,658	\$ (101,274)	
2008-09	Animal Adoption	Ch. 752/98	213	\$ 23,049,564	\$ -	\$ 23,049,564	\$ -	\$ -	\$ 23,049,564	

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2008-09	Conservatorship: Developmentally Disabled Adults	Ch. 1304/80	67	\$ 171,702	\$ -	\$ 171,702	\$ -	\$ -	\$ -	\$ 171,702
2008-09	Coroner's Costs	Ch. 498/77	88	\$ 113,089	\$ -	\$ 113,089	\$ -	\$ -	\$ -	\$ 113,089
2008-09	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	\$ 16,060,195	\$ -	\$ 16,060,195	\$ -	\$ -	\$ -	\$ 16,060,195
2008-09	Crime Victim's Domestic Violence Incident Reports	Ch. 1022/99	262	\$ 172,788	\$ 172,788	\$ -	\$ -	\$ -	\$ 2,257	\$ (2,257)
2008-09	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	\$ 263,698	\$ -	\$ 263,698	\$ -	\$ -	\$ -	\$ 263,698
2008-09	Crime Victims' Rights	Ch. 411/95	158	\$ 363,356	\$ -	\$ 363,356	\$ -	\$ -	\$ -	\$ 363,356
2008-09	Developmentally Disabled: Attorneys' Services	Ch. 694/75	87	\$ 567,312	\$ -	\$ 567,312	\$ -	\$ -	\$ -	\$ 567,312
2008-09	DNA Database	Ch. 822/00	266	\$ 146,180	\$ -	\$ 146,180	\$ -	\$ -	\$ -	\$ 146,180
2008-09	Domestic Violence Background Checks	Ch. 713/01	322	\$ 2,086,981	\$ -	\$ 2,086,981	\$ -	\$ -	\$ -	\$ 2,086,981
2008-09	Domestic Violence Treatment Services - Authorization and Case Management	Ch. 183/92	177	\$ 2,174,267	\$ 2,174,267	\$ -	\$ -	\$ 115,151	\$ 183,045	\$ (183,045)
2008-09	False Reports of Police Misconduct	Ch. 590/95	257	\$ 4,297	\$ -	\$ 4,297	\$ -	\$ -	\$ -	\$ 4,297
2008-09	Fire Safety Inspections of Care Facilities	Ch. 993/89	283	\$ 100,886	\$ -	\$ 100,886	\$ -	\$ -	\$ -	\$ 100,886
2008-09	Firearm Hearing for Discharged Inpatients Handicapped and Disabled Students; Handicapped and Disturbed (SED) Pupils; Out of State Mental Health Services	Ch. 578/99	293	\$ 31,906	\$ -	\$ 31,906	\$ -	\$ -	\$ -	\$ 31,906
2008-09	Identity Theft	Ch. 1747/84	273	\$ 32,151,097	\$ 2,291	\$ 32,148,806	\$ -	\$ -	\$ -	\$ 32,148,806
2008-09	Judicial Proceedings For Mentally Retarded Persons	Ch. 956/00	321	\$ 10,110,100	\$ -	\$ 10,110,100	\$ -	\$ -	\$ -	\$ 10,110,100
2008-09	Local Government Employees Relations	Ch. 644/80	35	\$ 139,227	\$ -	\$ 139,227	\$ -	\$ -	\$ -	\$ 139,227
2008-09	Local Government Employees Relations	Ch. 901/00	298	\$ 844,154	\$ -	\$ 844,154	\$ -	\$ -	\$ -	\$ 844,154
2008-09	Local Recreational Areas: Background Screenings	Ch. 777/01	285	\$ 669,845	\$ -	\$ 669,845	\$ -	\$ -	\$ -	\$ 669,845
2008-09	Mentally Disordered Offenders: Treatment as a Conditions of Parole	Ch. 1419/85	281	\$ 383,293	\$ -	\$ 383,293	\$ -	\$ -	\$ -	\$ 383,293
2008-09	Mentally Disordered Offenders' Extended Commitment Proceedings	Ch. 1418/85	203	\$ 3,794,562	\$ -	\$ 3,794,562	\$ -	\$ -	\$ -	\$ 3,794,562
2008-09	Mentally Disordered Sex Offenders: Extended Commitment Proceedings	Ch. 1036/78	39	\$ 40,980	\$ -	\$ 40,980	\$ -	\$ -	\$ -	\$ 40,980
2008-09	Mentally Retarded Defendants: Diversion	Ch. 1253/80	66	\$ 17,862	\$ -	\$ 17,862	\$ -	\$ -	\$ -	\$ 17,862
2008-09	Municipal Storm Water and Urban Runoff Discharges	Title 2	314	\$ 3,344,905	\$ -	\$ 3,344,905	\$ -	\$ -	\$ -	\$ 3,344,905
2008-09	Not Guilty by Reason of Insanity	Ch. 1114/79	200	\$ 2,749,480	\$ -	\$ 2,749,480	\$ -	\$ -	\$ -	\$ 2,749,480
2008-09	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	\$ 16,772,447	\$ -	\$ 16,772,447	\$ -	\$ -	\$ -	\$ 16,772,447
2008-09	Pacific Beach Safety: Water Quality and Closures	Ch. 961/92	122	\$ 64,851	\$ -	\$ 64,851	\$ -	\$ -	\$ -	\$ 64,851
2008-09	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	\$ 12,813,444	\$ -	\$ 12,813,444	\$ -	\$ -	\$ -	\$ 12,813,444
2008-09	Perinatal Services	Ch. 1603/90	124	\$ 1,009,278	\$ -	\$ 1,009,278	\$ -	\$ -	\$ -	\$ 1,009,278
2008-09	Permanent Absent Voters	Ch. 1422/82	83	\$ 1,813,889	\$ 1,813,889	\$ -	\$ -	\$ -	\$ 29,513	\$ (29,513)
2008-09	Permanent Absent Voters II	Ch. 922/01	324	\$ 191,573	\$ -	\$ 191,573	\$ -	\$ -	\$ -	\$ 191,573
2008-09	Photographic Record of Evidence	Ch. 875/85	215	\$ 112,982	\$ -	\$ 112,982	\$ -	\$ -	\$ -	\$ 112,982
2008-09	Post Conviction: DNA Court Proceedings	Ch. 821/00	279	\$ 142,458	\$ -	\$ 142,458	\$ -	\$ -	\$ -	\$ 142,458
2008-09	Postmortem Examinations: Unidentified Bodies, Human Remains	Ch. 284/00	255	\$ 1,122	\$ -	\$ 1,122	\$ -	\$ -	\$ -	\$ 1,122

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2008-09	Search Warrant: AIDS	Ch. 1088/88	73	\$ 706,871	\$ -	\$ 706,871	\$ -	\$ -	\$ 706,871	
2008-09	Senior Citizens Property Tax Postponement	Ch. 1242/77	18	\$ 195,373	\$ -	\$ 195,373	\$ -	\$ -	\$ 195,373	
2008-09	Stolen Vehicle Notification	Ch. 337/90	120	\$ 551,742	\$ -	\$ 551,742	\$ -	\$ -	\$ 551,742	
2008-09 Total				\$ 1,453,986	\$ -	\$ 1,453,986	\$ -	\$ -	\$ 1,453,986	
2007-08	Absentee Ballots	Ch. 77/78	2	\$ 22,557,828	\$ 22,557,828	\$ -	\$ 103,885	\$ 705	\$ (103,180)	
2007-08	Administrative License Suspension	Ch. 1460/89	246	\$ 2,537,487	\$ 2,537,487	\$ -	\$ 15,363	\$ 4,574	\$ (10,789)	
2007-08	Animal Adoption	Ch. 752/98	213	\$ 20,630,891	\$ -	\$ 20,630,891	\$ -	\$ -	\$ 20,630,891	
2007-08	Conservatorship: Developmentally Disabled Adults	Ch. 1304/80	67	\$ 164,218	\$ -	\$ 164,218	\$ -	\$ -	\$ 164,218	
2007-08	Coroner's Costs	Ch. 498/77	88	\$ 99,582	\$ -	\$ 99,582	\$ -	\$ -	\$ 99,582	
2007-08	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	\$ 15,655,373	\$ -	\$ 15,655,373	\$ -	\$ -	\$ 15,655,373	
2007-08	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	\$ 275,387	\$ -	\$ 275,387	\$ -	\$ -	\$ 275,387	
2007-08	Crime Victims' Rights	Ch. 411/95	158	\$ 321,041	\$ -	\$ 321,041	\$ -	\$ -	\$ 321,041	
2007-08	Developmentally Disabled: Attorneys' Services	Ch. 694/75	87	\$ 593,232	\$ -	\$ 593,232	\$ -	\$ -	\$ 593,232	
2007-08	DNA Database	Ch. 822/00	266	\$ 163,634	\$ -	\$ 163,634	\$ -	\$ -	\$ 163,634	
2007-08	Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	\$ 7,589,735	\$ 7,589,735	\$ -	\$ 17,895	\$ 7,895	\$ (10,000)	
2007-08	Domestic Violence Arrests and Victims Assistance	Ch. 698/98	274	\$ 1,238,574	\$ 1,238,574	\$ -	\$ 120,918	\$ 109,792	\$ (11,126)	
2007-08	Domestic Violence Background Checks	Ch. 713/01	322	\$ 1,942,263	\$ -	\$ 1,942,263	\$ -	\$ -	\$ 1,942,263	
2007-08	False Reports of Police Misconduct	Ch. 590/95	257	\$ 5,788	\$ -	\$ 5,788	\$ -	\$ -	\$ 5,788	
2007-08	Fire Safety Inspections of Care Facilities	Ch. 993/89	283	\$ 146,000	\$ -	\$ 146,000	\$ -	\$ -	\$ 146,000	
2007-08	Firearm Hearing for Discharged Inpatients	Ch. 578/99	293	\$ 27,775	\$ -	\$ 27,775	\$ -	\$ -	\$ 27,775	
2007-08	Firefighters' Cancer Presumption	Ch. 1568/82	23	\$ 6,058,218	\$ -	\$ 6,058,218	\$ -	\$ -	\$ 6,058,218	
2007-08	Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services	Ch. 1747/84	273	\$ 76,180,806	\$ 5,347,016	\$ 70,833,790	\$ -	\$ -	\$ 70,833,790	
2007-08	Identity Theft	Ch. 956/00	321	\$ 9,689,339	\$ -	\$ 9,689,339	\$ -	\$ -	\$ 9,689,339	
2007-08	Judicial Proceedings For Mentally Retarded Persons	Ch. 644/80	35	\$ 134,655	\$ -	\$ 134,655	\$ -	\$ -	\$ 134,655	
2007-08	Local Agency Formation Commissions (LAFCO)	Ch. 761/00	300	\$ 9,133	\$ 5,761	\$ 3,372	\$ -	\$ -	\$ 3,372	
2007-08	Local Government Employee Relations	Ch. 901/00	298	\$ 1,622,631	\$ -	\$ 1,622,631	\$ -	\$ -	\$ 1,622,631	
2007-08	Local Recreational Areas: Background Screenings	Ch. 777/01	285	\$ 661,256	\$ -	\$ 661,256	\$ -	\$ -	\$ 661,256	
2007-08	Mentally Disordered Offenders: Treatment as a Condition of Parole	Ch. 1419/85	281	\$ 681,608	\$ -	\$ 681,608	\$ -	\$ -	\$ 681,608	
2007-08	Mentally Disordered Offenders' Extended Commitment Proceedings	Ch. 1418/85	203	\$ 3,146,513	\$ -	\$ 3,146,513	\$ -	\$ -	\$ 3,146,513	
2007-08	Mentally Disordered Sex Offenders: Extended Commitment Proceedings	Ch. 1036/78	39	\$ 295,550	\$ -	\$ 295,550	\$ -	\$ -	\$ 295,550	
2007-08	Mentally Retarded Defendants: Diversion	Ch. 1253/80	66	\$ 16,698	\$ -	\$ 16,698	\$ -	\$ -	\$ 16,698	
2007-08	Modified Primary Election	Ch. 898/00	323	\$ 321,317	\$ -	\$ 321,317	\$ -	\$ -	\$ 321,317	
2007-08	Municipal Storm Water and Urban Runoff Discharges	Title 2	314	\$ 4,934,428	\$ -	\$ 4,934,428	\$ -	\$ -	\$ 4,934,428	
2007-08	Not Guilty by Reason of Insanity	Ch. 1114/79	200	\$ 2,338,247	\$ -	\$ 2,338,247	\$ -	\$ -	\$ 2,338,247	
2007-08	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	\$ 16,500,776	\$ -	\$ 16,500,776	\$ -	\$ -	\$ 16,500,776	

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

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				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2007-08	Pacific Beach Safety: Water Quality and Closures	Ch. 961/92	122	\$ 277,610	\$ -	\$ 277,610	\$ -	\$ -	\$ 277,610	
2007-08	Peace Officers Cancer Presumption	Ch. 1171/89	118	\$ 4,951,263	\$ -	\$ 4,951,263	\$ -	\$ -	\$ 4,951,263	
2007-08	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	\$ 9,354,360	\$ -	\$ 9,354,360	\$ -	\$ -	\$ 9,354,360	
2007-08	Perinatal Services	Ch. 1603/90	124	\$ 1,280,819	\$ -	\$ 1,280,819	\$ -	\$ -	\$ 1,280,819	
2007-08	Permanent Absent Voters II	Ch. 922/01	324	\$ 18,688	\$ -	\$ 18,688	\$ -	\$ -	\$ 18,688	
2007-08	Photographic Record of Evidence	Ch. 875/85	215	\$ 163,955	\$ -	\$ 163,955	\$ -	\$ -	\$ 163,955	
2007-08	Post Conviction: DNA Court Proceedings	Ch. 821/00	279	\$ 123,677	\$ -	\$ 123,677	\$ -	\$ -	\$ 123,677	
2007-08	Postmortem Examinations: Unidentified Bodies,									
2007-08	Human Remains	Ch. 284/00	255	\$ 4,338	\$ -	\$ 4,338	\$ -	\$ -	\$ 4,338	
2007-08	Rape Victim Counseling Center Notices	Ch. 999/91	177	\$ 361,730	\$ 361,730	\$ -	\$ 12,360	\$ 9,100	\$ 3,260	
2007-08	Search Warrant: AIDS	Ch. 1088/88	73	\$ 841,064	\$ -	\$ 841,064	\$ -	\$ -	\$ 841,064	
2007-08	Senior Citizens Property Tax Postponement	Ch. 1242/77	18	\$ 284,904	\$ -	\$ 284,904	\$ -	\$ -	\$ 284,904	
2007-08	Stolen Vehicle Notification	Ch. 337/90	120	\$ 551,719	\$ -	\$ 551,719	\$ -	\$ -	\$ 551,719	
2007-08 Total				\$ 214,754,110	\$ 39,638,131	\$ 175,115,979	\$ 270,421	\$ 132,066	\$ 174,977,624	
2006-07	Absentee Ballots	Ch. 777/8	2	\$ 19,646,473	\$ 19,646,473	\$ -	\$ 1,879,295	\$ 1,796,175	\$ 83,120	
2006-07	Animal Adoption	Ch. 752/98	213	\$ 17,578,031	\$ 17,578,031	\$ -	\$ 7,173,913	\$ 3,196,190	\$ 3,977,723	
2006-07	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	\$ 14,699,081	\$ -	\$ 14,699,081	\$ -	\$ -	\$ 14,699,081	
2006-07	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	\$ 253,715	\$ -	\$ 253,715	\$ -	\$ -	\$ 253,715	
2006-07	Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	\$ 7,245,327	\$ 7,245,327	\$ -	\$ 511,677	\$ 203,592	\$ 308,085	
2006-07	Domestic Violence Background Checks	Ch. 713/01	322	\$ 1,613,395	\$ -	\$ 1,613,395	\$ -	\$ -	\$ 1,613,395	
2006-07	Fire Safety Inspections of Care Facilities	Ch. 993/89	283	\$ 99,516	\$ -	\$ 99,516	\$ -	\$ -	\$ 99,516	
2006-07	Firearm Hearing for Discharged Inpatients	Ch. 578/99	293	\$ 17,343	\$ -	\$ 17,343	\$ -	\$ -	\$ 17,343	
2006-07	Firefighters' Cancer Presumption	Ch. 1568/82	23	\$ 4,916,471	\$ 4,891,214	\$ 25,257	\$ 329,599	\$ 96,754	\$ 232,845	
	Handicapped and Disabled Students; Handicapped and									
	Disturbed (SED) Pupils; Out of State Mental Health									
2006-07	Services	Ch. 1747/84	273	\$ 55,055,560	\$ 45,839,884	\$ 9,215,676	\$ 810,809	\$ 314,697	\$ 496,112	
2006-07	Health Benefits for Survivors of Peace Officers and									
2006-07	Firefighters	Ch. 1120/96	197	\$ 911,198	\$ 911,198	\$ -	\$ 63,389	\$ 62,655	\$ 734	
2006-07	Identity Theft	Ch. 956/00	321	\$ 8,195,588	\$ -	\$ 8,195,588	\$ -	\$ -	\$ 8,195,588	
2006-07	Local Government Employee Relations	Ch. 901/00	298	\$ 1,494,135	\$ -	\$ 1,494,135	\$ -	\$ -	\$ 1,494,135	
2006-07	Local Recreational Areas: Background Screenings	Ch. 777/01	285	\$ 608,739	\$ -	\$ 608,739	\$ -	\$ -	\$ 608,739	
2006-07	Mentally Disordered Offenders: Treatment as a									
2006-07	Conditions of Parole	Ch. 1419/85	281	\$ 649,974	\$ -	\$ 649,974	\$ -	\$ -	\$ 649,974	
2006-07	Mentally Disordered Offenders' Extended									
2006-07	Commitment Proceedings	Ch. 1418/85	203	\$ 3,003,738	\$ 2,950,498	\$ 53,240	\$ 341,376	\$ 341,376	\$ -	
2006-07	Municipal Storm Water and Urban Runoff Discharges	Title 2	314	\$ 4,945,546	\$ -	\$ 4,945,546	\$ -	\$ -	\$ 4,945,546	
2006-07	Not Guilty by Reason of Insanity	Ch. 1114/79	200	\$ 1,707,977	\$ 1,702,574	\$ 5,403	\$ 439,438	\$ 439,438	\$ -	
2006-07	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	\$ 15,737,180	\$ -	\$ 15,737,180	\$ -	\$ -	\$ 15,737,180	
2006-07	Peace Officers Cancer Presumption	Ch. 1171/89	118	\$ 5,458,348	\$ 5,346,969	\$ 111,379	\$ 499,658	\$ 260,199	\$ 239,459	
2006-07	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	\$ 9,846,865	\$ 7,917,464	\$ 1,929,401	\$ 10,543,101	\$ 8,336,825	\$ 2,206,276	
2006-07	Permanent Absent Voters II	Ch. 922/01	324	\$ 24,807	\$ -	\$ 24,807	\$ -	\$ -	\$ 24,807	
2006-07	Photographic Record of Evidence	Ch. 875/85	215	\$ 309,808	\$ 298,328	\$ 11,480	\$ 224,111	\$ 123,080	\$ 101,031	
2006-07	Post Conviction: DNA Court Proceedings	Ch. 821/00	279	\$ 359,305	\$ 334,797	\$ 24,508	\$ -	\$ -	\$ 24,508	

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2005-07	Postmortem Examinations: Unidentified Bodies,	Ch. 284/00	255	\$ 1,454	\$ -	\$ -	\$ 569,162	\$ 98,026	\$ 471,136	\$ (471,136)
2006-07	Human Remains	Ch. 1242/77	18	\$ 273,468	\$ 273,084	\$ 384	\$ 384	\$ 384	\$ -	\$ 384
2006-07 Total	Senior Citizens Property Tax Postponement			\$ 174,653,042	\$ 114,937,295	\$ 59,715,747	\$ 23,385,912	\$ 15,269,391	\$ 8,116,521	\$ 51,999,226
2005-06	Animal Adoption	Ch. 752/98	213	\$ 17,295,277	\$ 17,295,277	\$ -	\$ 4,731,540	\$ 2,180,604	\$ 2,550,936	\$ (2,550,936)
2005-06	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	\$ 14,208,617	\$ -	\$ 14,208,617	\$ -	\$ -	\$ -	\$ 14,208,617
2005-06	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	\$ 228,442	\$ -	\$ 228,442	\$ -	\$ -	\$ -	\$ 228,442
2005-06	Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	\$ 6,667,418	\$ 6,667,418	\$ -	\$ 275,973	\$ 18,621	\$ 257,352	\$ (257,352)
2005-06	Domestic Violence Background Checks	Ch. 713/01	322	\$ 1,404,520	\$ -	\$ 1,404,520	\$ -	\$ -	\$ -	\$ 1,404,520
2005-06	Fire Safety Inspections of Care Facilities	Ch. 993/89	283	\$ 74,994	\$ -	\$ 74,994	\$ -	\$ -	\$ -	\$ 74,994
2005-06	Firearm Hearing for Discharged Inpatients	Ch. 578/99	293	\$ 14,818	\$ -	\$ 14,818	\$ -	\$ -	\$ -	\$ 14,818
2005-06	Handicapped and Disabled Students	Ch. 1747/84	111	\$ 47,584,774	\$ 46,036,314	\$ 1,548,460	\$ 24,034,991	\$ 16,222,065	\$ 7,812,926	\$ (6,264,466)
2005-06	Handicapped and Disabled Students II	Ch. 1128/94	263	\$ 1,413,312	\$ 241,607	\$ 1,171,705	\$ -	\$ -	\$ -	\$ 1,171,705
2005-06	Identity Theft	Ch. 956/00	321	\$ 6,606,055	\$ -	\$ 6,606,055	\$ -	\$ -	\$ -	\$ 6,606,055
2005-06	Local Agency Formation Commissions (LAFCO)	Ch. 761/00	300	\$ 202,633	\$ 192,604	\$ 10,029	\$ -	\$ -	\$ -	\$ 10,029
2005-06	Local Government Employee Relations	Ch. 901/00	298	\$ 624,936	\$ -	\$ 624,936	\$ -	\$ -	\$ -	\$ 624,936
2005-06	Local Recreational Areas: Background Screenings	Ch. 777/01	285	\$ 520,454	\$ -	\$ 520,454	\$ -	\$ -	\$ -	\$ 520,454
2005-06	Mentally Disordered Offenders: Treatment as a	Ch. 1419/85	281	\$ 680,286	\$ -	\$ 680,286	\$ -	\$ -	\$ -	\$ 680,286
2005-06	Conditions of Parole	Ch. 898/00	323	\$ 224,217	\$ -	\$ 224,217	\$ -	\$ -	\$ -	\$ 224,217
2005-06	Modified Primary Election			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2005-06	Municipal Storm Water and Urban Runoff Discharges	Title 2	314	\$ 4,426,491	\$ -	\$ 4,426,491	\$ -	\$ -	\$ -	\$ 4,426,491
2005-06	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	\$ 14,357,147	\$ 400,803	\$ 13,956,344	\$ 187,248	\$ 156,785	\$ 30,463	\$ 13,925,881
2005-06	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	\$ 13,310,225	\$ 11,075,800	\$ 2,234,425	\$ 6,047,022	\$ 5,925,563	\$ 121,459	\$ 2,112,966
2005-06	Permanent Absent Voters II	Ch. 922/01	324	\$ 21,868	\$ -	\$ 21,868	\$ -	\$ -	\$ -	\$ 21,868
2005-06	Photographic Record of Evidence	Ch. 875/85	215	\$ 292,557	\$ 292,557	\$ -	\$ 215,089	\$ 87,646	\$ 127,443	\$ (127,443)
2005-06	Post Conviction: DNA Court Proceedings	Ch. 821/00	279	\$ 173,372	\$ 134,566	\$ 38,806	\$ -	\$ -	\$ -	\$ 38,806
2005-06	Senior Citizens Property Tax Postponement	Ch. 1242/77	18	\$ 258,165	\$ 258,032	\$ 133	\$ 133	\$ 133	\$ -	\$ 133
2005-06 Total	Absentee Ballots	Ch. 777/8	2	\$ 130,590,578	\$ 82,594,978	\$ 47,995,600	\$ 35,491,996	\$ 24,591,417	\$ 10,900,579	\$ 37,095,021
2004-05	Animal Adoption	Ch. 752/98	213	\$ 19,548,029	\$ 19,548,029	\$ -	\$ 4,216,994	\$ 2,830,732	\$ 1,386,262	\$ (1,386,262)
2004-05	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	\$ 13,916,033	\$ -	\$ 13,916,033	\$ -	\$ -	\$ -	\$ 13,916,033
2004-05	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	\$ 222,536	\$ -	\$ 222,536	\$ -	\$ -	\$ -	\$ 222,536
2004-05	Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	\$ 6,141,561	\$ 6,141,561	\$ -	\$ 1,110,167	\$ 1,051,100	\$ 59,067	\$ (59,067)
2004-05	Domestic Violence Background Checks	Ch. 713/01	322	\$ 1,301,244	\$ -	\$ 1,301,244	\$ -	\$ -	\$ -	\$ 1,301,244
2004-05	Fire Safety Inspections of Care Facilities	Ch. 993/89	283	\$ 83,670	\$ -	\$ 83,670	\$ -	\$ -	\$ -	\$ 83,670
2004-05	Firearm Hearing for Discharged Inpatients	Ch. 578/99	293	\$ 9,385	\$ -	\$ 9,385	\$ -	\$ -	\$ -	\$ 9,385
2004-05	Firefighters' Cancer Presumption	Ch. 1568/82	23	\$ 2,985,232	\$ 2,985,232	\$ -	\$ 862,921	\$ 831,514	\$ 31,407	\$ (31,407)
2004-05	Handicapped and Disabled Students	Ch. 1747/84	111	\$ 47,836,298	\$ 45,841,083	\$ 1,995,215	\$ 24,694,055	\$ 17,134,159	\$ 7,559,896	\$ (5,564,681)
2004-05	Handicapped and Disabled Students II	Ch. 1128/94	263	\$ 122,653	\$ -	\$ 122,653	\$ -	\$ -	\$ -	\$ 122,653
2004-05	Identity Theft	Ch. 956/00	321	\$ 6,015,442	\$ -	\$ 6,015,442	\$ -	\$ -	\$ -	\$ 6,015,442
2004-05	Local Agency Formation Commissions (LAFCO)	Ch. 761/00	300	\$ 9,603	\$ 4,880	\$ 4,723	\$ -	\$ -	\$ -	\$ 4,723
2004-05	Local Government Employee Relations	Ch. 901/00	298	\$ 572,059	\$ -	\$ 572,059	\$ -	\$ -	\$ -	\$ 572,059

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2004-05	Local Recreational Areas: Background Screenings	Ch. 777/01	285	\$ 423,486	\$ -	\$ 423,486	\$ -	\$ -	\$ -	\$ 423,486
2004-05	Mentally Disordered Offenders: Treatment as a Conditions of Parole	Ch. 1419/85	281	\$ 427,477	\$ -	\$ 427,477	\$ -	\$ -	\$ -	\$ 427,477
2004-05	Municipal Storm Water and Urban Runoff Discharges	Title 2	314	\$ 4,377,858	\$ -	\$ 4,377,858	\$ -	\$ -	\$ -	\$ 4,377,858
2004-05	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	\$ 14,798,506	\$ 14,438,448	\$ 360,058	\$ 1,690,642	\$ 1,688,023	\$ 2,619	\$ 357,439
2004-05	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	\$ 13,187,078	\$ -	\$ 13,187,078	\$ -	\$ -	\$ -	\$ 13,187,078
2004-05	Permanent Absent Voters II	Ch. 922/01	324	\$ 24,382	\$ -	\$ 24,382	\$ -	\$ -	\$ -	\$ 24,382
2004-05	Photographic Record of Evidence	Ch. 875/85	215	\$ 340,151	\$ 340,151	\$ -	\$ 381,207	\$ 225,914	\$ 155,293	\$ (155,293)
2004-05	Post Conviction: DNA Court Proceedings	Ch. 821/00	279	\$ 31,183	\$ 17,053	\$ 14,130	\$ -	\$ -	\$ -	\$ 14,130
2004-05	Racial Profiling: Law Enforcement Training	Ch. 684/00	282	\$ 126,355	\$ -	\$ 126,355	\$ -	\$ -	\$ -	\$ 126,355
2004-05 Total				\$ 150,063,820	\$ 106,832,888	\$ 43,230,932	\$ 35,272,843	\$ 26,078,299	\$ 9,194,544	\$ 34,036,388
2003-04	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	\$ 12,995,063	\$ -	\$ 12,995,063	\$ -	\$ -	\$ -	\$ 12,995,063
2003-04	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	\$ 198,432	\$ -	\$ 198,432	\$ -	\$ -	\$ -	\$ 198,432
2003-04	Domestic Violence Background Checks	Ch. 713/01	322	\$ 1,445,585	\$ -	\$ 1,445,585	\$ -	\$ -	\$ -	\$ 1,445,585
2003-04	Fire Safety Inspections of Care Facilities	Ch. 993/89	283	\$ 69,168	\$ -	\$ 69,168	\$ -	\$ -	\$ -	\$ 69,168
2003-04	Firearm Hearing for Discharged Inpatients	Ch. 578/99	293	\$ 10,431	\$ -	\$ 10,431	\$ -	\$ -	\$ -	\$ 10,431
2003-04	Handicapped and Disabled Students II	Ch. 1128/94	263	\$ 1,183,695	\$ -	\$ 1,183,695	\$ -	\$ -	\$ -	\$ 1,183,695
2003-04	Identity Theft	Ch. 956/00	321	\$ 4,922,194	\$ -	\$ 4,922,194	\$ -	\$ -	\$ -	\$ 4,922,194
2003-04	In-Home Support Services II	Ch. 90/99	289	\$ 11,904	\$ -	\$ 11,904	\$ -	\$ -	\$ -	\$ 11,904
2003-04	Local Government Employee Relations	Ch. 901/00	298	\$ 278,272	\$ -	\$ 278,272	\$ -	\$ -	\$ -	\$ 278,272
2003-04	Local Recreational Areas: Background Screenings	Ch. 777/01	285	\$ 389,996	\$ -	\$ 389,996	\$ -	\$ -	\$ -	\$ 389,996
2003-04	Mentally Disordered Offenders: Treatment as a Conditions of Parole	Ch. 1419/85	281	\$ 446,868	\$ -	\$ 446,868	\$ -	\$ -	\$ -	\$ 446,868
2003-04	Modified Primary Election	Ch. 898/00	323	\$ 138,065	\$ -	\$ 138,065	\$ -	\$ -	\$ -	\$ 138,065
2003-04	Municipal Storm Water and Urban Runoff Discharges	Title 2	314	\$ 4,166,048	\$ -	\$ 4,166,048	\$ -	\$ -	\$ -	\$ 4,166,048
2003-04	Permanent Absent Voters II	Ch. 922/01	324	\$ 14,834	\$ -	\$ 14,834	\$ -	\$ -	\$ -	\$ 14,834
2003-04	Post Conviction: DNA Court Proceedings	Ch. 821/00	279	\$ 148,711	\$ 124,059	\$ 24,652	\$ -	\$ -	\$ -	\$ 24,652
2003-04	Racial Profiling: Law Enforcement Training	Ch. 684/00	282	\$ 6,650,521	\$ -	\$ 6,650,521	\$ -	\$ -	\$ -	\$ 6,650,521
2003-04 Total				\$ 33,069,787	\$ 124,059	\$ 32,945,728	\$ -	\$ -	\$ -	\$ 32,945,728
2002-03	Binding Arbitration	Ch. 906/00	284	\$ 122,267	\$ -	\$ 122,267	\$ -	\$ -	\$ -	\$ 122,267
2002-03	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	\$ 12,146,890	\$ -	\$ 12,146,890	\$ -	\$ -	\$ -	\$ 12,146,890
2002-03	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	\$ 159,800	\$ -	\$ 159,800	\$ -	\$ -	\$ -	\$ 159,800
2002-03	Domestic Violence Background Checks	Ch. 713/01	322	\$ 1,482,019	\$ -	\$ 1,482,019	\$ -	\$ -	\$ -	\$ 1,482,019
2002-03	Fire Safety Inspections of Care Facilities	Ch. 993/89	283	\$ 59,501	\$ -	\$ 59,501	\$ -	\$ -	\$ -	\$ 59,501
2002-03	Firearm Hearing for Discharged Inpatients	Ch. 578/99	293	\$ 12,410	\$ -	\$ 12,410	\$ -	\$ -	\$ -	\$ 12,410
2002-03	Handicapped and Disabled Students II	Ch. 1128/94	263	\$ 2,958,677	\$ -	\$ 2,958,677	\$ -	\$ -	\$ -	\$ 2,958,677
2002-03	Identity Theft	Ch. 956/00	321	\$ 4,322,291	\$ -	\$ 4,322,291	\$ -	\$ -	\$ -	\$ 4,322,291
2002-03	In-Home Support Services II	Ch. 90/99	289	\$ 132,994	\$ -	\$ 132,994	\$ -	\$ -	\$ -	\$ 132,994
2002-03	Local Government Employee Relations	Ch. 901/00	298	\$ 217,798	\$ -	\$ 217,798	\$ -	\$ -	\$ -	\$ 217,798
2002-03	Local Recreational Areas: Background Screenings	Ch. 777/01	285	\$ 397,782	\$ -	\$ 397,782	\$ -	\$ -	\$ -	\$ 397,782

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2002-03	Mentally Disordered Offenders: Treatment as a Conditions of Parole	Ch. 1419/85	281	\$ 821,319	-	\$ 821,319	-	-	\$ 821,319	
2002-03	Municipal Storm Water and Urban Runoff Discharges	Title 2	314	\$ 3,642,082	-	\$ 3,642,082	-	-	\$ 3,642,082	
2002-03	Permanent Absent Voters II	Ch. 922/01	324	\$ 9,310	-	\$ 9,310	-	-	\$ 9,310	
2002-03	Post Conviction: DNA Court Proceedings	Ch. 821/00	279	\$ 135,482	\$ 112,687	\$ 22,795	-	-	\$ 22,795	
2002-03	Racial Profiling: Law Enforcement Training	Ch. 684/00	282	\$ 3,008,618	-	\$ 3,008,618	-	-	\$ 3,008,618	
2002-03 Total				\$ 29,629,240	\$ 112,687	\$ 29,516,553	\$ -	\$ -	\$ 29,516,553	
2001-02	Binding Arbitration	Ch. 906/00	284	\$ 169,704	-	\$ 169,704	-	-	\$ 169,704	
2001-02	Crime Statistics Reports for the Department of Justice	Ch. 1172/89	310	\$ 11,348,947	-	\$ 11,348,947	-	-	\$ 11,348,947	
2001-02	Crime Victims' Domestic Violence Incident Reports II	Ch. 483/01	306	\$ 51,990	-	\$ 51,990	-	-	\$ 51,990	
2001-02	Domestic Violence Background Checks	Ch. 713/01	322	\$ 583,468	-	\$ 583,468	-	-	\$ 583,468	
2001-02	Fire Safety Inspections of Care Facilities	Ch. 993/89	283	\$ 75,056	-	\$ 75,056	-	-	\$ 75,056	
2001-02	Firearm Hearing for Discharged Inpatients	Ch. 578/99	293	\$ 15,208	-	\$ 15,208	-	-	\$ 15,208	
2001-02	Handicapped and Disabled Students II	Ch. 1128/94	263	\$ 2,343,422	-	\$ 2,343,422	-	-	\$ 2,343,422	
2001-02	In-Home Support Services II	Ch. 907/99	289	\$ 116,534	-	\$ 116,534	-	-	\$ 116,534	
2001-02	Local Government Employee Relations	Ch. 901/00	298	\$ 189,785	-	\$ 189,785	-	-	\$ 189,785	
2001-02	Local Recreational Areas: Background Screenings	Ch. 777/01	285	\$ 171,461	-	\$ 171,461	-	-	\$ 171,461	
2001-02	Mentally Disordered Offenders: Treatment as a Conditions of Parole	Ch. 1419/85	281	\$ 565,634	-	\$ 565,634	-	-	\$ 565,634	
2001-02	Modified Primary Election	Ch. 898/00	323	\$ 32,181	-	\$ 32,181	-	-	\$ 32,181	
2001-02	Post Conviction: DNA Court Proceedings	Ch. 821/00	279	\$ 73,775	\$ 62,375	\$ 11,400	-	-	\$ 11,400	
2001-02	Racial Profiling: Law Enforcement Training	Ch. 684/00	282	\$ 70,053	-	\$ 70,053	-	-	\$ 70,053	
2001-02 Total				\$ 15,807,218	\$ 62,375	\$ 15,744,843	\$ -	\$ -	\$ 15,744,843	
2000-01	Binding Arbitration	Ch. 906/00	284	\$ 36,299	-	\$ 36,299	-	-	\$ 36,299	
2000-01	Fire Safety Inspections of Care Facilities	Ch. 993/89	283	\$ 56,002	-	\$ 56,002	-	-	\$ 56,002	
2000-01	Firearm Hearing for Discharged Inpatients	Ch. 578/99	293	\$ 13,248	-	\$ 13,248	-	-	\$ 13,248	
2000-01	In-Home Support Services II	Ch. 907/99	289	\$ 112,301	-	\$ 112,301	-	-	\$ 112,301	
2000-01	Mentally Disordered Offenders: Treatment as a Conditions of Parole	Ch. 1419/85	281	\$ 235,446	-	\$ 235,446	-	-	\$ 235,446	
2000-01	Racial Profiling: Law Enforcement Training	Ch. 684/00	282	\$ 4,292	-	\$ 4,292	-	-	\$ 4,292	
2000-01 Total				\$ 457,588	\$ -	\$ 457,588	\$ -	\$ -	\$ 457,588	
1999-00	In-Home Support Services II	Ch. 907/99	289	\$ 32,985	-	\$ 32,985	-	-	\$ 32,985	
1999-00 Total				\$ 32,985	\$ -	\$ 32,985	\$ -	\$ -	\$ 32,985	
1998-99	Open Meetings Act	Ch. 641/86	49	\$ 5,866,046	\$ 5,866,046	\$ -	\$ 120,751	\$ 119,988	\$ 763	
1998-99 Total				\$ 5,866,046	\$ 5,866,046	\$ -	\$ 120,751	\$ 119,988	\$ 763	
1997-98	Open Meetings Act	Ch. 641/86	49	\$ 4,707,412	\$ 4,707,412	\$ -	\$ 183,902	\$ 183,169	\$ 733	
1997-98 Total				\$ 4,707,412	\$ 4,707,412	\$ -	\$ 183,902	\$ 183,169	\$ 733	
1995-96	Open Meetings Act	Ch. 641/86	49	\$ 3,690,222	\$ 3,690,222	\$ -	\$ 870,559	\$ 867,771	\$ 2,788	
1995-96 Total				\$ 3,690,222	\$ 3,690,222	\$ -	\$ 870,559	\$ 867,771	\$ 2,788	
1992-93	Open Meetings Act	Ch. 641/86	49	\$ 4,970,992	\$ 4,970,992	\$ -	\$ 713	\$ 713	\$ 713	
1992-93 Total				\$ 4,970,992	\$ 4,970,992	\$ -	\$ 713	\$ 713	\$ 713	
1991-92	California Fire Incident Reporting System (CFIRS)	Ch. 445/00, 345/87	288	\$ 130,288	\$ -	\$ 130,288	\$ -	\$ -	\$ 130,288	

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
1991-92	Open Meetings Act	Ch. 641/86	49	\$ 5,350,067	\$ 5,350,067	\$ -	\$ 48,328	\$ 46,542	\$ 1,786	\$ (1,786)
1991-92 Total				\$ 5,480,355	\$ 5,350,067	\$ 130,288	\$ 48,328	\$ 46,542	\$ 1,786	\$ 128,502
1990-91	California Fire Incident Reporting System (CFIRS)	Ch. 445/00, 345/87	288	\$ 85,888	\$ -	\$ 85,888	\$ -	\$ -	\$ -	\$ 85,888
1990-91 Total				\$ 85,888	\$ -	\$ 85,888	\$ -	\$ -	\$ -	\$ 85,888
Grand Total				\$ 1,294,248,596	\$ 427,684,313	\$ 866,564,283	\$ 97,168,039	\$ 67,908,815	\$ 29,259,224	\$ 837,305,059

**Schedule B2:
Local Agencies
for 15-year Payment
Pursuant to Proposition 1A**

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2003-04 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2003-04	Absentee Ballots	Ch. 77/78	2	\$ 18,909,670	\$ -	\$ 18,909,670	\$ -	\$ -	\$ 18,909,670	
2003-04	Absentee Ballots: Tabulation by Precinct	Ch. 697/99	248	\$ 20,545	\$ -	\$ 20,545	\$ -	\$ -	\$ 20,545	
2003-04	Allocation of Property Tax Revenues	Ch. 697/92	152	\$ 362,165	\$ -	\$ 362,165	\$ -	\$ -	\$ 362,165	
2003-04	Child Abduction and Recovery	Ch. 1399/76	13	\$ 12,782,459	\$ -	\$ 12,782,459	\$ -	\$ -	\$ 12,782,459	
2003-04	Conservatorship: Developmentally Disabled Adults	Ch. 1304/80	67	\$ 136,462	\$ -	\$ 136,462	\$ -	\$ -	\$ 136,462	
2003-04	Coroner's Costs	Ch. 498/77	88	\$ 83,566	\$ -	\$ 83,566	\$ -	\$ -	\$ 83,566	
2003-04	Countywide Tax Rates	Ch. 921/87	90	\$ 151,074	\$ -	\$ 151,074	\$ -	\$ -	\$ 151,074	
2003-04	Crime Victims' Rights	Ch. 411/95	158	\$ 228,501	\$ -	\$ 228,501	\$ -	\$ -	\$ 228,501	
2003-04	Developmentally Disabled: Attorneys' Services	Ch. 694/75	87	\$ 308,674	\$ -	\$ 308,674	\$ -	\$ -	\$ 308,674	
2003-04	Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	\$ 5,949,677	\$ -	\$ 5,949,677	\$ -	\$ -	\$ 5,949,677	
2003-04	Domestic Violence Treatment Services - Authorization and Case Management	Ch. 183/92	177	\$ 2,194,518	\$ -	\$ 2,194,518	\$ -	\$ -	\$ 2,194,518	
2003-04	Firefighters' Cancer Presumption	Ch. 1568/82	23	\$ 2,840,984	\$ -	\$ 2,840,984	\$ -	\$ -	\$ 2,840,984	
2003-04	Grand Jury Proceedings	Ch. 1170/96	227	\$ 2,781,851	\$ -	\$ 2,781,851	\$ -	\$ -	\$ 2,781,851	
2003-04	Handicapped and Disabled Students	Ch. 1747/84	111	\$ 39,674,557	\$ -	\$ 39,674,557	\$ -	\$ -	\$ 39,674,557	
2003-04	Health Benefits for Survivors of Peace Officers and Firefighters	Ch. 1120/96	197	\$ 384,774	\$ -	\$ 384,774	\$ -	\$ -	\$ 384,774	
2003-04	Judicial Proceedings For Mentally Retarded Persons	Ch. 644/80	35	\$ 137,059	\$ -	\$ 137,059	\$ -	\$ -	\$ 137,059	
2003-04	Mandate Reimbursement Process	Ch. 486/75	41	\$ 5,944,315	\$ -	\$ 5,944,315	\$ -	\$ -	\$ 5,944,315	
2003-04	Medi-Cal Beneficiary Probate	Ch. 102/81	43	\$ 19,422	\$ -	\$ 19,422	\$ -	\$ -	\$ 19,422	
2003-04	Mentally Disordered Offenders' Extended Commitment Proceedings	Ch. 1418/85	203	\$ 1,976,735	\$ -	\$ 1,976,735	\$ -	\$ -	\$ 1,976,735	
2003-04	Mentally Disordered Sex Offenders: Extended Commitment Proceedings	Ch. 1036/78	39	\$ 40,675	\$ -	\$ 40,675	\$ -	\$ -	\$ 40,675	
2003-04	Mentally Retarded Defendants: Diversion	Ch. 1253/80	66	\$ 14,010	\$ -	\$ 14,010	\$ -	\$ -	\$ 14,010	
2003-04	Not Guilty by Reason of Insanity	Ch. 1114/79	200	\$ 1,860,553	\$ -	\$ 1,860,553	\$ -	\$ -	\$ 1,860,553	
2003-04	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	\$ 13,588,862	\$ -	\$ 13,588,862	\$ -	\$ -	\$ 13,588,862	
2003-04	Pacific Beach Safety: Water Quality and Closures	Ch. 961/92	122	\$ 256,296	\$ -	\$ 256,296	\$ -	\$ -	\$ 256,296	
2003-04	Peace Officers Cancer Presumption	Ch. 1171/89	118	\$ 1,860,505	\$ -	\$ 1,860,505	\$ -	\$ -	\$ 1,860,505	
2003-04	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	\$ 9,674,908	\$ -	\$ 9,674,908	\$ -	\$ -	\$ 9,674,908	
2003-04	Perinatal Services	Ch. 1603/90	124	\$ 1,002,334	\$ -	\$ 1,002,334	\$ -	\$ -	\$ 1,002,334	
2003-04	Permanent Absent Voters	Ch. 1422/82	83	\$ 2,923,144	\$ -	\$ 2,923,144	\$ -	\$ -	\$ 2,923,144	
2003-04	Photographic Record of Evidence	Ch. 875/85	215	\$ 410,002	\$ -	\$ 410,002	\$ -	\$ -	\$ 410,002	
2003-04	Presidential Primaries 2000	Ch. 18/99	222	\$ 170,703	\$ -	\$ 170,703	\$ -	\$ -	\$ 170,703	
2003-04	Prisoner Parental Rights	Ch. 820/91	128	\$ 2,905,875	\$ -	\$ 2,905,875	\$ -	\$ -	\$ 2,905,875	
2003-04	Rape Victim Counseling Center Notices	Ch. 999/91	127	\$ 277,627	\$ -	\$ 277,627	\$ -	\$ -	\$ 277,627	
2003-04	Redevelopment Agencies - Tax Disbursement Reporting	Ch. 39/98	245	\$ 13,075	\$ -	\$ 13,075	\$ -	\$ -	\$ 13,075	
2003-04	Regional Housing Need Determination	Ch. 1143/80	55	\$ 2,181,855	\$ -	\$ 2,181,855	\$ -	\$ -	\$ 2,181,855	
2003-04	Search Warrant: AIDS	Ch. 1088/88	73	\$ 1,508,402	\$ -	\$ 1,508,402	\$ -	\$ -	\$ 1,508,402	
2003-04	Senior Citizens Property Tax Postponement	Ch. 1242/77	18	\$ 238,077	\$ -	\$ 238,077	\$ -	\$ -	\$ 238,077	
2003-04	Seriously Emotionally Disturbed (SED), Pupils: Out-of-State Mental Health Services	Ch. 654/96	191	\$ 16,135,367	\$ -	\$ 16,135,367	\$ -	\$ -	\$ 16,135,367	
2003-04	Sexually Violent Predators	Ch. 762/95	175	\$ 11,614,420	\$ -	\$ 11,614,420	\$ -	\$ -	\$ 11,614,420	
2003-04	Voter Registration Procedures	Ch. 704/75	56	\$ 1,608,634	\$ -	\$ 1,608,634	\$ -	\$ -	\$ 1,608,634	

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2003-04 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2003-04 Total				\$ 163,172,332	\$ -	\$ 163,172,332	\$ -	\$ -	\$ 163,172,332	
2002-03	Absentee Ballots	Ch. 77/78	2	\$ 11,979,511	\$ -	\$ 11,979,511	\$ -	\$ -	\$ 11,979,511	
2002-03	Absentee Ballots: Tabulation by Precinct	Ch. 697/99	248	\$ 7,652	\$ -	\$ 7,652	\$ -	\$ -	\$ 7,652	
2002-03	AIDS Testing	Ch. 1597/88	1	\$ 783,100	\$ 983	\$ 783,100	\$ 17	\$ 17	\$ 783,100	
2002-03	Allocation of Property Tax Revenues	Ch. 697/92	152	\$ 298,804	\$ -	\$ 298,804	\$ -	\$ -	\$ 298,804	
2002-03	Animal Adoption	Ch. 752/98	213	\$ 14,665,349	\$ -	\$ 14,665,349	\$ -	\$ -	\$ 14,665,349	
2002-03	Child Abduction and Recovery	Ch. 1399/76	13	\$ 15,960,547	\$ 999	\$ 15,959,548	\$ -	\$ -	\$ 15,959,548	
2002-03	Child Abuse Treatment Services Authorization and Case Management	Ch. 1090/96	196	\$ 254,775	\$ -	\$ 254,775	\$ -	\$ -	\$ 254,775	
2002-03	Conservatorship: Developmentally Disabled Adults	Ch. 1304/80	67	\$ 128,317	\$ 1,000	\$ 127,317	\$ -	\$ -	\$ 127,317	
2002-03	Coroner's Costs	Ch. 498/77	88	\$ 79,570	\$ 1,000	\$ 78,570	\$ -	\$ -	\$ 78,570	
2002-03	County Treasury Oversight Committee	Ch. 784/95	207	\$ 427,179	\$ -	\$ 427,179	\$ -	\$ -	\$ 427,179	
2002-03	Countywide Tax Rates	Ch. 921/87	90	\$ 180,073	\$ 871	\$ 179,202	\$ 129	\$ 129	\$ 179,202	
2002-03	Crime Victims' Rights	Ch. 411/95	158	\$ 403,295	\$ 975	\$ 402,320	\$ 25	\$ 25	\$ 402,320	
2002-03	Developmentally Disabled: Attorneys' Services	Ch. 694/75	87	\$ 335,776	\$ 995	\$ 334,781	\$ 5	\$ 5	\$ 334,781	
2002-03	Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	\$ 5,979,253	\$ 945	\$ 5,978,308	\$ 34	\$ 34	\$ 5,978,308	
2002-03	Domestic Violence Treatment Services - Authorization and Case Management	Ch. 183/92	177	\$ 2,504,720	\$ 999	\$ 2,503,721	\$ 1	\$ 1	\$ 2,503,721	
2002-03	Elder Abuse Training	Ch. 444/97	205	\$ 22,714	\$ -	\$ 22,714	\$ -	\$ -	\$ 22,714	
2002-03	Firefighters' Cancer Prescription	Ch. 1568/82	23	\$ 3,729,935	\$ 993	\$ 3,728,942	\$ 7	\$ 7	\$ 3,728,942	
2002-03	Grand Jury Proceedings	Ch. 1170/96	227	\$ 2,066,250	\$ -	\$ 2,066,250	\$ -	\$ -	\$ 2,066,250	
2002-03	Handicapped and Disabled Students	Ch. 1747/84	111	\$ 121,706,750	\$ 1,000	\$ 121,705,750	\$ -	\$ -	\$ 121,705,750	
2002-03	Health Benefits for Survivors of Peace Officers and Firefighters	Ch. 1120/96	197	\$ 323,124	\$ -	\$ 323,124	\$ -	\$ -	\$ 323,124	
2002-03	Investment Reports	Ch. 783/95	161	\$ 5,354,628	\$ 841	\$ 5,353,787	\$ 138	\$ 133	\$ 5,353,782	
2002-03	Judicial Proceedings For Mentally Retarded Persons	Ch. 644/80	35	\$ 66,009	\$ 1,000	\$ 65,009	\$ -	\$ -	\$ 65,009	
2002-03	Mandate Reimbursement Process	Ch. 486/75	41	\$ 6,660,335	\$ 933	\$ 6,659,402	\$ 47	\$ 47	\$ 6,659,402	
2002-03	Mentally Disordered Offenders' Extended Commitment Proceedings	Ch. 1418/85	203	\$ 1,909,524	\$ -	\$ 1,909,524	\$ -	\$ -	\$ 1,909,524	
2002-03	Mentally Disordered Sex Offenders: Extended Commitment Proceedings	Ch. 1036/78	39	\$ 95,696	\$ 989	\$ 94,707	\$ 11	\$ 11	\$ 94,707	
2002-03	Misdemeanors: Booking and Fingerprinting	Ch. 1105/92	138	\$ 2,723,511	\$ -	\$ 2,723,511	\$ -	\$ -	\$ 2,723,511	
2002-03	Not Guilty by Reason of Insanity	Ch. 1114/79	200	\$ 1,566,598	\$ -	\$ 1,566,598	\$ -	\$ -	\$ 1,566,598	
2002-03	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	\$ 13,055,944	\$ 2,199,511	\$ 10,856,433	\$ 15,792	\$ 15,792	\$ 10,856,433	
2002-03	Pacific Beach Safety: Water Quality and Closures	Ch. 961/92	122	\$ 206,052	\$ 774	\$ 205,278	\$ 226	\$ 226	\$ 205,278	
2002-03	Peace Officers' Cancer Prescription	Ch. 1171/89	118	\$ 1,290,053	\$ 997	\$ 1,289,056	\$ 3	\$ 3	\$ 1,289,056	
2002-03	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	\$ 15,747,770	\$ 915	\$ 15,746,855	\$ 78	\$ 78	\$ 15,746,855	
2002-03	Perinatal Services	Ch. 1603/90	124	\$ 1,111,542	\$ 498	\$ 1,111,044	\$ 501	\$ 501	\$ 1,111,044	
2002-03	Permanent Absent Voters	Ch. 1422/82	83	\$ 1,749,664	\$ -	\$ 1,749,664	\$ -	\$ -	\$ 1,749,664	
2002-03	Photographic Record of Evidence	Ch. 875/85	215	\$ 241,133	\$ -	\$ 241,133	\$ -	\$ -	\$ 241,133	
2002-03	Prisoner Parental Rights	Ch. 820/91	128	\$ 2,790,600	\$ 999	\$ 2,789,601	\$ 1	\$ 1	\$ 2,789,601	
2002-03	Rape Victim Counseling Center Notices	Ch. 999/91	127	\$ 255,024	\$ -	\$ 255,024	\$ -	\$ -	\$ 255,024	
2002-03	Redevelopment Agencies - Tax Disbursement Reporting	Ch. 39/98	245	\$ 8,394	\$ -	\$ 8,394	\$ -	\$ -	\$ 8,394	
2002-03	Regional Housing Need Determination	Ch. 1143/80	55	\$ 3,242,842	\$ -	\$ 3,242,842	\$ -	\$ -	\$ 3,242,842	

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2003-04 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2002-03	Search Warrant: AIDS	Ch. 1088/88	73	\$ 1,310,317	\$ 996	\$ 1,309,321	\$ 4	\$ 4	\$ -	\$ 1,309,321
2002-03	Senior Citizens Property Tax Postponement	Ch. 1242/77	18	\$ 230,252	\$ 997	\$ 229,255	\$ 3	\$ 3	\$ -	\$ 229,255
2002-03	Seriously Emotionally Disturbed (SED), Pupils: Out-of-									
2002-03	State Mental Health Services	Ch. 654/96	191	\$ 21,030,595	\$ 992	\$ 21,029,603	\$ 8	\$ 8	\$ -	\$ 21,029,603
2002-03	Sex Crime Confidentiality	Ch. 502/92	220	\$ 803,497	\$ -	\$ 803,497	\$ -	\$ -	\$ -	\$ 803,497
2002-03	Sex Offenders: Disclosure by Law Enforcement Officers (Megan's Law)	Ch. 908/96, 909/96	217	\$ 3,960,523	\$ -	\$ 3,960,523	\$ -	\$ -	\$ -	\$ 3,960,523
2002-03	Sexually Violent Predators	Ch. 762/95	175	\$ 11,865,771	\$ -	\$ 11,865,771	\$ -	\$ -	\$ -	\$ 11,865,771
2002-03	SIDS Training for Firefighters	Ch. 1111/89	180	\$ 63,176	\$ -	\$ 63,176	\$ -	\$ -	\$ -	\$ 63,176
2002-03	SIDS: Autopsy Protocols	Ch. 955/89	110	\$ 629,852	\$ 951	\$ 628,901	\$ 49	\$ 49	\$ -	\$ 628,901
2002-03	SIDS: Contact By Local Health Officers	Ch. 268/91	125	\$ 395,547	\$ 973	\$ 394,574	\$ 27	\$ 27	\$ -	\$ 394,574
2002-03	Stolen Vehicle Notification	Ch. 337/90	120	\$ 511,645	\$ 909	\$ 510,736	\$ 91	\$ 91	\$ -	\$ 510,736
2002-03	Very High Fire Hazard Severity Zones	Ch. 1188/92	181	\$ 177,184	\$ -	\$ 177,184	\$ -	\$ -	\$ -	\$ 177,184
2002-03	Voter Registration Procedures	Ch. 704/75	56	\$ 928,546	\$ -	\$ 928,546	\$ -	\$ -	\$ -	\$ 928,546
2002-03 Total				\$ 281,819,901	\$ 2,224,035	\$ 279,595,866	\$ 17,197	\$ 17,192	\$ 5	\$ 279,595,861
2001-02	Absentee Ballots	Ch. 771/78	2	\$ 11,238,372	\$ 5,873,491	\$ 5,364,881	\$ 433,509	\$ -	\$ -	\$ 5,364,881
2001-02	Absentee Ballots: Tabulation by Precinct	Ch. 697/99	248	\$ 8,252	\$ -	\$ 8,252	\$ -	\$ -	\$ -	\$ 8,252
2001-02	Allocation of Property Tax Revenues	Ch. 697/92	152	\$ 265,607	\$ 197,866	\$ 67,741	\$ 87,456	\$ -	\$ -	\$ 67,741
2001-02	Animal Adoption	Ch. 752/98	213	\$ 15,364,538	\$ -	\$ 15,364,538	\$ -	\$ -	\$ -	\$ 15,364,538
2001-02	Child Abuse and Recovery	Ch. 1399/76	13	\$ 15,813,649	\$ 12,329,063	\$ 3,484,586	\$ 1,269,937	\$ -	\$ -	\$ 3,484,586
2001-02	Child Abuse Treatment Services Authorization and Case Management	Ch. 1090/96	196	\$ 223,267	\$ -	\$ 223,267	\$ -	\$ -	\$ -	\$ 223,267
2001-02	Conservatorship: Developmentally Disabled Adults	Ch. 1304/80	67	\$ 131,924	\$ 103,000	\$ 28,924	\$ 20,511	\$ -	\$ -	\$ 28,924
2001-02	County Treasury Oversight Committee	Ch. 784/95	207	\$ 399,060	\$ -	\$ 399,060	\$ -	\$ -	\$ -	\$ 399,060
2001-02	Countywide Tax Rates	Ch. 921/87	90	\$ 105,665	\$ 70,603	\$ 35,062	\$ 5,710	\$ -	\$ -	\$ 35,062
2001-02	Crime Victims' Rights	Ch. 411/95	158	\$ 250,837	\$ 185,110	\$ 65,727	\$ 26,415	\$ -	\$ -	\$ 65,727
2001-02	Developmentally Disabled: Attorneys' Services	Ch. 694/75	87	\$ 339,466	\$ 189,000	\$ 150,466	\$ -	\$ -	\$ -	\$ 150,466
2001-02	Domestic Violence Arrest Policies and Standards	Ch. 246/95	167	\$ 6,322,585	\$ 4,127,820	\$ 2,194,765	\$ 247,050	\$ -	\$ -	\$ 2,194,765
2001-02	Domestic Violence Treatment Services - Authorization and Case Management	Ch. 183/92	177	\$ 2,451,185	\$ 955,823	\$ 1,495,362	\$ 48,177	\$ -	\$ -	\$ 1,495,362
2001-02	Elder Abuse Training	Ch. 444/97	205	\$ 66,641	\$ -	\$ 66,641	\$ -	\$ -	\$ -	\$ 66,641
2001-02	Firefighters' Cancer Presumption	Ch. 1568/82	23	\$ 3,022,743	\$ 291,927	\$ 2,730,816	\$ 6,927	\$ -	\$ -	\$ 2,730,816
2001-02	Grand Jury Proceedings	Ch. 1170/96	227	\$ 1,843,088	\$ -	\$ 1,843,088	\$ -	\$ -	\$ -	\$ 1,843,088
2001-02	Handicapped and Disabled Students	Ch. 1747/84	111	\$ 101,247,740	\$ 46,876,924	\$ 54,370,816	\$ 67,076	\$ -	\$ -	\$ 54,370,816
2001-02	Health Benefits for Survivors of Peace Officers and Firefighters	Ch. 1120/96	197	\$ 360,814	\$ -	\$ 360,814	\$ -	\$ -	\$ -	\$ 360,814
2001-02	Investment Reports	Ch. 783/95	161	\$ 6,155,995	\$ 3,234,817	\$ 2,921,178	\$ 214,181	\$ -	\$ 2,549	\$ 2,918,629
2001-02	Mandate Reimbursement Process	Ch. 486/75	41	\$ 7,439,972	\$ 3,039,628	\$ 4,400,344	\$ 79,707	\$ -	\$ -	\$ 4,400,344
2001-02	Mentally Disordered Offenders' Extended Commitment Proceedings	Ch. 1418/85	203	\$ 1,686,347	\$ -	\$ 1,686,347	\$ -	\$ -	\$ -	\$ 1,686,347
2001-02	Misdemeanors: Booking and Fingerprinting	Ch. 1105/92	138	\$ 2,254,752	\$ 343,177	\$ 1,911,575	\$ 678,810	\$ -	\$ -	\$ 1,911,575
2001-02	Not Guilty by Reason of Insanity	Ch. 1114/79	200	\$ 1,414,676	\$ 291,657	\$ 1,123,019	\$ 16,343	\$ -	\$ -	\$ 1,123,019
2001-02	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	\$ 13,790,702	\$ 2,865,951	\$ 10,924,751	\$ 66,087	\$ -	\$ -	\$ 10,924,751
2001-02	Pacific Beach Safety: Water Quality and Closures	Ch. 961/92	122	\$ 183,179	\$ 51,474	\$ 131,705	\$ 18,661	\$ -	\$ -	\$ 131,705
2001-02	Peace Officers Cancer Presumption	Ch. 1171/89	118	\$ 2,090,618	\$ 562,261	\$ 1,528,357	\$ 29,457	\$ -	\$ -	\$ 1,528,357
2001-02	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	\$ 14,448,269	\$ -	\$ 14,448,269	\$ -	\$ -	\$ -	\$ 14,448,269

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2003-04 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2001-02	Perinatal Services	Ch. 1603/90	124	\$ 970,340	\$ 727,025	\$ 243,315	\$ 1,208,147	\$ 1,208,147	\$ -	\$ 243,315
2001-02	Permanent Absent Voters	Ch. 1422/82	83	\$ 1,203,466	\$ 327,388	\$ 876,078	\$ 7,612	\$ 7,612	\$ -	\$ 876,078
2001-02	Photographic Record of Evidence	Ch. 875/85	215	\$ 440,624	\$ -	\$ 440,624	\$ -	\$ -	\$ -	\$ 440,624
2001-02	Prisoner Parental Rights	Ch. 820/91	128	\$ 2,254,996	\$ 1,176,944	\$ 1,078,052	\$ 186,548	\$ 186,548	\$ -	\$ 1,078,052
2001-02	Rape Victim Counseling Center Notices	Ch. 999/91	127	\$ 288,849	\$ 127,255	\$ 161,594	\$ 30,632	\$ 30,632	\$ -	\$ 161,594
2001-02	Redevelopment Agencies - Tax Disbursement Reporting	Ch. 39/98	245	\$ 8,212	\$ -	\$ 8,212	\$ -	\$ -	\$ -	\$ 8,212
2001-02	Regional Housing Need Determination	Ch. 1143/80	55	\$ 4,276,504	\$ 735,764	\$ 3,540,740	\$ 114,232	\$ 114,232	\$ -	\$ 3,540,740
2001-02	Search Warrant: AIDS	Ch. 1088/88	73	\$ 1,194,438	\$ 839,862	\$ 354,576	\$ 88,138	\$ 88,138	\$ -	\$ 354,576
2001-02	Seriously Emotionally Disturbed (SED), Pupils: Out-of-State Mental Health Services	Ch. 654/96	191	\$ 15,007,547	\$ -	\$ 15,007,547	\$ -	\$ -	\$ -	\$ 15,007,547
2001-02	Sex Crime Confidentiality	Ch. 502/92	220	\$ 779,209	\$ -	\$ 779,209	\$ -	\$ -	\$ -	\$ 779,209
2001-02	Sex Offenders: Disclosure by Law Enforcement Officers (Megan's Law)	Ch. 908/96	217	\$ 5,741,239	\$ -	\$ 5,741,239	\$ -	\$ -	\$ -	\$ 5,741,239
2001-02	Sexually Violent Predators	Ch. 762/95	175	\$ 10,074,813	\$ 4,186,774	\$ 5,888,039	\$ 10,225	\$ 10,225	\$ -	\$ 5,888,039
2001-02	SIDS Training for Firefighters	Ch. 1111/89	180	\$ 105,056	\$ 32,152	\$ 72,904	\$ 4,175	\$ 4,175	\$ -	\$ 72,904
2001-02	SIDS: Autopsy Protocols	Ch. 955/89	110	\$ 845,703	\$ 496,206	\$ 349,497	\$ 12,560	\$ 12,560	\$ -	\$ 349,497
2001-02	SIDS: Contact By Local Health Officers	Ch. 268/91	125	\$ 441,364	\$ 243,856	\$ 197,508	\$ 27,451	\$ 27,451	\$ -	\$ 197,508
2001-02	Stolen Vehicle Notification	Ch. 337/90	120	\$ 459,916	\$ 213,009	\$ 246,907	\$ 43,206	\$ 43,206	\$ -	\$ 246,907
2001-02	Very High Fire Hazard Severity Zones	Ch. 1188/92	181	\$ 97,093	\$ 40,941	\$ 56,152	\$ 2,132	\$ 2,132	\$ -	\$ 56,152
2001-02	Voter Registration Procedures	Ch. 704/75	56	\$ 778,351	\$ -	\$ 778,351	\$ -	\$ -	\$ -	\$ 778,351
2001-02 Total				\$ 259,887,663	\$ 90,736,768	\$ 163,150,895	\$ 5,051,072	\$ 5,048,523	\$ 2,549	\$ 163,148,346
2000-01	Animal Adoption	Ch. 752/98	213	\$ 14,251,637	\$ 14,251,637	\$ -	\$ 3,593,852	\$ 1,009,521	\$ 2,584,331	\$ (2,584,331)
2000-01	Domestic Violence Treatment Services - Authorization and Case Management	Ch. 183/92	177	\$ 2,252,430	\$ 2,215,840	\$ 36,590	\$ 383,170	\$ 383,170	\$ -	\$ 36,590
2000-01	Firefighters' Cancer Presumption	Ch. 1568/82	23	\$ 1,250,611	\$ 1,250,611	\$ -	\$ 512,013	\$ 427,707	\$ 84,306	\$ (84,306)
2000-01	Grand Jury Proceedings	Ch. 1170/96	227	\$ 1,812,095	\$ 1,804,629	\$ 7,466	\$ -	\$ -	\$ -	\$ 7,466
2000-01	Handicapped and Disabled Students	Ch. 1747/84	111	\$ 68,191,228	\$ 37,167,984	\$ 31,023,244	\$ 3,793,011	\$ 3,793,011	\$ -	\$ 31,023,244
2000-01	Open Meetings Act II	Ch. 641/86	202	\$ 14,995,599	\$ 14,994,266	\$ 1,333	\$ 1,106,187	\$ 1,106,173	\$ 14	\$ 1,319
2000-01	Open Meetings Act/Brown Act Reform	Ch. 641/86	219	\$ 689,947	\$ 689,947	\$ -	\$ 7,574	\$ 3,657	\$ 3,917	\$ (3,917)
2000-01	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	\$ 14,671,757	\$ 2,787,000	\$ 11,884,757	\$ 5,245,281	\$ 1,653,468	\$ 3,591,813	\$ 8,292,944
2000-01	Seriously Emotionally Disturbed (SED), Pupils: Out-of-State Mental Health Services	Ch. 654/96	191	\$ 9,999,179	\$ 248,697	\$ 9,750,482	\$ 614	\$ 614	\$ -	\$ 9,750,482
2000-01	Sexually Violent Predators	Ch. 762/95	175	\$ 8,540,313	\$ 8,379,743	\$ 160,570	\$ 510,604	\$ 510,604	\$ -	\$ 160,570
2000-01 Total				\$ 136,654,796	\$ 83,790,354	\$ 52,864,442	\$ 15,152,306	\$ 8,887,925	\$ 6,264,381	\$ 46,600,061
1999-00	Absentee Ballots: Tabulation by Precinct	Ch. 697/99	248	\$ 28,513	\$ 23,714	\$ 4,799	\$ -	\$ -	\$ -	\$ 4,799
1999-00	Animal Adoption	Ch. 752/98	213	\$ 13,567,069	\$ 13,566,554	\$ 515	\$ 3,522,285	\$ 1,749,440	\$ 1,772,845	\$ (1,772,330)
1999-00	Domestic Violence Treatment Services - Authorization and Case Management	Ch. 183/92	177	\$ 2,061,037	\$ 2,023,558	\$ 37,479	\$ 587,701	\$ 587,701	\$ -	\$ 37,479
1999-00	Firefighters' Cancer Presumption	Ch. 1568/82	23	\$ 1,091,963	\$ 1,091,963	\$ -	\$ 136,139	\$ 104,705	\$ 31,434	\$ (31,434)
1999-00	Grand Jury Proceedings	Ch. 1170/96	227	\$ 1,595,325	\$ 1,587,332	\$ 7,993	\$ -	\$ -	\$ -	\$ 7,993
1999-00	Mandate Reimbursement Process	Ch. 486/75	41	\$ 5,248,034	\$ 5,248,034	\$ -	\$ 115,251	\$ 114,140	\$ 1,111	\$ (1,111)
1999-00	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	\$ 14,478,554	\$ 4,461,386	\$ 10,017,168	\$ 5,889,090	\$ 5,852,305	\$ 36,785	\$ 9,980,383
1999-00	Perinatal Services	Ch. 1603/90	124	\$ 811,698	\$ 811,698	\$ -	\$ 1,488,386	\$ 1,402,610	\$ 85,776	\$ (85,776)
1999-00	Seriously Emotionally Disturbed (SED), Pupils: Out-of-State Mental Health Services	Ch. 654/96	191	\$ 6,346,409	\$ 249,312	\$ 6,097,097	\$ -	\$ -	\$ -	\$ 6,097,097
1999-00	Sexually Violent Predators	Ch. 762/95	175	\$ 8,243,006	\$ 8,224,593	\$ 18,413	\$ 952,022	\$ 952,022	\$ -	\$ 18,413

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2003-04 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
1999-00	SIDS Training for Firefighters	Ch. 1111/89	180	\$ 105,659	\$ 105,659	\$ -	\$ 14,707	\$ 13,726	\$ 981	\$ (981)
1999-00 Total				\$ 53,577,267	\$ 37,393,803	\$ 16,183,464	\$ 12,705,581	\$ 10,776,649	\$ 1,928,932	\$ 14,254,532
1998-99	Animal Adoption	Ch. 752/98	213	\$ 2,531,909	\$ 2,531,909	\$ -	\$ 1,329,182	\$ 918,343	\$ 410,839	\$ (410,839)
1998-99	Domestic Violence Treatment Services - Authorization and Case Management	Ch. 183/92	177	\$ 1,860,575	\$ 1,833,763	\$ 26,812	\$ 215,643	\$ 215,643	\$ -	\$ 26,812
1998-99	Investment Reports	Ch. 783/95	161	\$ 4,004,788	\$ 4,004,788	\$ -	\$ 38,458	\$ 27,831	\$ 10,627	\$ (10,627)
1998-99	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	\$ 14,470,188	\$ 3,439,305	\$ 11,030,883	\$ 5,357,016	\$ 5,267,106	\$ 89,910	\$ 10,940,973
1998-99	Regional Housing Need Determination	Ch. 1143/80	55	\$ 1,323,819	\$ 1,323,819	\$ -	\$ 647,104	\$ 481,403	\$ 165,701	\$ (165,701)
1998-99	Seriously Emotionally Disturbed (SED), Pupils: Out-of-									
1998-99	State Mental Health Services	Ch. 654/96	191	\$ 4,900,892	\$ 249,311	\$ 4,651,581	\$ -	\$ -	\$ -	\$ 4,651,581
1998-99 Total				\$ 29,092,171	\$ 13,382,895	\$ 15,709,276	\$ 7,587,403	\$ 6,910,326	\$ 677,077	\$ 15,032,199
1997-98	Investment Reports	Ch. 783/95	161	\$ 3,081,640	\$ 3,056,637	\$ 24,983	\$ 51,089	\$ 42,955	\$ 8,134	\$ (6,849)
1997-98	Mandate Reimbursement Process	Ch. 486/75	41	\$ 3,841,394	\$ 3,841,394	\$ -	\$ 230,325	\$ 226,466	\$ 3,859	\$ (3,859)
1997-98	Open Meetings Act II	Ch. 641/86	202	\$ 5,881,449	\$ 5,875,788	\$ 5,661	\$ 11,613	\$ 11,613	\$ -	\$ 5,661
1997-98	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	\$ 12,868,309	\$ 3,269,388	\$ 9,598,921	\$ 3,359,034	\$ 3,359,034	\$ -	\$ 9,598,921
1997-98 Total				\$ 25,672,792	\$ 16,043,227	\$ 9,629,565	\$ 3,652,061	\$ 3,640,068	\$ 11,993	\$ 9,617,572
1996-97	Absentee Ballots	Ch. 777/78	2	\$ 9,365,007	\$ 9,153,177	\$ 211,830	\$ 1,825,441	\$ 1,825,441	\$ -	\$ 211,830
1996-97	Investment Reports	Ch. 783/95	161	\$ 780,221	\$ 691,464	\$ 88,757	\$ 9,532	\$ 9,532	\$ -	\$ 88,757
1996-97	Mandate Reimbursement Process	Ch. 486/75	41	\$ 3,560,480	\$ 3,560,480	\$ -	\$ 319,940	\$ 319,940	\$ 177	\$ (177)
1996-97	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	\$ 13,976,967	\$ 3,578,658	\$ 10,398,309	\$ 2,223,826	\$ 2,221,701	\$ 2,125	\$ 10,396,184
1996-97 Total				\$ 27,682,675	\$ 16,983,779	\$ 10,698,896	\$ 4,378,739	\$ 4,376,437	\$ 2,302	\$ 10,696,594
1995-96	Investment Reports	Ch. 783/95	161	\$ 488,976	\$ 444,107	\$ 44,869	\$ 5,046	\$ 5,046	\$ -	\$ 44,869
1995-96	Mandate Reimbursement Process	Ch. 486/75	41	\$ 2,968,144	\$ 2,968,144	\$ -	\$ 661,263	\$ 657,638	\$ 3,625	\$ (3,625)
1995-96	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	\$ 12,271,952	\$ 3,172,303	\$ 9,099,649	\$ 2,521,286	\$ 2,500,771	\$ 20,515	\$ 9,079,134
1995-96	SIDS Training for Firefighters	Ch. 1111/89	180	\$ 123,317	\$ 123,317	\$ -	\$ 1,171	\$ 711	\$ 460	\$ (460)
1995-96 Total				\$ 15,852,389	\$ 6,707,871	\$ 9,144,518	\$ 3,188,766	\$ 3,164,166	\$ 24,600	\$ 9,119,918
1994-95	Business Tax Reporting Requirement	Ch. 1490/84	7	\$ 4,719,935	\$ 4,719,935	\$ -	\$ 130,777	\$ 123,277	\$ 7,500	\$ (7,500)
1994-95	Mandate Reimbursement Process	Ch. 486/75	41	\$ 3,097,183	\$ 3,079,535	\$ 17,648	\$ 201,105	\$ 199,020	\$ 2,085	\$ 15,563
1994-95	Peace Officers Procedural Bill of Rights	Ch. 465/76	187	\$ 10,018,968	\$ 2,476,091	\$ 7,542,877	\$ 2,220,331	\$ 2,174,712	\$ 45,619	\$ 7,497,258
1994-95 Total				\$ 17,836,086	\$ 10,275,561	\$ 7,560,525	\$ 2,552,213	\$ 2,497,009	\$ 55,204	\$ 7,505,321
1992-93	Firefighters' Cancer Presumption	Ch. 1568/82	23	\$ 492,467	\$ 492,209	\$ 258	\$ 48,175	\$ 48,175	\$ -	\$ 258
1992-93	Personal Alarm Devices	Tit. 8	24	\$ 722,127	\$ 722,127	\$ -	\$ 2,253	\$ -	\$ 2,253	\$ (2,253)
1992-93	SIDS: Autopsy Protocols	Ch. 955/89	110	\$ 898,522	\$ 897,729	\$ 793	\$ 793	\$ 793	\$ -	\$ 793
1992-93 Total				\$ 2,113,116	\$ 2,112,065	\$ 1,051	\$ 51,221	\$ 48,968	\$ 2,253	\$ (1,202)
1991-92	Mandate Reimbursement Process	Ch. 486/75	41	\$ 2,102,143	\$ 2,102,143	\$ -	\$ 153,432	\$ 109,451	\$ 43,981	\$ (43,981)
1991-92	Structural and Wildland Firefighter Safety Clothing and Equipment	Tit. 8 Cal. Code	64	\$ 7,347,344	\$ 7,347,344	\$ -	\$ 293,279	\$ 284,557	\$ 8,722	\$ (8,722)
1991-92 Total				\$ 9,449,487	\$ 9,449,487	\$ -	\$ 446,711	\$ 394,008	\$ 52,703	\$ (52,703)
1990-91	Handicapped and Disabled Students	Ch. 1747/84	111	\$ 14,952,686	\$ 14,840,118	\$ 112,568	\$ 3,649,063	\$ 3,649,063	\$ -	\$ 112,568
1990-91 Total				\$ 14,952,686	\$ 14,840,118	\$ 112,568	\$ 3,649,063	\$ 3,649,063	\$ -	\$ 112,568
Grand Total				\$ 1,031,763,361	\$ 303,939,963	\$ 727,823,398	\$ 58,432,333	\$ 49,410,334	\$ 9,021,999	\$ 718,801,399

**Schedule B3:
School Districts**

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2010-11	Academic Performance Index	Ch. 695/00	305	\$ 383,245	\$ -	\$ 383,245	\$ -	\$ -	\$ 383,245	
2010-11	Agency Fee Arrangements	Ch. 893/00	269	\$ 8,679	\$ 1,000	\$ 7,679	\$ -	\$ -	\$ 7,679	
2010-11	AIDS Prevention Instruction II	Ch. 818/91	250	\$ 1,300,948	\$ 1,000	\$ 1,299,948	\$ -	\$ -	\$ 1,299,948	
2010-11	California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	286	\$ 48,564	\$ 1,000	\$ 47,564	\$ -	\$ -	\$ 47,564	
2010-11	Caregiver Affidavits to Establish Residence for School Attendance	Ch. 98/94	172	\$ 507,658	\$ 1,000	\$ 506,658	\$ -	\$ -	\$ 506,658	
2010-11	Charter Schools I, II, III	Ch. 781/92	278	\$ 1,863,628	\$ 1,000	\$ 1,862,628	\$ -	\$ -	\$ 1,862,628	
2010-11	Child Abuse and Neglect Reporting	Ch. 640/87	309	\$ 13,640	\$ -	\$ 13,640	\$ -	\$ -	\$ 13,640	
2010-11	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	\$ 19,800,707	\$ 1,000	\$ 19,799,707	\$ -	\$ -	\$ 19,799,707	
2010-11	Comprehensive School Safety Plans I and II	Ch. 736/97; Ch. 996/99	313	\$ 3,175,858	\$ 1,000	\$ 3,174,858	\$ -	\$ -	\$ 3,174,858	
2010-11	Consolidation of Annual Parent Notification/Schoolsite Discipline Rules/Alternative Schools	Ch. 448/75	272	\$ 9,407,102	\$ 1,000	\$ 9,406,102	\$ -	\$ -	\$ 9,406,102	
2010-11	Consolidation of Law Enforcement Agency Notification and Missing Children Reports	Ch. 1117/89	276	\$ 930,888	\$ 1,000	\$ 929,888	\$ -	\$ -	\$ 929,888	
2010-11	Consolidation of Notification to Teachers: Pupils Subject to Suspension or Expulsion and Pupil Discipline Records, Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 1306/89	292	\$ 7,713,953	\$ 1,000	\$ 7,712,953	\$ -	\$ -	\$ 7,712,953	
2010-11	County Office of Education Fiscal Accountability Reporting	Ch. 917/87	209	\$ 300,245	\$ 1,000	\$ 299,245	\$ -	\$ -	\$ 299,245	
2010-11	Criminal Background Checks	Ch. 588/97	183	\$ 470,619	\$ 1,000	\$ 469,619	\$ -	\$ -	\$ 469,619	
2010-11	Criminal Background Checks II	Ch. 594/98	251	\$ 437,598	\$ 1,000	\$ 436,598	\$ -	\$ -	\$ 436,598	
2010-11	Differential Pay and Reemployment	Ch. 30/98	253	\$ 7,611	\$ 1,000	\$ 6,611	\$ -	\$ -	\$ 6,611	
2010-11	Expulsion of Pupils Transcript Cost for Appeals	Ch. 1253/75	91	\$ 15,135	\$ -	\$ 15,135	\$ -	\$ -	\$ 15,135	
2010-11	Financial and Compliance Audits	Ch. 367/77	192	\$ 280,193	\$ 1,000	\$ 279,193	\$ -	\$ -	\$ 279,193	
2010-11	Graduation Requirements (On or after 01/01/2005)	Ch. 498/93	297	\$ 265,330,232	\$ -	\$ 265,330,232	\$ -	\$ -	\$ 265,330,232	
2010-11	Habitual Truant	Ch. 1184/75	166	\$ 6,217,479	\$ 1,000	\$ 6,216,479	\$ -	\$ -	\$ 6,216,479	
2010-11	High School Exit Examination	Ch. 1/99	268	\$ 6,642,005	\$ 1,000	\$ 6,641,005	\$ -	\$ -	\$ 6,641,005	
2010-11	Immunization Records	Ch. 1176/77	32	\$ 4,525,744	\$ 1,000	\$ 4,524,744	\$ -	\$ -	\$ 4,524,744	
2010-11	Immunization Records - Hepatitis B	Ch. 325/78	230	\$ 5,645,071	\$ 1,000	\$ 5,644,071	\$ -	\$ -	\$ 5,644,071	
2010-11	Interdistrict Attendance Permits	Ch. 172/86	148	\$ 418,219	\$ -	\$ 418,219	\$ -	\$ -	\$ 418,219	
2010-11	Interdistrict Attendance	Ch. 161/93	153	\$ 4,425,722	\$ 1,000	\$ 4,424,722	\$ -	\$ -	\$ 4,424,722	
2010-11	Juvenile Court Notices II	Ch. 1423/84	155	\$ 965,763	\$ 1,000	\$ 964,763	\$ -	\$ -	\$ 964,763	
2010-11	Mandate Reimbursement Process	Ch. 486/75	42	\$ 16,099,910	\$ 1,000	\$ 16,098,910	\$ -	\$ -	\$ 16,098,910	
2010-11	Notification of Truancy	Ch. 498/83	48	\$ 23,913,167	\$ 1,000	\$ 23,912,167	\$ -	\$ -	\$ 23,912,167	
2010-11	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	\$ 3,562,434	\$ 1,000	\$ 3,561,434	\$ -	\$ -	\$ 3,561,434	
2010-11	Physical Education Reports	Ch. 640/97	195	\$ 9,000	\$ -	\$ 9,000	\$ -	\$ -	\$ 9,000	
2010-11	Physical Performance Tests	Ch. 975/95	173	\$ 1,560,148	\$ 1,000	\$ 1,559,148	\$ -	\$ -	\$ 1,559,148	
2010-11	Prevailing Wage Rate	Ch. 1249/78	304	\$ 201,323	\$ 1,000	\$ 200,323	\$ -	\$ -	\$ 200,323	
2010-11	Pupil Health Screenings	Ch. 1208/76	261	\$ 789,180	\$ 1,000	\$ 788,180	\$ -	\$ -	\$ 788,180	
2010-11	Pupil Promotion and Retention	Ch. 100/91	244	\$ 1,890,716	\$ 1,000	\$ 1,889,716	\$ -	\$ -	\$ 1,889,716	
2010-11	Pupil Residency Verification and Appeals	Ch. 309/95	182	\$ 10,283	\$ -	\$ 10,283	\$ -	\$ -	\$ 10,283	

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2010-11	Pupil Safety Notices	Ch. 498/83	280	\$ 119,811	\$ 1,000	\$ 118,811	\$ -	\$ -	\$ -	\$ 118,811
2010-11	Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 1253/75	176	\$ 4,802,682	\$ 1,000	\$ 4,801,682	\$ -	\$ -	\$ -	\$ 4,801,682
2010-11	Removal of Chemicals	Ch. 1107/84	57	\$ 89,704	\$ -	\$ 89,704	\$ -	\$ -	\$ -	\$ 89,704
2010-11	School Accountability Report Cards	Ch. 1463/89	171	\$ 2,654,644	\$ 1,000	\$ 2,653,644	\$ -	\$ -	\$ -	\$ 2,653,644
2010-11	School District Fiscal Accountability Reporting and Employee Benefits Disclosure	Ch. 100/81	258	\$ 3,195,555	\$ 1,000	\$ 3,194,555	\$ -	\$ -	\$ -	\$ 3,194,555
2010-11	School District Reorganization	Ch. 1197/80	228	\$ 7,405	\$ 1,000	\$ 6,405	\$ -	\$ -	\$ -	\$ 6,405
2010-11	Scoliosis Screening	Ch. 1347/80	58	\$ 205,106	\$ -	\$ 205,106	\$ -	\$ -	\$ -	\$ 205,106
2010-11	Student Records	Ch. 593/89	308	\$ 242,733	\$ -	\$ 242,733	\$ -	\$ -	\$ -	\$ 242,733
2010-11	The Stull Act	Ch. 498/83	260	\$ 17,985,103	\$ 1,000	\$ 17,984,103	\$ -	\$ -	\$ -	\$ 17,984,103
2010-11 Total				\$ 418,175,410	\$ 34,000	\$ 418,141,410	\$ -	\$ -	\$ -	\$ 418,141,410
2009-10	Academic Performance Index	Ch. 695/00	305	\$ 165,265	\$ -	\$ 165,265	\$ -	\$ -	\$ -	\$ 165,265
2009-10	Agency Fee Arrangements	Ch. 893/00	269	\$ 12,470	\$ 9,355	\$ 3,115	\$ -	\$ -	\$ -	\$ 3,115
2009-10	AIDS Prevention Instruction II	Ch. 818/91	250	\$ 1,382,762	\$ 1,292,997	\$ 89,765	\$ -	\$ -	\$ -	\$ 89,765
2009-10	Caregiver Affidavits to Establish Residence for School Attendance	Ch. 98/94	172	\$ 490,948	\$ 488,623	\$ 2,325	\$ -	\$ -	\$ -	\$ 2,325
2009-10	Charter Schools I, II, III	Ch. 781/92	278	\$ 2,836,753	\$ 1,306,000	\$ 1,530,753	\$ -	\$ -	\$ -	\$ 1,530,753
2009-10	Child Abuse and Neglect Reporting	Ch. 640/87	309	\$ 10,638	\$ -	\$ 10,638	\$ -	\$ -	\$ -	\$ 10,638
2009-10	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	\$ 23,262,632	\$ 1,783,147	\$ 21,479,485	\$ 5,853	\$ 2,133	\$ 3,720	\$ 21,475,765
2009-10	Comprehensive School Safety Plans I and II	Ch. 736/97; Ch. 996/99	313	\$ 3,339,644	\$ 2,996,282	\$ 343,362	\$ -	\$ -	\$ -	\$ 343,362
2009-10	Consolidation of Annual Parent Notification/Schoolsite Discipline Rules/Alternative Schools	Ch. 448/75	272	\$ 9,246,935	\$ 8,843,988	\$ 402,947	\$ -	\$ -	\$ -	\$ 402,947
2009-10	Consolidation of Law Enforcement Agency Notification and Missing Children Reports	Ch. 1117/89	276	\$ 824,608	\$ 1,000	\$ 823,608	\$ -	\$ -	\$ -	\$ 823,608
2009-10	Consolidation or Notification to Teachers: Pupils Subject to Suspension or Expulsion and Pupil Discipline Records, Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 1306/89	292	\$ 8,776,032	\$ 6,622,523	\$ 2,153,509	\$ 33,477	\$ 5,484	\$ 27,993	\$ 2,125,516
2009-10	County Office of Education Fiscal Accountability Reporting	Ch. 917/87	209	\$ 337,987	\$ 282,000	\$ 55,987	\$ -	\$ -	\$ -	\$ 55,987
2009-10	Criminal Background Checks	Ch. 588/97	183	\$ 444,298	\$ 411,866	\$ 32,432	\$ -	\$ -	\$ -	\$ 32,432
2009-10	Criminal Background Checks II	Ch. 594/98	251	\$ 382,165	\$ 303,000	\$ 79,165	\$ -	\$ -	\$ -	\$ 79,165
2009-10	Expulsion of Pupils Transcript Cost for Appeals	Ch. 1253/75	91	\$ 12,754	\$ 1,000	\$ 11,754	\$ -	\$ -	\$ -	\$ 11,754
2009-10	Financial and Compliance Audits	Ch. 367/77	192	\$ 312,270	\$ 303,505	\$ 8,765	\$ -	\$ -	\$ -	\$ 8,765
2009-10	Graduation Requirements (On or after 01/01/2005)	Ch. 498/93	297	\$ 268,157,436	\$ 1,000	\$ 268,156,436	\$ -	\$ -	\$ -	\$ 268,156,436
2009-10	Habitual Truant	Ch. 1184/75	166	\$ 6,257,553	\$ 1,383,000	\$ 4,874,553	\$ -	\$ -	\$ -	\$ 4,874,553
2009-10	High School Exit Examination	Ch. 1/99	268	\$ 7,419,164	\$ 5,775,998	\$ 1,643,166	\$ -	\$ -	\$ -	\$ 1,643,166
2009-10	Immunization Records	Ch. 1176/77	32	\$ 4,668,681	\$ 3,802,000	\$ 866,681	\$ -	\$ -	\$ -	\$ 866,681
2009-10	Immunization Records - Hepatitis B	Ch. 325/78	230	\$ 5,705,616	\$ 4,600,235	\$ 1,105,381	\$ 173	\$ 173	\$ -	\$ 1,105,381
2009-10	Intradistrict Attendance Permits	Ch. 172/86	148	\$ 448,120	\$ -	\$ 448,120	\$ -	\$ -	\$ -	\$ 448,120
2009-10	Intradistrict Attendance	Ch. 161/93	153	\$ 4,394,453	\$ 3,396,996	\$ 997,457	\$ -	\$ -	\$ -	\$ 997,457
2009-10	Juvenile Court Notices II	Ch. 1423/84	155	\$ 1,071,881	\$ 993,861	\$ 78,020	\$ -	\$ -	\$ -	\$ 78,020

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)				Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance		
2009-10	Mandate Reimbursement Process	Ch. 486/75	42	\$ 16,547,869	\$ 995	\$ 16,546,874	\$ -	\$ -	\$ -	\$ 16,546,870	
2009-10	Notification of Truancy	Ch. 498/83	48	\$ 18,676,860	\$ 3,645,000	\$ 15,031,860	\$ -	\$ -	\$ -	\$ 15,031,860	
2009-10	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	\$ 3,729,137	\$ -	\$ 3,729,137	\$ -	\$ -	\$ -	\$ 3,729,137	
2009-10	Physical Education Reports	Ch. 640/97	195	\$ 10,552	\$ 1,000	\$ 9,552	\$ -	\$ -	\$ -	\$ 9,552	
2009-10	Physical Performance Tests	Ch. 975/95	173	\$ 1,540,395	\$ 1,455,607	\$ 84,788	\$ 1,826	\$ -	\$ -	\$ 84,788	
2009-10	Prevailing Wage Rate	Ch. 1249/78	304	\$ 22,223	\$ -	\$ 22,223	\$ -	\$ -	\$ -	\$ 22,223	
2009-10	Pupil Health Screenings	Ch. 1208/76	261	\$ 906,604	\$ 746,761	\$ 159,843	\$ -	\$ -	\$ -	\$ 159,843	
2009-10	Pupil Promotion and Retention	Ch. 100/91	244	\$ 2,767,841	\$ 1,073,998	\$ 1,693,843	\$ -	\$ -	\$ -	\$ 1,693,843	
2009-10	Pupil Residency Verification and Appeals	Ch. 309/95	182	\$ 113,910	\$ 981	\$ 112,929	\$ 19	\$ -	\$ -	\$ 112,929	
2009-10	Pupil Safety Notices	Ch. 498/83	280	\$ 118,719	\$ 72,000	\$ 46,719	\$ -	\$ -	\$ -	\$ 46,719	
2009-10	Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 1253/75	176	\$ 5,414,487	\$ 5,174,605	\$ 239,882	\$ 30,395	\$ -	\$ -	\$ 209,487	
2009-10	Removal of Chemicals	Ch. 1107/84	57	\$ 973,526	\$ 1,000	\$ 972,526	\$ -	\$ -	\$ -	\$ 972,526	
2009-10	School Accountability Report Cards	Ch. 1463/89	171	\$ 2,365,488	\$ -	\$ 2,365,488	\$ -	\$ -	\$ -	\$ 2,365,488	
2009-10	School District Fiscal Accountability Reporting and Employee Benefits Disclosure	Ch. 100/81	258	\$ 3,461,835	\$ 2,666,881	\$ 794,954	\$ -	\$ -	\$ -	\$ 794,954	
2009-10	School District Reorganization	Ch. 1192/80	228	\$ 1,019	\$ 1,000	\$ 19	\$ -	\$ -	\$ -	\$ 19	
2009-10	Scoliosis Screening	Ch. 1347/80	58	\$ 3,292,644	\$ 1,000	\$ 3,291,644	\$ -	\$ -	\$ -	\$ 3,291,644	
2009-10	Student Records	Ch. 593/89	308	\$ 224,162	\$ -	\$ 224,162	\$ -	\$ -	\$ -	\$ 224,162	
2009-10	The Staff Act	Ch. 498/83	260	\$ 19,781,136	\$ 18,244,203	\$ 1,536,933	\$ -	\$ -	\$ -	\$ 1,536,933	
2009-10 Total				\$ 429,909,472	\$ 77,683,407	\$ 352,226,065	\$ 71,748	\$ 9,636	\$ 62,112	\$ 352,163,953	
2008-09	Academic Performance Index	Ch. 695/00	305	\$ 125,080	\$ -	\$ 125,080	\$ -	\$ -	\$ -	\$ 125,080	
2008-09	AIDS Prevention Instruction II	Ch. 818/91	250	\$ 1,582,037	\$ 1,582,037	\$ -	\$ 5,161	\$ -	\$ 1,049	\$ (1,049)	
2008-09	California State Teachers' Retirement System (CalSTRS)										
2008-09	Service Credit	Ch. 603/94	286	\$ 103,369	\$ 84,999	\$ 18,370	\$ -	\$ -	\$ -	\$ 18,370	
2008-09	Caregiver Affidavits to Establish Residence for School Attendance	Ch. 98/94	172	\$ 614,283	\$ 598,478	\$ 15,805	\$ 1,120	\$ -	\$ -	\$ 15,805	
2008-09	Charter Schools I, II, III	Ch. 781/92	278	\$ 2,559,473	\$ 1,367,020	\$ 1,192,453	\$ -	\$ -	\$ -	\$ 1,192,453	
2008-09	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	\$ 22,160,127	\$ 2,713,539	\$ 19,446,588	\$ 20,789	\$ 12,350	\$ 8,439	\$ 19,438,149	
2008-09	Comprehensive School Safety Plans	Ch. 736/97	223	\$ 4,143,100	\$ 3,647,550	\$ 495,550	\$ 7,808	\$ 5,918	\$ 1,890	\$ 493,660	
2008-09	Comprehensive School Safety Plans II: Discrimination and Harassment Policy, and Hate Crime Reporting Procedures	Ch. 890/01; Ch. 506/02	311	\$ 3,616	\$ -	\$ 3,616	\$ -	\$ -	\$ -	\$ 3,616	
2008-09	Consolidation of Annual Parent Notification/Schoolsite Discipline Rules/Alternative Schools	Ch. 448/75	272	\$ 10,098,477	\$ 10,092,640	\$ 5,837	\$ 865,406	\$ 11,587	\$ 853,819	\$ (847,982)	
2008-09	Consolidation of Law Enforcement Agency Notification and Missing Children Reports	Ch. 1117/89	276	\$ 891,533	\$ -	\$ 891,533	\$ -	\$ -	\$ -	\$ 891,533	
2008-09	Subject to Suspension or Expulsion and Pupil Discipline Records, Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 1306/89	292	\$ 8,511,984	\$ 7,659,423	\$ 852,561	\$ 1,049	\$ -	\$ 1,049	\$ 851,512	
2008-09	County Office of Education Fiscal Accountability Reporting	Ch. 917/87	209	\$ 346,268	\$ 285,499	\$ 60,769	\$ -	\$ -	\$ -	\$ 60,769	
2008-09	Criminal Background Checks	Ch. 588/97	183	\$ 697,267	\$ 663,358	\$ 33,909	\$ 825	\$ 825	\$ -	\$ 33,909	
2008-09	Criminal Background Checks II	Ch. 594/98	251	\$ 368,652	\$ 355,003	\$ 13,649	\$ 1,055	\$ -	\$ 1,055	\$ 12,594	

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2008-09	Differential Pay and Reemployment	Ch. 30/98	253	\$ 2,996	\$ 2,000	\$ 996	\$ -	\$ -	\$ -	\$ 996
2008-09	Expulsion of Pupils Transcript Cost for Appeals	Ch. 1253/75	91	\$ 13,929	\$ -	\$ 13,929	\$ -	\$ -	\$ -	\$ 13,929
2008-09	Financial and Compliance Audits	Ch. 36/77	192	\$ 439,129	\$ 373,791	\$ 65,338	\$ 2,175	\$ -	\$ 2,175	\$ 63,163
2008-09	Graduation Requirements (On or after 01/01/2005)	Ch. 498/93	297	\$ 261,471,058	\$ 52,675	\$ 261,418,383	\$ -	\$ -	\$ -	\$ 261,418,383
2008-09	Habitual Truant	Ch. 1184/75	166	\$ 6,805,634	\$ 1,452,088	\$ 5,353,546	\$ 1,233	\$ -	\$ 1,233	\$ 5,352,313
2008-09	High School Exit Examination	Ch. 1/99	268	\$ 7,755,202	\$ 5,776,234	\$ 1,978,968	\$ -	\$ -	\$ -	\$ 1,978,968
2008-09	Immunization Records	Ch. 1176/77	32	\$ 4,662,828	\$ 4,614,045	\$ 48,783	\$ 15,736	\$ 1,119	\$ 14,617	\$ 34,166
2008-09	Immunization Records - Hepatitis B	Ch. 325/78	230	\$ 5,708,071	\$ 5,507,176	\$ 200,895	\$ 9,336	\$ 2,366	\$ 6,970	\$ 193,925
2008-09	Interdistrict Attendance Permits	Ch. 172/86	148	\$ 363,201	\$ -	\$ 363,201	\$ -	\$ -	\$ -	\$ 363,201
2008-09	Intradistrict Attendance	Ch. 161/93	153	\$ 4,431,609	\$ 3,607,488	\$ 824,121	\$ 12,323	\$ 8,157	\$ 4,166	\$ 819,955
2008-09	Juvenile Court Notices II	Ch. 1423/84	155	\$ 1,256,537	\$ 1,094,166	\$ 162,371	\$ -	\$ -	\$ -	\$ 162,371
2008-09	Mandate Reimbursement Process	Ch. 486/75	42	\$ 16,990,141	\$ 4,536	\$ 16,985,605	\$ -	\$ -	\$ -	\$ 16,985,605
2008-09	National Norm-Referenced Achievement Test (formerly Standardized Testing and Reporting (STAR))	Ch. 828/97	265	\$ 65,051	\$ -	\$ 65,051	\$ -	\$ -	\$ -	\$ 65,051
2008-09	Notification of Truancy	Ch. 498/83	48	\$ 17,448,872	\$ 4,028,307	\$ 13,420,565	\$ 1,150	\$ -	\$ 1,150	\$ 13,419,415
2008-09	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	\$ 3,808,780	\$ 10,302	\$ 3,798,478	\$ -	\$ -	\$ -	\$ 3,798,478
2008-09	Physical Education Reports	Ch. 640/97	195	\$ 4,262	\$ -	\$ 4,262	\$ -	\$ -	\$ -	\$ 4,262
2008-09	Physical Performance Tests	Ch. 975/95	173	\$ 1,813,841	\$ 1,809,170	\$ 4,671	\$ 4,260	\$ 1,109	\$ 3,151	\$ 1,520
2008-09	Prevailing Wage Rate	Ch. 1249/78	304	\$ 89,256	\$ -	\$ 89,256	\$ -	\$ -	\$ -	\$ 89,256
2008-09	Pupil Health Screenings	Ch. 1208/76	261	\$ 927,647	\$ 804,471	\$ 123,176	\$ 12,411	\$ 10,089	\$ 2,322	\$ 120,854
2008-09	Pupil Promotion and Retention	Ch. 100/91	244	\$ 3,165,880	\$ 1,119,074	\$ 2,046,806	\$ 471	\$ 471	\$ -	\$ 2,046,806
2008-09	Pupil Residency Verification and Appeals	Ch. 309/95	182	\$ 109,517	\$ -	\$ 109,517	\$ -	\$ -	\$ -	\$ 109,517
2008-09	Pupil Safety Notices	Ch. 498/83	280	\$ 87,954	\$ 75,760	\$ 12,194	\$ -	\$ -	\$ -	\$ 12,194
2008-09	Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 1253/75	176	\$ 6,359,105	\$ 5,670,909	\$ 688,196	\$ 203,356	\$ 203,356	\$ -	\$ 688,196
2008-09	Removal of Chemicals	Ch. 1107/84	57	\$ 1,148,847	\$ -	\$ 1,148,847	\$ -	\$ -	\$ -	\$ 1,148,847
2008-09	School Accountability Report Cards	Ch. 1463/89	171	\$ 2,152,482	\$ 2,255	\$ 2,150,227	\$ -	\$ -	\$ -	\$ 2,150,227
2008-09	School District Fiscal Accountability Reporting and Employee Benefits Disclosure	Ch. 100/81	258	\$ 3,369,668	\$ 33,027	\$ 3,336,641	\$ -	\$ -	\$ -	\$ 3,336,641
2008-09	Scoliosis Screening	Ch. 1347/80	58	\$ 3,305,227	\$ 8,159	\$ 3,297,068	\$ -	\$ -	\$ -	\$ 3,297,068
2008-09	Student Records	Ch. 593/89	308	\$ 135,845	\$ -	\$ 135,845	\$ -	\$ -	\$ -	\$ 135,845
2008-09	The Stull Act	Ch. 498/83	260	\$ 23,045,261	\$ 20,001,947	\$ 3,043,314	\$ 31,751	\$ 22,292	\$ 9,459	\$ 3,033,855
2008-09 Total				\$ 429,143,096	\$ 85,097,126	\$ 344,045,970	\$ 1,197,415	\$ 284,871	\$ 912,544	\$ 343,133,426
2007-08	Absentee Ballots	Ch. 77/78	170	\$ 19,654	\$ 1,000	\$ 18,654	\$ -	\$ -	\$ -	\$ 18,654
2007-08	Academic Performance Index	Ch. 695/00	305	\$ 117,677	\$ -	\$ 117,677	\$ -	\$ -	\$ -	\$ 117,677
2007-08	Agency Fee Arrangements	Ch. 893/00	269	\$ 5,267	\$ -	\$ 5,267	\$ -	\$ -	\$ -	\$ 5,267
2007-08	AIDS Prevention Instruction II	Ch. 818/91	250	\$ 1,709,778	\$ 993	\$ 1,708,785	\$ 7	\$ 4	\$ 3	\$ 1,708,782
2007-08	California State Teachers' Retirement System (CalSTRS)	Ch. 603/94	286	\$ 72,259	\$ -	\$ 72,259	\$ -	\$ -	\$ -	\$ 72,259
2007-08	Caregiver Affidavits to Establish Residence for School Attendance	Ch. 98/94	172	\$ 624,944	\$ 2,327	\$ 622,617	\$ -	\$ -	\$ -	\$ 622,617
2007-08	Charter Schools I, II, III	Ch. 781/92	278	\$ 1,740,107	\$ 34,978	\$ 1,705,129	\$ -	\$ -	\$ -	\$ 1,705,129
2007-08	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	\$ 24,970,299	\$ 152,919	\$ 24,817,380	\$ 2	\$ -	\$ 2	\$ 24,817,378
2007-08	Comprehensive School Safety Plans	Ch. 736/97	223	\$ 4,039,484	\$ 11,297	\$ 4,028,187	\$ 3	\$ -	\$ 3	\$ 4,028,184

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2007-08	Comprehensive School Safety Plans II: Discrimination and Harassment Policy, and Hate Crime Reporting Procedures	Ch. 890/01; Ch. 506/02	311	\$ 3,730	\$ -	\$ 3,730	\$ -	\$ -	\$ 3,730	
2007-08	Consolidation of Annual Parent Notification/Schoolsite Discipline Rules/Alternative Schools	Ch. 448/75	272	\$ 9,232,098	\$ 17,576	\$ 9,214,522	\$ 2	\$ -	\$ 9,214,520	
2007-08	Consolidation of Law Enforcement Agency Notification and Missing Children Reports	Ch. 1117/89	276	\$ 891,073	\$ 1,000	\$ 890,073	\$ -	\$ -	\$ 890,073	
2007-08	Consolidation of Pupil Discipline Records and Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 345/00	291	\$ 346,400	\$ -	\$ 346,400	\$ -	\$ -	\$ 346,400	
2007-08	County Office of Education Fiscal Accountability Reporting	Ch. 917/87	209	\$ 309,546	\$ 1,000	\$ 308,546	\$ -	\$ -	\$ 308,546	
2007-08	Criminal Background Checks	Ch. 588/97	183	\$ 868,045	\$ 3,595	\$ 864,450	\$ 1	\$ -	\$ 864,450	
2007-08	Criminal Background Checks II	Ch. 594/98	251	\$ 460,761	\$ 1,000	\$ 459,761	\$ -	\$ -	\$ 459,761	
2007-08	Expulsion of Pupils Transcript Cost for Appeals	Ch. 1253/75	91	\$ 13,054	\$ 1,000	\$ 12,054	\$ -	\$ -	\$ 12,054	
2007-08	Financial and Compliance Audits	Ch. 367/77	192	\$ 415,489	\$ 1,000	\$ 414,489	\$ -	\$ -	\$ 414,489	
2007-08	Graduation Requirements	Ch. 498/83	26	\$ 27,025,365	\$ 756	\$ 27,024,609	\$ -	\$ -	\$ 27,024,609	
2007-08	Graduation Requirements (On or after 01/01/2005)	Ch. 498/93	297	\$ 231,450,482	\$ 2,117,081	\$ 229,333,401	\$ -	\$ -	\$ 229,333,401	
2007-08	Habitual Truant	Ch. 1184/75	166	\$ 7,098,458	\$ 3,299	\$ 7,095,159	\$ 1	\$ -	\$ 7,095,158	
2007-08	High School Exit Examination	Ch. 1/99	268	\$ 6,941,272	\$ 2,643	\$ 6,938,629	\$ -	\$ -	\$ 6,938,629	
2007-08	Immunization Records	Ch. 1176/77	32	\$ 4,365,533	\$ 155,818	\$ 4,209,715	\$ 2	\$ -	\$ 4,209,713	
2007-08	Immunization Records - Hepatitis B	Ch. 325/78	230	\$ 5,527,457	\$ 14,201	\$ 5,513,256	\$ 3	\$ -	\$ 5,513,253	
2007-08	Intradistrict Attendance Permits	Ch. 172/86	148	\$ 267,572	\$ -	\$ 267,572	\$ -	\$ -	\$ 267,572	
2007-08	Intradistrict Attendance	Ch. 161/93	153	\$ 4,238,386	\$ 1,000	\$ 4,237,386	\$ -	\$ -	\$ 4,237,386	
2007-08	Juvenile Court Notices II	Ch. 1423/84	155	\$ 1,159,907	\$ 1,000	\$ 1,158,907	\$ -	\$ -	\$ 1,158,907	
2007-08	Mandate Reimbursement Process	Ch. 486/75	42	\$ 16,426,591	\$ 3,785	\$ 16,422,806	\$ -	\$ -	\$ 16,422,806	
2007-08	National Norm-Referenced Achievement Test (formerly Standardized Testing and Reporting (STAR))	Ch. 828/97	265	\$ 3,431,203	\$ 9,177	\$ 3,422,026	\$ -	\$ -	\$ 3,422,026	
2007-08	Notification of Truancy	Ch. 498/83	48	\$ 16,740,504	\$ 34,735	\$ 16,705,769	\$ 10	\$ 9	\$ 16,705,768	
2007-08	Notification to Teachers: Pupils Subject to Suspension or Expulsion	Ch. 1306/89	150	\$ 7,031,993	\$ 14,335	\$ 7,017,658	\$ 9	\$ 7	\$ 7,017,656	
2007-08	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	\$ 3,830,664	\$ 7,754	\$ 3,822,910	\$ -	\$ -	\$ 3,822,910	
2007-08	Physical Education Reports	Ch. 640/97	195	\$ 9,014	\$ 1,000	\$ 8,014	\$ -	\$ -	\$ 8,014	
2007-08	Physical Performance Tests	Ch. 975/95	173	\$ 1,914,563	\$ 4,709	\$ 1,909,854	\$ 2	\$ -	\$ 1,909,852	
2007-08	Prevailing Wage Rate	Ch. 1249/78	304	\$ 150,888	\$ -	\$ 150,888	\$ -	\$ -	\$ 150,888	
2007-08	Pupil Health Screenings	Ch. 1208/76	261	\$ 840,766	\$ 3,095	\$ 837,671	\$ 2	\$ -	\$ 837,669	
2007-08	Pupil Promotion and Retention	Ch. 100/91	244	\$ 2,791,621	\$ 12,880	\$ 2,778,741	\$ -	\$ -	\$ 2,778,741	
2007-08	Pupil Residency Verification and Appeals	Ch. 309/95	182	\$ 90,993	\$ 1,000	\$ 89,993	\$ -	\$ -	\$ 89,993	
2007-08	Pupil Safety Notices	Ch. 498/83	280	\$ 23,080	\$ -	\$ 23,080	\$ -	\$ -	\$ 23,080	
2007-08	Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 1253/75	176	\$ 7,077,212	\$ 6,137	\$ 7,071,075	\$ 22	\$ 21	\$ 7,071,074	
2007-08	Removal of Chemicals	Ch. 1107/84	57	\$ 1,377,233	\$ 1,000	\$ 1,376,233	\$ -	\$ -	\$ 1,376,233	
2007-08	School Accountability Report Cards	Ch. 1463/89	171	\$ 2,194,113	\$ 3,695	\$ 2,190,418	\$ -	\$ -	\$ 2,190,418	

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2007-08	School District Fiscal Accountability Reporting and	Ch. 100/81	258	\$ 3,249,617	\$ 6,419	\$ 3,243,198	\$ 2,501	\$ -	\$ 2,501	\$ 3,240,697
2007-08	Employee Benefits Disclosure	Ch. 1192/80	228	\$ 47,447	\$ 1,000	\$ 46,447	\$ -	\$ -	\$ -	\$ 46,447
2007-08	School District Reorganization	Ch. 1347/80	58	\$ 3,358,946	\$ 13,460	\$ 3,345,486	\$ 2	\$ -	\$ 2	\$ 3,345,484
2007-08	Scoliosis Screening	Ch. 593/89	308	\$ 124,119	\$ -	\$ 124,119	\$ -	\$ -	\$ -	\$ 124,119
2007-08	Student Records	Ch. 498/83	260	\$ 22,168,457	\$ 55,548	\$ 22,112,909	\$ -	\$ -	\$ -	\$ 22,112,909
2007-08 Total	The Stull Act		260	\$ 426,793,121	\$ 2,705,212	\$ 424,087,909	\$ 2,569	\$ 42	\$ 2,527	\$ 424,085,382
2006-07	Academic Performance Index	Ch. 695/00	305	\$ 110,375	\$ -	\$ 110,375	\$ -	\$ -	\$ -	\$ 110,375
2006-07	Agency Fee Arrangements	Ch. 893/00	269	\$ 6,011	\$ -	\$ 6,011	\$ -	\$ -	\$ -	\$ 6,011
2006-07	AIDS Prevention Instruction II	Ch. 818/91	250	\$ 1,560,401	\$ 203,760	\$ 1,356,641	\$ 54,327	\$ 52,385	\$ 1,942	\$ 1,354,699
2006-07	California State Teachers' Retirement System (CalSTRS)									
2006-07	Service Credit	Ch. 603/94	286	\$ 87,725	\$ -	\$ 87,725	\$ -	\$ -	\$ -	\$ 87,725
2006-07	Caregiver Affidavits to Establish Residence for School Attendance	Ch. 98/94	172	\$ 713,312	\$ 106,094	\$ 607,218	\$ 28,693	\$ 15,027	\$ 13,666	\$ 593,552
2006-07	Charter Schools II	Ch. 34/98	249	\$ 2,310,086	\$ 148,060	\$ 2,162,026	\$ 20,038	\$ 20,038	\$ -	\$ 2,162,026
2006-07	Charter Schools III	Ch. 34/98	277	\$ 84,983	\$ -	\$ 84,983	\$ -	\$ -	\$ -	\$ 84,983
2006-07	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	\$ 27,822,780	\$ 3,467,271	\$ 24,355,509	\$ 147,591	\$ 116,500	\$ 31,091	\$ 24,324,418
2006-07	Comprehensive School Safety Plans	Ch. 736/97	223	\$ 3,840,616	\$ 619,014	\$ 3,221,602	\$ 93,330	\$ 44,981	\$ 48,349	\$ 3,173,253
2006-07	Comprehensive School Safety Plans II: Earthquake Emergency Procedure System and Use of School Buildings During Emergencies	Ch. 895/04	312	\$ 3,045	\$ -	\$ 3,045	\$ -	\$ -	\$ -	\$ 3,045
2006-07	Consolidation of Annual Parent Notification/Schoolsite Discipline Rules/Alternative Schools	Ch. 448/75	272	\$ 9,089,467	\$ 1,413,223	\$ 7,676,244	\$ 55,256	\$ 48,794	\$ 6,462	\$ 7,669,782
2006-07	Consolidation of Pupil Discipline Records and Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 345/00	291	\$ 215,949	\$ -	\$ 215,949	\$ -	\$ -	\$ -	\$ 215,949
2006-07	County Office of Education Fiscal Accountability Reporting	Ch. 917/87	209	\$ 271,074	\$ 36,060	\$ 235,014	\$ 15,158	\$ 15,158	\$ -	\$ 235,014
2006-07	Criminal Background Checks	Ch. 588/97	183	\$ 814,197	\$ 124,668	\$ 689,529	\$ 40,116	\$ 39,439	\$ 677	\$ 688,852
2006-07	Criminal Background Checks II	Ch. 594/98	251	\$ 555,064	\$ 41,213	\$ 513,851	\$ 6,681	\$ 4,892	\$ 1,789	\$ 512,062
2006-07	Differential Pay and Reemployment	Ch. 30/98	253	\$ 2,919	\$ -	\$ 2,919	\$ 1,262	\$ -	\$ 1,262	\$ 1,657
2006-07	Expulsion of Pupils Transcript Cost for Appeals	Ch. 1253/75	91	\$ 14,079	\$ 2,924	\$ 11,155	\$ -	\$ -	\$ -	\$ 11,155
2006-07	Financial and Compliance Audits	Ch. 36/77	192	\$ 386,700	\$ 38,250	\$ 348,450	\$ 16,641	\$ 15,516	\$ 1,125	\$ 347,325
2006-07	Graduation Requirements	Ch. 498/83	26	\$ 65,289,197	\$ 11,544,437	\$ 53,744,760	\$ 491,772	\$ 3,394	\$ 488,378	\$ 53,256,382
2006-07	Graduation Requirements (On or after 01/01/2005)	Ch. 498/93	297	\$ 173,270,634	\$ 3,001,107	\$ 170,269,527	\$ -	\$ -	\$ -	\$ 170,269,527
2006-07	Habitual Truant	Ch. 1184/75	166	\$ 6,719,558	\$ 797,003	\$ 5,922,555	\$ 69,622	\$ 47,948	\$ 21,674	\$ 5,900,881
2006-07	High School Exit Examination	Ch. 1/99	268	\$ 6,589,849	\$ 8,349	\$ 6,581,500	\$ -	\$ -	\$ -	\$ 6,581,500
2006-07	Immunization Records	Ch. 1176/77	32	\$ 4,151,300	\$ 1,867,265	\$ 2,284,035	\$ 1,352	\$ 912	\$ 440	\$ 2,283,595
2006-07	Immunization Records - Hepatitis B	Ch. 325/78	230	\$ 5,373,009	\$ 908,287	\$ 4,464,722	\$ 10,680	\$ 8,110	\$ 2,570	\$ 4,462,152
2006-07	Interdistrict Attendance Permits	Ch. 172/86	148	\$ 224,134	\$ -	\$ 224,134	\$ -	\$ -	\$ -	\$ 224,134
2006-07	Intradistrict Attendance	Ch. 161/93	153	\$ 4,509,810	\$ 783,969	\$ 3,725,841	\$ 65,813	\$ 59,790	\$ 6,023	\$ 3,719,818
2006-07	Juvenile Court Notices II	Ch. 1423/84	155	\$ 1,176,856	\$ 170,781	\$ 1,006,075	\$ 28,652	\$ 27,448	\$ 1,204	\$ 1,004,871
2006-07	Law Enforcement Agency Notification	Ch. 1117/89	157	\$ 1,656,765	\$ 201,715	\$ 1,455,050	\$ 32,178	\$ 30,021	\$ 2,157	\$ 1,452,893
2006-07	Mandate Reimbursement Process	Ch. 486/75	42	\$ 15,562,513	\$ 3,786	\$ 15,558,727	\$ -	\$ -	\$ -	\$ 15,558,727

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2006-07	Missing Children Reports	Ch. 249/86	275	\$ 23,761	\$ -	\$ 23,761	\$ -	\$ -	\$ -	\$ 23,761
2006-07	National Norm-Referenced Achievement Test (formerly Standardized Testing and Reporting (STAR))	Ch. 828/97	265	\$ 3,247,854	\$ 21,019	\$ 3,226,835	\$ -	\$ -	\$ -	\$ 3,226,835
2006-07	Notification of Truancy	Ch. 498/83	48	\$ 14,280,248	\$ 1,944,636	\$ 12,335,612	\$ 203,988	\$ 199,635	\$ 4,353	\$ 12,331,259
2006-07	Notification to Teachers: Pupils Subject to Suspension or Expulsion	Ch. 1306/89	150	\$ 6,617,290	\$ 923,200	\$ 5,694,090	\$ 60,300	\$ 54,923	\$ 5,377	\$ 5,688,713
2006-07	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	\$ 3,724,236	\$ 4,639	\$ 3,719,597	\$ -	\$ -	\$ -	\$ 3,719,597
2006-07	Physical Education Reports	Ch. 640/97	195	\$ 6,689	\$ -	\$ 6,689	\$ -	\$ -	\$ -	\$ 6,689
2006-07	Physical Performance Tests	Ch. 975/95	173	\$ 1,756,962	\$ 658,882	\$ 1,098,080	\$ 42,573	\$ 37,208	\$ 5,365	\$ 1,092,715
2006-07	Prevailing Wage Rate	Ch. 1249/78	304	\$ 52,810	\$ -	\$ 52,810	\$ -	\$ -	\$ -	\$ 52,810
2006-07	Pupil Health Screenings	Ch. 1208/76	261	\$ 814,086	\$ 146,439	\$ 667,647	\$ 72,250	\$ 29,296	\$ 42,954	\$ 624,693
2006-07	Pupil Promotion and Retention	Ch. 1007/91	244	\$ 3,239,841	\$ 424,439	\$ 2,815,402	\$ 73,306	\$ 50,311	\$ 22,995	\$ 2,792,407
2006-07	Pupil Residency Verification and Appeals	Ch. 309/95	182	\$ 68,265	\$ 53,939	\$ 14,326	\$ 1,388	\$ 1,388	\$ -	\$ 14,326
2006-07	Pupil Safety Notices	Ch. 498/83	280	\$ 14,665	\$ -	\$ 14,665	\$ -	\$ -	\$ -	\$ 14,665
2006-07	Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 1253/75	176	\$ 7,224,918	\$ 506,503	\$ 6,718,415	\$ 35,024	\$ 25,955	\$ 9,069	\$ 6,709,346
2006-07	Removal of Chemicals	Ch. 1107/84	57	\$ 964,299	\$ 54,289	\$ 910,010	\$ 14,205	\$ 14,205	\$ -	\$ 910,010
2006-07	School Accountability Report Cards	Ch. 1463/89	171	\$ 2,196,998	\$ 2,251	\$ 2,194,747	\$ -	\$ -	\$ -	\$ 2,194,747
2006-07	School District Fiscal Accountability Reporting and Employee Benefits Disclosure	Ch. 100/81	258	\$ 2,758,435	\$ 309,403	\$ 2,449,032	\$ 42,825	\$ 40,423	\$ 2,402	\$ 2,446,630
2006-07	School District Reorganization	Ch. 1192/80	228	\$ 14,952	\$ -	\$ 14,952	\$ -	\$ -	\$ -	\$ 14,952
2006-07	Scoliosis Screening	Ch. 1347/80	58	\$ 3,087,553	\$ 520,351	\$ 2,567,202	\$ 15,442	\$ 13,514	\$ 1,928	\$ 2,565,274
2006-07	Student Records	Ch. 593/89	308	\$ 83,236	\$ -	\$ 83,236	\$ -	\$ -	\$ -	\$ 83,236
2006-07	The Stull Act	Ch. 498/83	260	\$ 20,924,951	\$ 148,316	\$ 20,776,635	\$ -	\$ -	\$ -	\$ 20,776,635
2006-07 Total				\$ 403,514,457	\$ 31,205,542	\$ 372,308,915	\$ 1,740,463	\$ 1,017,211	\$ 723,252	\$ 371,585,663
2005-06	Academic Performance Index	Ch. 695/00	305	\$ 91,574	\$ -	\$ 91,574	\$ -	\$ -	\$ -	\$ 91,574
2005-06	Agency Fee Arrangements	Ch. 893/00	269	\$ 13,832	\$ -	\$ 13,832	\$ -	\$ -	\$ -	\$ 13,832
2005-06	AIDS Prevention Instruction II	Ch. 818/91	250	\$ 1,529,642	\$ 207,496	\$ 1,322,146	\$ -	\$ -	\$ -	\$ 1,322,146
2005-06	California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	286	\$ 81,632	\$ -	\$ 81,632	\$ -	\$ -	\$ -	\$ 81,632
2005-06	Caregiver Affidavits to Establish Residence for School Attendance	Ch. 98/94	172	\$ 789,966	\$ 124,841	\$ 665,125	\$ -	\$ -	\$ -	\$ 665,125
2005-06	Charter Schools II	Ch. 34/98	249	\$ 1,894,352	\$ 64,827	\$ 1,829,525	\$ -	\$ -	\$ -	\$ 1,829,525
2005-06	Charter Schools III	Ch. 34/98	277	\$ 9,521	\$ -	\$ 9,521	\$ -	\$ -	\$ -	\$ 9,521
2005-06	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	\$ 28,153,468	\$ 18,933,286	\$ 9,220,182	\$ 6,504,563	\$ 5,404,226	\$ 1,100,337	\$ 8,119,845
2005-06	Comprehensive School Safety Plans	Ch. 736/97	223	\$ 4,128,203	\$ 282,342	\$ 3,845,861	\$ -	\$ -	\$ -	\$ 3,845,861
2005-06	Comprehensive School Safety Plans II: Earthquake Emergency Procedure System and Use of School Buildings During Emergencies	Ch. 895/04	312	\$ 1,649	\$ -	\$ 1,649	\$ -	\$ -	\$ -	\$ 1,649
2005-06	Consolidation of Annual Parent Notification/Schoolsite Discipline Rules/Alternative Schools	Ch. 448/75	272	\$ 8,377,096	\$ 2,847,159	\$ 5,529,937	\$ -	\$ -	\$ -	\$ 5,529,937
2005-06	Consolidation of Pupil Discipline Records and Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 345/00	291	\$ 221,637	\$ -	\$ 221,637	\$ -	\$ -	\$ -	\$ 221,637

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2005-06	County Office of Education Fiscal Accountability Reporting	Ch. 917/87	209	\$ 330,968	\$ 3,536	\$ 327,432	\$ -	\$ -	\$ -	\$ 327,432
2005-06	Criminal Background Checks	Ch. 588/97	183	\$ 1,054,716	\$ 748,138	\$ 306,578	\$ 324,824	\$ 323,081	\$ 1,743	\$ 304,835
2005-06	Criminal Background Checks II	Ch. 594/98	251	\$ 347,467	\$ 11,457	\$ 336,010	\$ -	\$ -	\$ -	\$ 336,010
2005-06	Differential Pay and Reemployment	Ch. 30/98	253	\$ 9,089	\$ 968	\$ 8,121	\$ -	\$ -	\$ -	\$ 8,121
2005-06	Expulsion of Pupils Transcript Cost for Appeals	Ch. 1253/75	91	\$ 11,182	\$ 1,696	\$ 9,486	\$ -	\$ -	\$ -	\$ 9,486
2005-06	Financial and Compliance Audits	Ch. 36/77	192	\$ 345,937	\$ 68,025	\$ 277,912	\$ -	\$ -	\$ -	\$ 277,912
2005-06	Graduation Requirements	Ch. 498/83	26	\$ 43,202,517	\$ 18,607,255	\$ 24,595,262	\$ 2,628,221	\$ 940,748	\$ 1,687,473	\$ 22,907,789
2005-06	Graduation Requirements (On or after 01/01/2005)	Ch. 498/93	297	\$ 178,622,302	\$ 6,217,536	\$ 172,404,766	\$ -	\$ -	\$ -	\$ 172,404,766
2005-06	Habitual Truant	Ch. 1184/75	166	\$ 5,514,935	\$ 580,255	\$ 4,934,680	\$ -	\$ -	\$ -	\$ 4,934,680
2005-06	High School Exit Examination	Ch. 1/99	268	\$ 6,928,053	\$ 1,095,422	\$ 5,832,631	\$ -	\$ -	\$ -	\$ 5,832,631
2005-06	Immunization Records	Ch. 1176/77	32	\$ 3,940,566	\$ 2,825,996	\$ 1,114,570	\$ -	\$ -	\$ -	\$ 1,114,570
2005-06	Immunization Records - Hepatitis B	Ch. 325/78	230	\$ 5,033,509	\$ 1,271,738	\$ 3,761,771	\$ -	\$ -	\$ -	\$ 3,761,771
2005-06	Interdistrict Attendance Permits	Ch. 172/86	148	\$ 187,472	\$ -	\$ 187,472	\$ -	\$ -	\$ -	\$ 187,472
2005-06	Intradistrict Attendance	Ch. 161/93	153	\$ 4,741,022	\$ 2,882,466	\$ 1,858,556	\$ 1,319,463	\$ 1,295,954	\$ 23,509	\$ 1,835,047
2005-06	Juvenile Court Notices II	Ch. 1423/84	155	\$ 1,185,878	\$ 219,376	\$ 966,502	\$ -	\$ -	\$ -	\$ 966,502
2005-06	Law Enforcement Agency Notification	Ch. 1117/89	157	\$ 1,550,790	\$ 59,580	\$ 1,491,210	\$ -	\$ -	\$ -	\$ 1,491,210
2005-06	Mandate Reimbursement Process	Ch. 486/75	42	\$ 16,509,166	\$ 1,225,153	\$ 15,284,013	\$ -	\$ -	\$ -	\$ 15,284,013
2005-06	Missing Children Reports	Ch. 249/86	275	\$ 3,950	\$ -	\$ 3,950	\$ -	\$ -	\$ -	\$ 3,950
2005-06	National Norm-Referenced Achievement Test (formerly Standardized Testing and Reporting (STAR))	Ch. 828/97	265	\$ 2,832,985	\$ 88,163	\$ 2,744,822	\$ -	\$ -	\$ -	\$ 2,744,822
2005-06	Notification of Truancy	Ch. 498/83	48	\$ 12,361,312	\$ 2,308,281	\$ 10,053,031	\$ -	\$ -	\$ -	\$ 10,053,031
2005-06	Notification to Teachers: Pupils Subject to Suspension or Expulsion	Ch. 1306/89	150	\$ 5,726,692	\$ 3,875,457	\$ 1,851,235	\$ 1,191,943	\$ 1,166,078	\$ 25,835	\$ 1,825,400
2005-06	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	\$ 3,290,016	\$ 3,670	\$ 3,286,346	\$ -	\$ -	\$ -	\$ 3,286,346
2005-06	Prevailing Wage Rate	Ch. 1249/78	304	\$ 6,121	\$ -	\$ 6,121	\$ -	\$ -	\$ -	\$ 6,121
2005-06	Pupil Classroom Suspension: Counseling	Ch. 965/77	151	\$ -	\$ -	\$ -	\$ 154,522	\$ 150,626	\$ 3,896	\$ (3,896)
2005-06	Pupil Exclusions	Ch. 668/78	165	\$ 858,538	\$ -	\$ 858,538	\$ -	\$ -	\$ -	\$ 858,538
2005-06	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	\$ 4,310,781	\$ 149,779	\$ 4,161,002	\$ -	\$ -	\$ -	\$ 4,161,002
2005-06	Pupil Health Screenings	Ch. 1208/76	261	\$ 1,283,024	\$ 139,749	\$ 1,143,275	\$ -	\$ -	\$ -	\$ 1,143,275
2005-06	Pupil Promotion and Retention	Ch. 100/91	244	\$ 3,003,669	\$ 412,997	\$ 2,590,672	\$ -	\$ -	\$ -	\$ 2,590,672
2005-06	Pupil Residency Verification and Appeals	Ch. 309/95	182	\$ 283,789	\$ 2,296	\$ 281,493	\$ -	\$ -	\$ -	\$ 281,493
2005-06	Pupil Safety Notices	Ch. 498/83	280	\$ 10,081	\$ -	\$ 10,081	\$ -	\$ -	\$ -	\$ 10,081
2005-06	Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 1253/75	176	\$ 3,178,106	\$ 303,195	\$ 2,874,911	\$ -	\$ -	\$ -	\$ 2,874,911
2005-06	Removal of Chemicals	Ch. 1107/84	57	\$ 1,056,004	\$ 118,591	\$ 937,413	\$ -	\$ -	\$ -	\$ 937,413
2005-06	School Accountability Report Cards	Ch. 1463/89	171	\$ 1,823,094	\$ 4,537	\$ 1,818,557	\$ -	\$ -	\$ -	\$ 1,818,557
2005-06	School District Fiscal Accountability Reporting and Employee Benefits Disclosure	Ch. 100/81	258	\$ 2,148,402	\$ (201,618)	\$ 2,350,020	\$ -	\$ -	\$ -	\$ 2,350,020
2005-06	Scoliosis Screening	Ch. 1347/80	58	\$ 2,981,606	\$ 608,394	\$ 2,373,212	\$ -	\$ -	\$ -	\$ 2,373,212
2005-06	Student Records	Ch. 593/89	308	\$ 68,777	\$ -	\$ 68,777	\$ -	\$ -	\$ -	\$ 68,777
2005-06	The Stull Act	Ch. 498/83	260	\$ 22,852,794	\$ 2,723,402	\$ 20,129,392	\$ -	\$ -	\$ -	\$ 20,129,392
2005-06 Total				\$ 382,887,882	\$ 68,815,441	\$ 314,072,441	\$ 12,123,506	\$ 9,280,713	\$ 2,842,793	\$ 311,229,648

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2004-05	Academic Performance Index	Ch. 695/00	305	\$ 83,768	\$ -	\$ 83,768	\$ -	\$ -	\$ 83,768	
2004-05	Agency Fee Arrangements	Ch. 893/00	269	\$ 11,498	\$ -	\$ 11,498	\$ -	\$ -	\$ 11,498	
2004-05	AIDS Prevention Instruction II	Ch. 818/91	250	\$ 1,663,814	\$ 1,663,814	\$ -	\$ 1,097	\$ -	\$ (1,097)	
2004-05	American Government Course Document Requirements	Ch. 778/96	179	\$ 35,823	\$ 35,823	\$ -	\$ 1,728	\$ -	\$ (1,728)	
2004-05	Annual Parent Notification III	Ch. 448/75	221	\$ 6,550,640	\$ 6,550,640	\$ -	\$ 11,682	\$ -	\$ (11,682)	
2004-05	California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	286	\$ 84,930	\$ -	\$ 84,930	\$ -	\$ -	\$ 84,930	
2004-05	Caregiver Affidavits to Establish Residence for School Attendance	Ch. 98/94	172	\$ 862,291	\$ 862,291	\$ -	\$ 8,341	\$ -	\$ (8,341)	
2004-05	Charter Schools III	Ch. 34/98	277	\$ 1,932	\$ -	\$ 1,932	\$ -	\$ -	\$ 1,932	
2004-05	Comprehensive School Safety Plans II: Discrimination and Harassment Policy, and Hate Crime Reporting Procedures	Ch. 890/01; Ch. 506/02	311	\$ 1,029	\$ -	\$ 1,029	\$ -	\$ -	\$ 1,029	
2004-05	Consolidation of Annual Parent Notification/Schoolsite Discipline Rules/Alternative Schools	Ch. 448/75	272	\$ 3,836,796	\$ 3,836,796	\$ -	\$ 232,908	\$ 227,523	\$ (5,385)	
2004-05	Consolidation of Pupil Discipline Records and Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 345/00	291	\$ 278,636	\$ -	\$ 278,636	\$ -	\$ -	\$ 278,636	
2004-05	Criminal Background Checks	Ch. 588/97	183	\$ 972,414	\$ 972,414	\$ -	\$ 5,164	\$ -	\$ (5,164)	
2004-05	Criminal Background Checks II	Ch. 594/98	251	\$ 410,381	\$ 410,381	\$ -	\$ 13,269	\$ -	\$ (13,269)	
2004-05	Emergency Procedures, Earthquake Procedures, and Disasters and Comprehensive School Safety Plans	Ch. 1659/84	225	\$ 7,692,381	\$ 7,692,381	\$ -	\$ 2,291,343	\$ 2,217,084	\$ (74,299)	
2004-05	Financial and Compliance Audits	Ch. 367/77	192	\$ 326,816	\$ 326,816	\$ -	\$ 28,443	\$ 16,875	\$ (11,568)	
2004-05	Graduation Requirements	Ch. 498/83	26	\$ 32,114,075	\$ 15,748,215	\$ 16,365,860	\$ 1,642,371	\$ -	\$ 14,723,489	
2004-05	Graduation Requirements (07/01/2004 to 12/21/2004)	Ch. 498/93	296	\$ 74,192,532	\$ 6,601,196	\$ 67,591,336	\$ -	\$ -	\$ 67,591,336	
2004-05	Graduation Requirements (On or after 01/01/2005)	Ch. 498/93	297	\$ 99,027,117	\$ 4,964,664	\$ 94,062,453	\$ -	\$ -	\$ 94,062,453	
2004-05	Habitual Truant	Ch. 1184/75	166	\$ 5,326,856	\$ 5,326,856	\$ -	\$ 86,788	\$ 1,924	\$ (84,864)	
2004-05	High School Exit Examination	Ch. 1/99	268	\$ 3,889,184	\$ 382,026	\$ 3,507,158	\$ -	\$ -	\$ 3,507,158	
2004-05	Immunization Records	Ch. 1176/77	32	\$ 3,750,504	\$ 3,750,504	\$ -	\$ 7,395	\$ 5,028	\$ (2,367)	
2004-05	Immunization Records - Hepatitis B	Ch. 325/78	230	\$ 4,852,850	\$ 4,852,850	\$ -	\$ 4,855	\$ 3,446	\$ (1,409)	
2004-05	Interdistrict Attendance Permits	Ch. 172/86	148	\$ 143,450	\$ -	\$ 143,450	\$ -	\$ -	\$ 143,450	
2004-05	Mandate Reimbursement Process	Ch. 486/75	42	\$ 16,131,558	\$ 16,131,558	\$ -	\$ 196,608	\$ -	\$ (196,608)	
2004-05	Missing Children Reports	Ch. 249/86	275	\$ 7,119	\$ -	\$ 7,119	\$ -	\$ -	\$ 7,119	
2004-05	National Norm-Referenced Achievement Test (formerly Standardized Testing and Reporting (STAR))	Ch. 828/97	265	\$ 1,985,085	\$ 8,083	\$ 1,977,002	\$ -	\$ -	\$ 1,977,002	
2004-05	Notification of Truancy	Ch. 498/83	48	\$ 9,690,577	\$ 9,690,577	\$ -	\$ 256,426	\$ 193,565	\$ (62,861)	
2004-05	Notification to Teachers: Pupils Subject to Suspension or Expulsion	Ch. 1306/89	150	\$ 5,227,141	\$ 5,227,141	\$ -	\$ 1,755	\$ -	\$ (1,755)	
2004-05	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	\$ 5,599,525	\$ 1,699,474	\$ 3,900,051	\$ -	\$ -	\$ 3,900,051	
2004-05	Physical Performance Tests	Ch. 975/95	173	\$ 1,640,120	\$ 1,640,120	\$ -	\$ 21,157	\$ -	\$ (21,157)	
2004-05	Prevailing Wage Rate	Ch. 1249/78	304	\$ 52,254	\$ -	\$ 52,254	\$ -	\$ -	\$ 52,254	

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2004-05	Pupil Classroom Suspension: Counseling	Ch. 965/77	151	\$ 284,214	\$ 284,214	\$ -	\$ 21,795	\$ -	\$ 21,795	\$ (21,795)
2004-05	Pupil Exclusions	Ch. 668/78	165	\$ 2,729,603	\$ 2,729,603	\$ -	\$ 3,259	\$ -	\$ 3,259	\$ (3,259)
2004-05	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	\$ 3,862,106	\$ 181,412	\$ 3,680,694	\$ -	\$ -	\$ -	\$ 3,680,694
2004-05	Pupil Health Screenings	Ch. 1208/76	139	\$ 357,362	\$ 357,362	\$ -	\$ 160,350	\$ 1,165	\$ 159,185	\$ (159,185)
2004-05	Pupil Promotion and Retention	Ch. 100/91	244	\$ 2,403,492	\$ 2,403,492	\$ -	\$ 141,792	\$ 133,418	\$ 8,374	\$ (8,374)
2004-05	Pupil Safety Notices	Ch. 498/83	280	\$ 6,645	\$ -	\$ 6,645	\$ -	\$ -	\$ -	\$ 6,645
2004-05	Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 1253/75	176	\$ 2,347,445	\$ 2,347,445	\$ -	\$ 16,180	\$ 6,905	\$ 9,275	\$ (9,275)
2004-05	Removal of Chemicals	Ch. 1107/84	57	\$ 1,056,561	\$ 497,056	\$ 559,505	\$ -	\$ -	\$ -	\$ 559,505
2004-05	School Accountability Report Cards	Ch. 1463/89	171	\$ 3,386,012	\$ 3,372,415	\$ 13,597	\$ 96,733	\$ -	\$ 96,733	\$ (83,136)
2004-05	School District Fiscal Accountability Reporting	Ch. 100/81	211	\$ 2,257,308	\$ 2,257,308	\$ -	\$ 23,731	\$ -	\$ 23,731	\$ (23,731)
2004-05	Scoliosis Screening	Ch. 1347/80	58	\$ 2,735,317	\$ 2,735,317	\$ -	\$ 8,173	\$ 5,490	\$ 2,683	\$ (2,683)
2004-05	Student Records	Ch. 593/89	308	\$ 75,037	\$ -	\$ 75,037	\$ -	\$ -	\$ -	\$ 75,037
2004-05	The Stull Act	Ch. 498/83	260	\$ 20,538,503	\$ 4,100,728	\$ 16,437,775	\$ -	\$ -	\$ -	\$ 16,437,775
2004-05 Total				\$ 328,482,701	\$ 119,640,972	\$ 208,841,729	\$ 5,283,343	\$ 2,812,423	\$ 2,470,920	\$ 206,370,809
2003-04	Academic Performance Index	Ch. 695/00	305	\$ 74,511	\$ -	\$ 74,511	\$ -	\$ -	\$ -	\$ 74,511
2003-04	Agency Fee Arrangements	Ch. 893/00	269	\$ 8,283	\$ -	\$ 8,283	\$ -	\$ -	\$ -	\$ 8,283
2003-04	California State Teachers' Retirement System (CalSTRS)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2003-04	Service Credit	Ch. 603/94	286	\$ 49,345	\$ -	\$ 49,345	\$ -	\$ -	\$ -	\$ 49,345
2003-04	Charter Schools III	Ch. 34/98	277	\$ 1,295	\$ -	\$ 1,295	\$ -	\$ -	\$ -	\$ 1,295
2003-04	Collective Bargaining and Collective Bargaining Agreement Disclosure			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2003-04	Notification to Teachers: Pupil Subject to Suspension or Expulsion II	Ch. 961/75	11	\$ 28,107,019	\$ 28,107,019	\$ -	\$ 517,475	\$ 433,247	\$ 84,228	\$ (84,228)
2003-04	Consolidation of Pupil Discipline Records and Graduation Requirements (07/01/1995 to 06/30/2004)	Ch. 345/00	291	\$ 176,468	\$ -	\$ 176,468	\$ -	\$ -	\$ -	\$ 176,468
2003-04	Grand Jury Proceedings	Ch. 498/93	295	\$ 169,711,560	\$ 7,533,910	\$ 162,177,650	\$ -	\$ -	\$ -	\$ 162,177,650
2003-04	High School Exit Examination	Ch. 1170/96	226	\$ 31,159	\$ 13,282	\$ 17,877	\$ -	\$ -	\$ -	\$ 17,877
2003-04	Missing Children Reports	Ch. 1/99	268	\$ 3,069,238	\$ 228,359	\$ 2,840,879	\$ -	\$ -	\$ -	\$ 2,840,879
2003-04	Notification of Truancy	Ch. 249/86	275	\$ 1,082	\$ -	\$ 1,082	\$ -	\$ -	\$ -	\$ 1,082
2003-04	Open Meetings Act/Brown Act Reform	Ch. 498/83	48	\$ 8,694,253	\$ 8,694,253	\$ -	\$ 1,253,345	\$ 405,483	\$ 847,862	\$ (847,862)
2003-04	Prevailing Wage Rate	Ch. 641/86	218	\$ 6,207,326	\$ 2,162,772	\$ 4,044,554	\$ -	\$ -	\$ -	\$ 4,044,554
2003-04	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	\$ 3,544,682	\$ 146,851	\$ 3,397,831	\$ -	\$ -	\$ -	\$ 3,397,831
2003-04	Pupil Health Screenings	Ch. 1208/76	139	\$ 3,233,418	\$ 3,233,418	\$ -	\$ 966,463	\$ -	\$ 966,463	\$ (966,463)
2003-04	Pupil Safety Notices	Ch. 498/83	280	\$ 6,634	\$ -	\$ 6,634	\$ -	\$ -	\$ -	\$ 6,634
2003-04	Removal of Chemicals	Ch. 1107/84	57	\$ 1,112,874	\$ 652,458	\$ 460,416	\$ -	\$ -	\$ -	\$ 460,416
2003-04	School Accountability Report Cards	Ch. 1463/89	171	\$ 3,863,134	\$ 3,863,065	\$ 69	\$ 69	\$ 69	\$ -	\$ -
2003-04	Standardized Testing and Reporting	Ch. 828/97	208	\$ 18,035,640	\$ 6,504,971	\$ 11,530,669	\$ 18,700	\$ 18,700	\$ -	\$ 11,530,669
2003-04	Student Records	Ch. 593/89	308	\$ 53,294	\$ -	\$ 53,294	\$ -	\$ -	\$ -	\$ 53,294
2003-04	The Stull Act	Ch. 498/83	260	\$ 17,141,199	\$ 3,626,695	\$ 13,514,504	\$ -	\$ -	\$ -	\$ 13,514,504
2003-04 Total				\$ 263,299,587	\$ 64,767,053	\$ 198,472,534	\$ 2,756,052	\$ 857,499	\$ 1,895,553	\$ 196,573,981

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2002-03	Academic Performance Index	Ch. 695/00	305	\$ 61,134	\$ -	\$ 61,134	\$ -	\$ -	\$ 61,134	
2002-03	Agency Fee Arrangements	Ch. 893/00	269	\$ 8,599	\$ 1,976	\$ 6,623	\$ -	\$ -	\$ 6,623	
2002-03	California State Teachers' Retirement System (CalSTRS)									
2002-03	Service Credit	Ch. 603/94	286	\$ 39,773	\$ -	\$ 39,773	\$ -	\$ -	\$ 39,773	
2002-03	Charter Schools III	Ch. 34/98	277	\$ 1,180	\$ -	\$ 1,180	\$ -	\$ -	\$ 1,180	
2002-03	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	\$ 30,770,605	\$ 30,595,553	\$ 175,052	\$ 867,444	\$ 796,031	\$ 71,413	
2002-03	Comprehensive School Safety Plans II: Discrimination and Harassment Policy, and Hate Crime Reporting Procedures	Ch. 890/01; Ch. 506/02	311	\$ 3,668	\$ -	\$ 3,668	\$ -	\$ -	\$ 3,668	
2002-03	Consolidation of Pupil Discipline Records and Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 345/00	291	\$ 194,231	\$ -	\$ 194,231	\$ -	\$ -	\$ 194,231	
2002-03	Graduation Requirements (07/01/1995 to 06/30/2004)	Ch. 498/93	295	\$ 176,597,642	\$ 5,767,696	\$ 170,829,946	\$ -	\$ -	\$ 170,829,946	
2002-03	Grand Jury Proceedings	Ch. 1170/96	226	\$ 73,771	\$ 61,567	\$ 12,204	\$ -	\$ -	\$ 12,204	
2002-03	High School Exit Examination	Ch. 1/99	268	\$ 3,016,345	\$ 216,611	\$ 2,799,734	\$ -	\$ -	\$ 2,799,734	
2002-03	Intradistrict Attendance	Ch. 161/93	153	\$ 7,235,790	\$ 7,100,754	\$ 135,036	\$ 204,853	\$ 204,853	\$ 135,036	
2002-03	Missing Children Reports	Ch. 249/86	275	\$ 1,047	\$ -	\$ 1,047	\$ -	\$ -	\$ 1,047	
2002-03	Notification of Truancy	Ch. 498/83	48	\$ 7,484,519	\$ 7,484,519	\$ -	\$ 895,210	\$ 357,099	\$ (538,111)	
2002-03	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	\$ 7,144,281	\$ 3,182,484	\$ 3,961,797	\$ -	\$ -	\$ 3,961,797	
2002-03	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	\$ 2,711,305	\$ 84,178	\$ 2,627,127	\$ -	\$ -	\$ 2,627,127	
2002-03	Pupil Health Screenings	Ch. 1208/76	139	\$ 3,491,968	\$ 3,491,968	\$ -	\$ 2,397,890	\$ -	\$ (2,397,890)	
2002-03	Pupil Promotion and Retention	Ch. 100/91	244	\$ 1,943,938	\$ 1,943,938	\$ -	\$ 25,317,281	\$ 2,721,523	\$ (22,595,758)	
2002-03	Pupil Safety Notices	Ch. 498/83	280	\$ 5,874	\$ -	\$ 5,874	\$ -	\$ -	\$ 5,874	
2002-03	Removal of Chemicals	Ch. 1107/84	57	\$ 1,462,432	\$ 871,942	\$ 590,490	\$ -	\$ -	\$ 590,490	
2002-03	School Bus Safety I and II	Ch. 624/92	184	\$ 5,952	\$ -	\$ 5,952	\$ -	\$ -	\$ 5,952	
2002-03	School Crimes Reporting II	Ch. 1607/84	190	\$ 28,400	\$ -	\$ 28,400	\$ -	\$ -	\$ 28,400	
2002-03	School District of Choice: Transfers and Appeals	Ch. 160/93	156	\$ 774,664	\$ 416,834	\$ 357,830	\$ -	\$ -	\$ 357,830	
2002-03	Standardized Testing and Reporting	Ch. 828/97	208	\$ 25,792,241	\$ 10,177,025	\$ 15,615,216	\$ -	\$ -	\$ 15,615,216	
2002-03	Student Records	Ch. 593/89	308	\$ 38,314	\$ -	\$ 38,314	\$ -	\$ -	\$ 38,314	
2002-03	The Stull Act	Ch. 498/83	260	\$ 16,295,378	\$ 3,281,991	\$ 13,013,387	\$ -	\$ -	\$ 13,013,387	
2002-03 Total				\$ 285,183,051	\$ 74,679,036	\$ 210,504,015	\$ 29,682,678	\$ 4,079,506	\$ 25,603,172	\$ 184,900,843
2001-02	Academic Performance Index	Ch. 695/00	305	\$ 57,561	\$ -	\$ 57,561	\$ -	\$ -	\$ 57,561	
2001-02	AIDS Prevention Instruction	Ch. 818/91	123	\$ 3,563,107	\$ 3,563,107	\$ -	\$ 838,033	\$ 830,151	\$ (7,882)	
2001-02	Annual Parent Notification II	Ch. 448/75	189	\$ (22,299)	\$ (22,299)	\$ -	\$ 155,672	\$ 155,518	\$ (154)	
2001-02	California State Teachers' Retirement System (CalSTRS)									
2001-02	Service Credit	Ch. 603/94	286	\$ 33,574	\$ 31,669	\$ 1,905	\$ -	\$ -	\$ 1,905	
2001-02	Charter Schools	Ch. 781/92	140	\$ 2,451,336	\$ 2,451,336	\$ -	\$ 243,611	\$ 194,035	\$ (49,576)	
2001-02	Charter Schools III	Ch. 34/98	277	\$ 1,100	\$ -	\$ 1,100	\$ -	\$ -	\$ 1,100	
2001-02	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	\$ 34,671,017	\$ 34,562,519	\$ 108,498	\$ 7,346,372	\$ 7,321,793	\$ 24,579	
2001-02	Comprehensive School Safety Plans	Ch. 736/97	223	\$ 5,548,278	\$ 5,548,278	\$ -	\$ 14,656	\$ 9,604	\$ (5,052)	

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2001-02	Comprehensive School Safety Plans II: Discrimination and Harassment Policy, and Hate Crime Reporting Procedures	Ch. 890/01; Ch. 506/02	311	\$ 6,973	\$ -	\$ 6,973	\$ -	\$ -	\$ -	\$ 6,973
2001-02	Notification to Teachers: Pupils Subject to Suspension or Expulsion II	Ch. 345/00	291	\$ 59,570	\$ -	\$ 59,570	\$ -	\$ -	\$ -	\$ 59,570
2001-02	Criminal Background Checks	Ch. 588/97	183	\$ 3,258,459	\$ 3,258,459	\$ -	\$ 2,332,978	\$ 2,329,690	\$ 3,288	\$ (3,288)
2001-02	Emergency Procedures: Earthquakes and Disasters	Ch. 1659/84	75	\$ 15,787,553	\$ 15,787,553	\$ -	\$ 4,530,020	\$ 4,527,017	\$ 3,003	\$ (3,003)
2001-02	Graduation Requirements	Ch. 498/83	26	\$ 7,956,244	\$ 7,956,244	\$ -	\$ 4,861,543	\$ 4,579,498	\$ 282,045	\$ (282,045)
2001-02	Graduation Requirements (07/01/1995 to 06/30/2004)	Ch. 498/93	295	\$ 166,721,546	\$ 10,139,372	\$ 156,582,174	\$ -	\$ -	\$ -	\$ 156,582,174
2001-02	Grand Jury Proceedings	Ch. 1170/96	226	\$ 22,713	\$ 4,354	\$ 18,359	\$ -	\$ -	\$ -	\$ 18,359
2001-02	Habitual Truant	Ch. 1184/75	166	\$ 7,701,749	\$ 7,700,749	\$ 1,000	\$ 2,062,132	\$ 2,061,893	\$ 239	\$ 761
2001-02	High School Exit Examination	Ch. 1/99	268	\$ 2,153,703	\$ 126,570	\$ 2,027,133	\$ -	\$ -	\$ -	\$ 2,027,133
2001-02	Interdistrict Attendance Permits	Ch. 172/86	148	\$ 1,807,989	\$ 1,807,989	\$ -	\$ 767,144	\$ 766,547	\$ 597	\$ (597)
2001-02	Intradistrict Attendance	Ch. 161/93	153	\$ 8,287,007	\$ 8,161,054	\$ 1,225,953	\$ 1,427,034	\$ 1,424,389	\$ 2,645	\$ 123,308
2001-02	Juvenile Court Notices II	Ch. 1423/84	155	\$ 798,088	\$ 798,088	\$ -	\$ 72,371	\$ 72,080	\$ 291	\$ (291)
2001-02	Law Enforcement Agency Notification	Ch. 1117/89	157	\$ 1,579,905	\$ 1,579,905	\$ -	\$ 818,310	\$ 816,980	\$ 1,330	\$ (1,330)
2001-02	Mandate Reimbursement Process	Ch. 486/75	42	\$ 18,513,506	\$ 18,513,506	\$ -	\$ 294,483	\$ 277,421	\$ 17,062	\$ (17,062)
2001-02	Open Meetings Act II	Ch. 641/86	201	\$ (25,166)	\$ (25,166)	\$ -	\$ -	\$ -	\$ -	\$ (1,759)
2001-02	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	\$ 7,324,265	\$ 5,578,375	\$ 1,745,890	\$ 441,130	\$ 437,972	\$ 3,158	\$ 1,742,732
2001-02	Physical Performance Tests	Ch. 975/95	173	\$ 2,301,476	\$ 2,301,476	\$ -	\$ 299,866	\$ 299,485	\$ 381	\$ (381)
2001-02	Pupil Classroom Suspension: Counseling	Ch. 965/77	151	\$ 2,589,924	\$ 2,589,924	\$ -	\$ 269,837	\$ 268,611	\$ 1,226	\$ (1,226)
2001-02	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	\$ 2,441,052	\$ 81,273	\$ 2,359,779	\$ -	\$ -	\$ -	\$ 2,359,779
2001-02	Pupil Health Screenings	Ch. 1208/76	139	\$ 4,917,750	\$ 4,917,750	\$ -	\$ 648,062	\$ 646,501	\$ 1,561	\$ (1,561)
2001-02	Pupil Promotion and Retention	Ch. 100/91	244	\$ 2,162,205	\$ 2,162,205	\$ -	\$ 13,814,130	\$ 654,358	\$ 13,159,772	\$ (13,159,772)
2001-02	Pupil Safety Notices	Ch. 498/83	280	\$ 5,692	\$ -	\$ 5,692	\$ -	\$ -	\$ -	\$ 5,692
2001-02	Pupil Suspensions, Expulsions, and Expulsion Appeals	Ch. 1253/75	176	\$ 3,499,391	\$ 3,499,391	\$ -	\$ 1,708,202	\$ 1,704,261	\$ 3,941	\$ (3,941)
2001-02	Removal of Chemicals	Ch. 1107/84	57	\$ 1,494,853	\$ 1,704,975	\$ 289,878	\$ 548,259	\$ 546,569	\$ 1,690	\$ 288,188
2001-02	School Accountability Report Cards	Ch. 1463/89	171	\$ 4,549,931	\$ 4,549,931	\$ -	\$ 420,875	\$ 420,292	\$ 583	\$ (583)
2001-02	School Bus Safety I and II	Ch. 624/92	184	\$ 1,197,389	\$ 885,728	\$ 311,661	\$ -	\$ -	\$ -	\$ 311,661
2001-02	School District of Choice: Transfers and Appeals	Ch. 160/93	156	\$ 5,796,730	\$ 4,335,729	\$ 1,461,001	\$ 3,640,851	\$ 3,550,983	\$ 89,868	\$ 1,371,433
2001-02	Schoolsite Discipline Rules	Ch. 87/86	146	\$ 1,737,914	\$ 1,737,914	\$ -	\$ 251,028	\$ 250,166	\$ 862	\$ (862)
2001-02	Scoliosis Screening	Ch. 1347/80	58	\$ 2,443,018	\$ 2,443,018	\$ -	\$ 348,998	\$ 346,049	\$ 2,949	\$ (2,949)
2001-02	Standardized Testing and Reporting	Ch. 828/97	208	\$ 21,646,726	\$ 16,734,473	\$ 10,912,253	\$ 19,552	\$ 19,552	\$ -	\$ 10,912,253
2001-02	Student Records	Ch. 593/89	308	\$ 37,464	\$ -	\$ 37,464	\$ -	\$ -	\$ -	\$ 37,464
2001-02	The Stull Act	Ch. 498/83	260	\$ 15,629,733	\$ 3,129,644	\$ 12,500,089	\$ -	\$ -	\$ -	\$ 12,500,089
2001-02 Total				\$ 366,704,026	\$ 178,095,093	\$ 188,608,933	\$ 48,289,764	\$ 34,624,271	\$ 13,665,493	\$ 174,943,440
2000-01	Academic Performance Index	Ch. 695/00	305	\$ 51,150	\$ -	\$ 51,150	\$ -	\$ -	\$ -	\$ 51,150
2000-01	Annual Parent Notification II	Ch. 448/75	189	\$ 6,343,796	\$ 6,340,479	\$ 3,317	\$ 152,726	\$ 152,726	\$ -	\$ 3,317
2000-01	Charter Schools	Ch. 781/92	140	\$ 4,273,117	\$ 4,273,117	\$ -	\$ 84,614	\$ 77,063	\$ 7,551	\$ (7,551)
2000-01	Charter Schools III	Ch. 34/98	277	\$ 1,225	\$ -	\$ 1,225	\$ -	\$ -	\$ -	\$ 1,225

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2000-01	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	\$ 36,980,185	\$ 36,729,059	\$ 251,126	\$ 10,551,511	\$ 10,551,511	\$ -	\$ 251,126
2000-01	Consolidation of Pupil Discipline Records and Notification to Teachers; Pupils Subject to Suspension or Expulsion II	Ch. 345/00 Ch. 588/97	291 183	\$ 23,166	\$ -	\$ 23,166	\$ -	\$ -	\$ -	\$ 23,166
2000-01	Criminal Background Checks	Ch. 588/97	183	\$ 5,005,596	\$ 5,005,596	\$ -	\$ 743,465	\$ 741,868	\$ 1,597	\$ (1,597)
2000-01	Emergency Procedures: Earthquakes and Disasters	Ch. 1659/84	75	\$ 19,422,607	\$ 19,422,607	\$ -	\$ 2,606,979	\$ 2,603,291	\$ 3,688	\$ (3,688)
2000-01	Graduation Requirements	Ch. 498/83	26	\$ 9,005,836	\$ 9,005,836	\$ -	\$ 6,748,371	\$ 6,695,184	\$ 53,187	\$ (53,187)
2000-01	Graduation Requirements (07/01/1995 to 06/30/2004)	Ch. 498/93	295	\$ 156,351,241	\$ 8,200,063	\$ 148,151,178	\$ -	\$ -	\$ -	\$ 148,151,178
2000-01	Grand Jury Proceedings	Ch. 1170/96	226	\$ 5,759	\$ 1,214	\$ 4,545	\$ -	\$ -	\$ -	\$ 4,545
2000-01	Habitual Truant	Ch. 1184/75	166	\$ 8,137,633	\$ 8,137,633	\$ -	\$ 2,391,490	\$ 2,384,893	\$ 6,597	\$ (6,597)
2000-01	High School Exit Examination	Ch. 1/99	268	\$ 1,045,174	\$ 84,334	\$ 960,840	\$ -	\$ -	\$ -	\$ 960,840
2000-01	Intradistrict Attendance	Ch. 161/93	153	\$ 9,807,270	\$ 9,408,513	\$ 398,757	\$ 1,636,613	\$ 1,635,432	\$ 1,181	\$ 397,576
2000-01	Investment Reports	Ch. 783/95	169	\$ 231,880	\$ 231,880	\$ -	\$ 56,171	\$ 54,892	\$ 1,279	\$ (1,279)
2000-01	Mandate Reimbursement Process	Ch. 486/75	42	\$ 15,900,354	\$ 15,900,354	\$ -	\$ 488,975	\$ 483,395	\$ 5,580	\$ (5,580)
2000-01	Open Meetings Act	Ch. 641/86	92	\$ (4,198)	\$ (4,198)	\$ -	\$ 37,398	\$ 30,346	\$ 7,052	\$ (7,052)
2000-01	Open Meetings Act II	Ch. 641/86	201	\$ 10,170,474	\$ 9,699,375	\$ 471,099	\$ 124,736	\$ 119,796	\$ 4,940	\$ 466,159
2000-01	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	\$ 647,116	\$ 371,081	\$ 276,035	\$ -	\$ -	\$ -	\$ 276,035
2000-01	Physical Performance Tests	Ch. 975/95	173	\$ 2,328,246	\$ 2,328,246	\$ -	\$ 237,134	\$ 236,756	\$ 378	\$ (378)
2000-01	Pupil Exclusions	Ch. 668/78	165	\$ 812,312	\$ 812,312	\$ -	\$ 1,646,971	\$ 1,646,298	\$ 673	\$ (673)
2000-01	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	\$ 2,328,868	\$ 56,896	\$ 2,271,972	\$ -	\$ -	\$ -	\$ 2,271,972
2000-01	Pupil Health Screenings	Ch. 1208/76	139	\$ 5,225,419	\$ 5,225,419	\$ -	\$ 301,477	\$ 300,847	\$ 630	\$ (630)
2000-01	Removal of Chemicals	Ch. 1107/84	57	\$ 1,047,563	\$ 989,407	\$ 58,156	\$ 780,671	\$ 780,671	\$ -	\$ 58,156
2000-01	School Bus Safety I and II	Ch. 624/92	184	\$ 2,841,930	\$ 2,666,619	\$ 175,311	\$ 2,356	\$ 2,356	\$ -	\$ 175,311
2000-01	School District of Choice: Transfers and Appeals	Ch. 160/93	156	\$ 2,936,742	\$ 2,012,319	\$ 924,423	\$ 4,517,252	\$ 4,441,596	\$ 75,656	\$ 848,767
2000-01	Scoliosis Screening	Ch. 1347/80	58	\$ 2,597,375	\$ 2,597,375	\$ -	\$ 227,843	\$ 227,326	\$ 517	\$ (517)
2000-01	Standardized Testing and Reporting	Ch. 828/97	208	\$ 23,099,284	\$ 19,143,866	\$ 3,955,418	\$ 883,889	\$ 883,889	\$ -	\$ 3,955,418
2000-01	The Stull Act	Ch. 498/83	260	\$ 12,930,375	\$ 1,824,537	\$ 11,105,838	\$ -	\$ -	\$ -	\$ 11,105,838
2000-01 Total				\$ 339,547,495	\$ 170,463,939	\$ 169,083,556	\$ 34,220,642	\$ 34,050,136	\$ 170,506	\$ 168,913,090
1999-00	Charter Schools	Ch. 781/92	140	\$ 3,778,490	\$ 3,778,490	\$ -	\$ 66,628	\$ 64,889	\$ 1,739	\$ (1,739)
1999-00	Charter Schools III	Ch. 34/98	277	\$ 1,005	\$ -	\$ 1,005	\$ -	\$ -	\$ -	\$ 1,005
1999-00	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	\$ 43,275,122	\$ 43,275,122	\$ -	\$ 5,245,736	\$ 5,240,272	\$ 5,464	\$ (5,464)
1999-00	Graduation Requirements	Ch. 498/83	26	\$ 7,457,120	\$ 7,457,120	\$ -	\$ 1,014,331	\$ 983,829	\$ 30,502	\$ (30,502)
1999-00	Graduation Requirements (07/01/1995 to 06/30/2004)	Ch. 498/93	295	\$ 136,355,794	\$ 6,689,479	\$ 129,666,315	\$ -	\$ -	\$ -	\$ 129,666,315
1999-00	Grand Jury Proceedings	Ch. 1170/96	226	\$ 2,764	\$ -	\$ 2,764	\$ -	\$ -	\$ -	\$ 2,764
1999-00	Intradistrict Attendance	Ch. 161/93	153	\$ 10,821,278	\$ 10,624,010	\$ 197,268	\$ 593,229	\$ 593,229	\$ -	\$ 197,268
1999-00	Mandate Reimbursement Process	Ch. 486/75	42	\$ 14,287,192	\$ 14,287,192	\$ -	\$ 111,664	\$ 111,537	\$ 127	\$ (127)
1999-00	Open Meetings Act	Ch. 641/86	92	\$ 4,416,671	\$ 4,416,671	\$ -	\$ 67,236	\$ 67,019	\$ 217	\$ (217)
1999-00	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	\$ 222,400	\$ 169,307	\$ 53,093	\$ -	\$ -	\$ -	\$ 53,093

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
1999-00	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	\$ 1,764,629	\$ 58,254	\$ 1,706,375	\$ -	\$ -	\$ -	\$ 1,706,375
1999-00	Removal of Chemicals	Ch. 1107/84	57	\$ 1,287,916	\$ 1,282,916	\$ 5,000	\$ 633,360	\$ 633,360	\$ -	\$ 5,000
1999-00	School Bus Safety	Ch. 624/92	137	\$ (1,965)	\$ (1,965)	\$ -	\$ 9,508	\$ 9,266	\$ 242	\$ (242)
1999-00	School Bus Safety I and II	Ch. 624/92	184	\$ 3,529,952	\$ 3,529,952	\$ 103,973	\$ 21,765	\$ 21,752	\$ 13	\$ 103,960
1999-00	School District of Choice: Transfers and Appeals	Ch. 160/93	156	\$ 3,808,205	\$ 3,289,153	\$ 519,052	\$ 1,122,365	\$ 1,122,365	\$ -	\$ 519,052
1999-00	Standardized Testing and Reporting	Ch. 828/97	208	\$ 24,357,760	\$ 19,638,286	\$ 4,719,474	\$ 441,293	\$ 441,293	\$ -	\$ 4,719,474
1999-00	The Stull Act	Ch. 498/83	260	\$ 10,987,978	\$ 1,530,117	\$ 9,457,861	\$ -	\$ -	\$ -	\$ 9,457,861
1999-00 Total				\$ 266,456,284	\$ 120,024,104	\$ 146,432,180	\$ 9,327,115	\$ 9,288,811	\$ 38,304	\$ 146,393,876
Collective Bargaining and Collective Bargaining										
1998-99	Agreement Disclosure	Ch. 961/75	11	\$ 44,841,220	\$ 44,841,220	\$ -	\$ 4,763,751	\$ 4,753,555	\$ 10,196	\$ (10,196)
1998-99	Graduation Requirements (07/01/1995 to 06/30/2004)	Ch. 498/93	295	\$ 113,120,944	\$ 10,905,555	\$ 102,215,389	\$ -	\$ -	\$ -	\$ 102,215,389
1998-99	Grand Jury Proceedings	Ch. 1170/96	226	\$ 6,697	\$ -	\$ 6,697	\$ -	\$ -	\$ -	\$ 6,697
1998-99	Mandate Reimbursement Process	Ch. 486/75	42	\$ 11,713,000	\$ 11,713,000	\$ -	\$ 1,237,169	\$ 1,236,569	\$ 600	\$ (600)
1998-99	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	\$ 189,974	\$ 140,120	\$ 48,854	\$ -	\$ -	\$ -	\$ 48,854
1998-99	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	\$ 1,996,485	\$ 78,291	\$ 1,918,194	\$ -	\$ -	\$ -	\$ 1,918,194
1998-99	Pupil Promotion and Retention	Ch. 100/91	244	\$ 860,408	\$ 860,408	\$ -	\$ 3,186,168	\$ 1,769,275	\$ 1,416,893	\$ (1,416,893)
1998-99	School Accountability Report Cards	Ch. 1463/89	171	\$ 2,804,864	\$ 2,804,864	\$ -	\$ 484,721	\$ 484,421	\$ 300	\$ (300)
1998-99	School Bus Safety I and II	Ch. 624/92	184	\$ 128,045	\$ 127,206	\$ 839	\$ 21,349	\$ 21,349	\$ -	\$ 839
1998-99	Standardized Testing and Reporting	Ch. 828/97	208	\$ 10,514,036	\$ 5,535,326	\$ 4,978,710	\$ 448,830	\$ 448,830	\$ -	\$ 4,978,710
1998-99	The Stull Act	Ch. 498/83	260	\$ 8,470,404	\$ 1,347,193	\$ 7,123,211	\$ -	\$ -	\$ -	\$ 7,123,211
1998-99 Total				\$ 194,645,077	\$ 78,353,183	\$ 116,291,894	\$ 10,141,988	\$ 8,713,999	\$ 1,427,989	\$ 114,863,905
Collective Bargaining and Collective Bargaining										
1997-98	Agreement Disclosure	Ch. 961/75	11	\$ 36,462,408	\$ 36,462,408	\$ -	\$ 6,956,351	\$ 6,944,813	\$ 11,538	\$ (11,538)
1997-98	Emergency Procedures: Earthquakes and Disasters	Ch. 1659/84	75	\$ 21,038,713	\$ 20,874,968	\$ 163,745	\$ 1,479,796	\$ 1,479,331	\$ 465	\$ 163,280
1997-98	Graduation Requirements (07/01/1995 to 06/30/2004)	Ch. 498/93	295	\$ 104,027,444	\$ 5,388,570	\$ 98,638,874	\$ -	\$ -	\$ -	\$ 98,638,874
1997-98	Grand Jury Proceedings	Ch. 1170/96	226	\$ 12,832	\$ -	\$ 12,832	\$ -	\$ -	\$ -	\$ 12,832
1997-98	Interdistrict Attendance Permits	Ch. 172/86	148	\$ 1,779,604	\$ 1,779,604	\$ -	\$ 249,145	\$ 248,887	\$ 258	\$ (258)
1997-98	Interdistrict Transfer Requests: Parent's Employment	Ch. 172/86	149	\$ 1,090,110	\$ 1,090,110	\$ -	\$ 437,671	\$ 436,936	\$ 735	\$ (735)
1997-98	Open Meetings Act	Ch. 641/86	92	\$ 3,396,990	\$ 3,396,990	\$ -	\$ 223,087	\$ 220,400	\$ 2,687	\$ (2,687)
1997-98	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	\$ 181,731	\$ 143,086	\$ 38,645	\$ -	\$ -	\$ -	\$ 38,645
1997-98	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	\$ 1,554,418	\$ 36,712	\$ 1,517,706	\$ -	\$ -	\$ -	\$ 1,517,706
1997-98	School Bus Safety I and II	Ch. 624/92	184	\$ 133,174	\$ 133,050	\$ 124	\$ 2,452	\$ 2,452	\$ -	\$ 124
1997-98	Standardized Testing and Reporting	Ch. 828/97	208	\$ 8,558,530	\$ 4,199,178	\$ 4,359,352	\$ 181,143	\$ 181,143	\$ -	\$ 4,359,352
1997-98	The Stull Act	Ch. 498/83	260	\$ 7,592,373	\$ 1,612,698	\$ 5,979,675	\$ -	\$ -	\$ -	\$ 5,979,675
1997-98 Total				\$ 185,828,327	\$ 75,117,374	\$ 110,710,953	\$ 9,529,645	\$ 9,513,962	\$ 15,683	\$ 110,695,270
Collective Bargaining and Collective Bargaining										
1996-97	Agreement Disclosure	Ch. 961/75	11	\$ 35,731,370	\$ 35,731,370	\$ -	\$ 8,222,200	\$ 8,207,235	\$ 14,965	\$ (14,965)

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
1996-97	Emergency Procedures: Earthquakes and Disasters	Ch. 1659/84	75	\$ 9,323,864	\$ 9,185,547	\$ 138,317	\$ 465,947	\$ -	\$ 138,317	
1996-97	Graduation Requirements (07/01/1995 to 06/30/2004)	Ch. 498/93	295	\$ 91,415,568	\$ 2,345,578	\$ 89,069,990	\$ -	\$ -	\$ 89,069,990	
1996-97	Open Meetings Act	Ch. 641/86	92	\$ 2,713,598	\$ 2,713,598	\$ -	\$ 217,201	\$ 151	\$ (151)	
1996-97	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	\$ 169,539	\$ 113,805	\$ 55,734	\$ -	\$ -	\$ 55,734	
1996-97	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	\$ 1,474,140	\$ 25,877	\$ 1,448,263	\$ -	\$ -	\$ 1,448,263	
1996-97	School Bus Safety I and II	Ch. 624/92	184	\$ 87,816	\$ 86,193	\$ 1,623	\$ -	\$ -	\$ 1,623	
1996-97	School District of Choice: Transfers and Appeals	Ch. 160/93	156	\$ 5,772,216	\$ 5,772,216	\$ -	\$ 136,699	\$ 48	\$ (48)	
1996-97	Scolliosis Screening	Ch. 1347/80	58	\$ 2,051,761	\$ 2,051,761	\$ -	\$ 64,789	\$ 304	\$ (304)	
1996-97 Total				\$ 148,739,872	\$ 58,025,945	\$ 90,713,927	\$ 9,106,836	\$ 9,091,368	\$ 90,698,459	
1995-96	AIDS Prevention Instruction	Ch. 818/91	123	\$ 2,063,016	\$ -	\$ -	\$ 691,837	\$ 63	\$ (63)	
1995-96	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	\$ 31,593,705	\$ 31,593,705	\$ -	\$ 9,201,086	\$ 9,679	\$ (9,679)	
1995-96	Credent Monitoring	Ch. 1376/87	79	\$ 2,929,406	\$ 2,929,406	\$ -	\$ 60,858	\$ 68	\$ (68)	
1995-96	Emergency Procedures: Earthquakes and Disasters	Ch. 1659/84	75	\$ 7,354,211	\$ 7,354,211	\$ -	\$ 62,469	\$ 290	\$ (290)	
1995-96	Graduation Requirements (07/01/1995 to 06/30/2004)	Ch. 498/93	295	\$ 84,781,284	\$ 2,150,637	\$ 82,630,647	\$ -	\$ -	\$ 82,630,647	
1995-96	Open Meetings Act	Ch. 641/86	92	\$ 1,774,560	\$ 1,774,560	\$ -	\$ 208,523	\$ 298	\$ (298)	
1995-96	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	\$ 160,444	\$ 107,574	\$ 52,870	\$ -	\$ -	\$ 52,870	
1995-96	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	\$ 1,505,054	\$ 32,204	\$ 1,472,850	\$ -	\$ -	\$ 1,472,850	
1995-96	School District of Choice: Transfers and Appeals	Ch. 160/93	156	\$ 4,726,009	\$ 4,726,009	\$ -	\$ 86,368	\$ 44	\$ (44)	
1995-96	School Testing - Physical Fitness	Ch. 1675/84	115	\$ 562,926	\$ 562,926	\$ -	\$ 219,834	\$ 269	\$ (269)	
1995-96 Total				\$ 137,450,615	\$ 53,294,248	\$ 84,156,367	\$ 10,530,975	\$ 10,711	\$ 84,145,656	
1994-95	Open Meetings Act	Ch. 641/86	92	\$ 1,128,612	\$ 1,128,612	\$ -	\$ 2,880	\$ 930	\$ (930)	
1994-95	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	\$ 143,107	\$ 93,725	\$ 49,382	\$ -	\$ -	\$ 49,382	
1994-95	Pupil Classroom Suspension: Counseling	Ch. 965/77	151	\$ 544,631	\$ 544,631	\$ -	\$ 3,055	\$ 412	\$ (412)	
1994-95	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	\$ 1,394,717	\$ 37,648	\$ 1,357,069	\$ -	\$ -	\$ 1,357,069	
1994-95	School District of Choice: Transfers and Appeals	Ch. 160/93	156	\$ 4,230,530	\$ 4,230,530	\$ -	\$ 73,525	\$ 73,477	\$ (48)	
1994-95 Total				\$ 7,441,597	\$ 6,035,146	\$ 1,406,451	\$ 79,460	\$ 78,070	\$ 1,405,061	
1993-94	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	\$ 29,969,495	\$ 29,969,495	\$ -	\$ 3,859,762	\$ 3,792,203	\$ (67,559)	
1993-94	Open Meetings Act	Ch. 641/86	92	\$ 748,308	\$ 748,308	\$ -	\$ 551	\$ 551	\$ (551)	
1993-94	Open Meetings Act/Brown Act Reform	Ch. 641/86	218	\$ 44,199	\$ 30,996	\$ 13,203	\$ -	\$ -	\$ 13,203	
1993-94	Pupil Expulsions from School: Additional Hearing Costs for Mandatory Recommendations for Expulsion	Ch. 1253/75	271	\$ 1,216,367	\$ 48,134	\$ 1,168,233	\$ -	\$ -	\$ 1,168,233	
1993-94	School District of Choice: Transfers and Appeals	Ch. 160/93	156	\$ 2,184,496	\$ 2,184,496	\$ -	\$ 32,867	\$ 32,835	\$ (32)	
1993-94 Total				\$ 34,162,865	\$ 32,981,429	\$ 1,181,436	\$ 3,893,180	\$ 3,825,038	\$ 1,113,294	
1992-93	Civic Center Act	Ch. 49/84	114	\$ 11,846,195	\$ 11,846,195	\$ -	\$ 1,179,938	\$ 386	\$ (386)	

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
1992-93	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	11	\$ 29,309,461	\$ 29,309,461	\$ -	\$ 3,004,258	\$ 2,983,106	\$ 21,152	\$ (21,152)
1992-93	Credent Monitoring	Ch. 1376/87	79	\$ 1,853,410	\$ 1,853,216	\$ 194	\$ 654,070	\$ 649,037	\$ 5,033	\$ (4,839)
1992-93 Total				\$ 49,009,066	\$ 43,008,872	\$ 194	\$ 4,838,266	\$ 4,811,695	\$ 26,571	\$ (26,378)
1991-92	Civic Center Act	Ch. 49/84	114	\$ 10,650,345	\$ 10,650,345	\$ -	\$ 1,058,329	\$ 1,057,915	\$ 414	\$ (414)
1991-92	Open Meetings Act	Ch. 641/86	92	\$ 869,812	\$ 869,812	\$ -	\$ 302,710	\$ 302,634	\$ 76	\$ (76)
1991-92 Total				\$ 11,520,157	\$ 11,520,157	\$ -	\$ 1,361,039	\$ 1,360,549	\$ 490	\$ (490)
1990-91	Civic Center Act	Ch. 49/84	114	\$ 9,961,940	\$ 9,961,940	\$ -	\$ 1,019,995	\$ 1,019,595	\$ 400	\$ (400)
1990-91	Graduation Requirements	Ch. 498/83	26	\$ 5,435,894	\$ 5,435,894	\$ -	\$ 2,940,929	\$ 2,574,050	\$ 366,879	\$ (366,879)
1990-91 Total				\$ 15,397,834	\$ 15,397,834	\$ -	\$ 3,960,924	\$ 3,593,645	\$ 367,279	\$ (367,279)
1989-90	Civic Center Act	Ch. 49/84	114	\$ 9,684,270	\$ 9,684,270	\$ -	\$ 954,100	\$ 953,623	\$ 477	\$ (477)
1989-90	Graduation Requirements	Ch. 498/83	26	\$ 8,260,170	\$ 8,260,170	\$ -	\$ 611,477	\$ 555,788	\$ 55,689	\$ (55,689)
1989-90 Total				\$ 17,944,440	\$ 17,944,440	\$ -	\$ 1,565,577	\$ 1,509,411	\$ 56,166	\$ (56,166)
1988-89	Civic Center Act	Ch. 49/84	114	\$ 8,195,968	\$ 8,195,968	\$ -	\$ 880,183	\$ 879,682	\$ 501	\$ (501)
1988-89	Graduation Requirements	Ch. 498/83	26	\$ 8,055,062	\$ 8,055,062	\$ -	\$ 803,598	\$ 803,123	\$ 475	\$ (475)
1988-89 Total				\$ 16,251,030	\$ 16,251,030	\$ -	\$ 1,683,781	\$ 1,682,805	\$ 976	\$ (976)
1987-88	Civic Center Act	Ch. 49/84	114	\$ 7,376,797	\$ 7,376,797	\$ -	\$ 727,817	\$ 726,898	\$ 919	\$ (919)
1987-88	Graduation Requirements	Ch. 498/83	26	\$ 7,376,797	\$ 7,376,797	\$ -	\$ 727,817	\$ 726,898	\$ 919	\$ (919)
1987-88 Total				\$ 14,753,594	\$ 14,753,594	\$ -	\$ 1,455,634	\$ 1,453,796	\$ 1,838	\$ (1,838)
1986-87	Civic Center Act	Ch. 49/84	114	\$ 7,513,308	\$ 7,513,308	\$ -	\$ 588,899	\$ 588,367	\$ 532	\$ (532)
1986-87	Graduation Requirements	Ch. 498/83	26	\$ 7,513,308	\$ 7,513,308	\$ -	\$ 588,899	\$ 588,367	\$ 532	\$ (532)
1986-87 Total				\$ 15,026,616	\$ 15,026,616	\$ -	\$ 1,177,798	\$ 1,176,734	\$ 1,064	\$ (1,064)
1985-86	Civic Center Act	Ch. 49/84	114	\$ 5,167,317	\$ 5,167,317	\$ -	\$ 1,416,030	\$ 1,415,567	\$ 443	\$ (443)
1985-86	Graduation Requirements	Ch. 498/83	26	\$ 5,167,317	\$ 5,167,317	\$ -	\$ 1,416,030	\$ 1,415,567	\$ 443	\$ (443)
1985-86 Total				\$ 10,334,634	\$ 10,334,634	\$ -	\$ 2,832,060	\$ 2,831,134	\$ 886	\$ (886)
Grand Total				\$ 152,321,190	\$ 152,321,190	\$ -	\$ 202,703,682	\$ 202,703,682	\$ 50,382,492	\$ 3,700,904,387

**Schedule B4:
Community College Districts**

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2010-11	Agency Fee Arrangements	Ch. 893/00	270	\$ 38,850	\$ 1,000	\$ 37,850	\$ -	\$ -	\$ 37,850	
2010-11	California Grants	Ch. 403/00	302	\$ 12,150	\$ 1,000	\$ 11,150	\$ -	\$ -	\$ 11,150	
2010-11	California State Teachers' Retirement System (CalSTRS)	Ch. 603/94	287	\$ 36,568	\$ 1,000	\$ 35,568	\$ -	\$ -	\$ 35,568	
2010-11	Service Credit	Ch. 961/75	232	\$ 4,100,167	\$ 1,000	\$ 4,099,167	\$ -	\$ -	\$ 4,099,167	
2010-11	Collective Bargaining and Collective Bargaining Agreement Disclosure	Title 5	267	\$ 16,583,065	\$ 1,000	\$ 16,582,065	\$ -	\$ -	\$ 16,582,065	
2010-11	Enrollment Fee Collection and Waivers	Ch. 1/84	234	\$ 6,148,447	\$ 1,000	\$ 6,147,447	\$ -	\$ -	\$ 6,147,447	
2010-11	Health Fee Elimination (On or after 07/01/1994)	Ch. 11/16/92	256	\$ 457,035	\$ -	\$ 457,035	\$ -	\$ -	\$ 457,035	
2010-11	Integrated Waste Management	Ch. 486/75	237	\$ 651,197	\$ 1,000	\$ 650,197	\$ -	\$ -	\$ 650,197	
2010-11	Mandate Reimbursement Process	Ch. 641/86	238	\$ 1,490,985	\$ 1,000	\$ 1,489,985	\$ -	\$ -	\$ 1,489,985	
2010-11	Open Meetings/Brown Act Reform	Ch. 12/49/78	303	\$ 71,811	\$ 1,000	\$ 70,811	\$ -	\$ -	\$ 70,811	
2010-11	Prevailing Wage Rate	Ch. 36/77	301	\$ 862,092	\$ 1,000	\$ 861,092	\$ -	\$ -	\$ 861,092	
2010-11	Tuition Fee Waivers	Ch. 36/77	301	\$ 30,452,367	\$ 10,000	\$ 30,442,367	\$ -	\$ -	\$ 30,442,367	
2010-11 Total				\$ 30,452,367	\$ 10,000	\$ 30,442,367	\$ -	\$ -	\$ 30,442,367	
2009-10	California Grants	Ch. 403/00	302	\$ 20,636	\$ -	\$ 20,636	\$ -	\$ -	\$ 20,636	
2009-10	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	\$ 4,792,797	\$ 444,000	\$ 4,348,797	\$ -	\$ -	\$ 4,348,797	
2009-10	Enrollment Fee Collection and Waivers	Title 5	267	\$ 21,396,979	\$ 2,999,999	\$ 18,396,980	\$ -	\$ -	\$ 18,396,980	
2009-10	Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	\$ 4,395,907	\$ 2,573,802	\$ 1,822,105	\$ 603,794	\$ 256,603	\$ 347,191	
2009-10	Integrated Waste Management	Ch. 11/16/92	256	\$ 2,211,666	\$ -	\$ 2,211,666	\$ -	\$ -	\$ 2,211,666	
2009-10	Mandate Reimbursement Process	Ch. 486/75	237	\$ 685,092	\$ -	\$ 685,092	\$ -	\$ -	\$ 685,092	
2009-10	Open Meetings/Brown Act Reform	Ch. 641/86	238	\$ 1,405,673	\$ -	\$ 1,405,673	\$ -	\$ -	\$ 1,405,673	
2009-10	Prevailing Wage Rate	Ch. 12/49/78	303	\$ 83,173	\$ -	\$ 83,173	\$ -	\$ -	\$ 83,173	
2009-10	Sexual Assault Response Procedures	Ch. 423/90	247	\$ 1,421	\$ -	\$ 1,421	\$ -	\$ -	\$ 1,421	
2009-10	Student Records	Ch. 593/89	307	\$ 1,170	\$ -	\$ 1,170	\$ -	\$ -	\$ 1,170	
2009-10	Tuition Fee Waivers	Ch. 36/77	301	\$ 763,416	\$ 13,000	\$ 750,416	\$ -	\$ -	\$ 750,416	
2009-10 Total				\$ 35,757,930	\$ 6,030,801	\$ 29,727,129	\$ 603,794	\$ 256,603	\$ 29,379,938	
2008-09	California Grants	Ch. 403/00	302	\$ 23,555	\$ -	\$ 23,555	\$ -	\$ -	\$ 23,555	
2008-09	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	\$ 5,255,258	\$ 602,002	\$ 4,653,256	\$ -	\$ -	\$ 4,653,256	
2008-09	Enrollment Fee Collection and Waivers	Title 5	267	\$ 26,776,653	\$ 3,662,165	\$ 23,114,488	\$ -	\$ -	\$ 23,114,488	
2008-09	Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	\$ 6,006,587	\$ 5,583,441	\$ 423,146	\$ 510,365	\$ 381,373	\$ 128,992	
2008-09	Integrated Waste Management	Ch. 11/16/92	256	\$ 6,326,880	\$ -	\$ 6,326,880	\$ -	\$ -	\$ 6,326,880	
2008-09	Mandate Reimbursement Process	Ch. 486/75	237	\$ 775,809	\$ 6,395	\$ 769,414	\$ -	\$ -	\$ 769,414	
2008-09	Open Meetings/Brown Act Reform	Ch. 641/86	238	\$ 1,475,222	\$ -	\$ 1,475,222	\$ -	\$ -	\$ 1,475,222	
2008-09	Prevailing Wage Rate	Ch. 12/49/78	303	\$ 63,845	\$ -	\$ 63,845	\$ -	\$ -	\$ 63,845	
2008-09	Reporting Improper Governmental Activities	Ch. 416/01	294	\$ 14,940	\$ 14,000	\$ 940	\$ -	\$ -	\$ 940	
2008-09	Tuition Fee Waivers	Ch. 36/77	301	\$ 642,515	\$ -	\$ 642,515	\$ -	\$ -	\$ 642,515	
2008-09 Total				\$ 47,361,264	\$ 9,868,003	\$ 37,493,261	\$ 510,365	\$ 381,373	\$ 37,364,269	
2007-08	Agency Fee Arrangements	Ch. 893/00	270	\$ 107,612	\$ 6,763	\$ 100,849	\$ -	\$ -	\$ 100,849	
2007-08	California Grants	Ch. 403/00	302	\$ 23,844	\$ -	\$ 23,844	\$ -	\$ -	\$ 23,844	
2007-08	California State Teachers' Retirement System (CalSTRS)	Ch. 603/94	287	\$ 65,504	\$ -	\$ 65,504	\$ -	\$ -	\$ 65,504	
2007-08	Service Credit	Ch. 961/75	232	\$ 6,507,511	\$ 60,759	\$ 6,446,752	\$ -	\$ -	\$ 6,446,752	
2007-08	Collective Bargaining and Collective Bargaining Agreement Disclosure	Title 5	267	\$ 22,113,234	\$ -	\$ 22,113,234	\$ -	\$ -	\$ 22,113,234	
2007-08	Enrollment Fee Collection and Waivers	Ch. 1/84	234	\$ 3,811,589	\$ 2,049,817	\$ 1,761,772	\$ 2,070,733	\$ 917,501	\$ 1,153,232	
2007-08	Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	\$ 3,811,589	\$ 2,049,817	\$ 1,761,772	\$ 2,070,733	\$ 917,501	\$ 608,540	

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2007-08	Integrated Waste Management	Ch. 1116/92	256	\$ 4,710,636	\$ -	\$ 4,710,636	\$ -	\$ -	\$ 4,710,636	
2007-08	Mandate Reimbursement Process	Ch. 486/75	237	\$ 707,987	\$ -	\$ 707,987	\$ -	\$ -	\$ 707,987	
2007-08	Open Meetings/Brown Act Reform	Ch. 641/86	238	\$ 1,225,722	\$ 68,719	\$ 1,157,003	\$ -	\$ -	\$ 1,157,003	
2007-08	Prevailing Wage Rate	Ch. 1249/78	303	\$ 86,420	\$ -	\$ 86,420	\$ -	\$ -	\$ 86,420	
2007-08	Reporting Improper Governmental Activities	Ch. 416/01	294	\$ 28,548	\$ -	\$ 28,548	\$ -	\$ -	\$ 28,548	
2007-08	Tuition Fee Waivers	Ch. 36/77	301	\$ 827,080	\$ -	\$ 827,080	\$ -	\$ -	\$ 827,080	
2007-08 Total				\$ 40,215,687	\$ 2,186,058	\$ 38,029,629	\$ 2,070,733	\$ 917,501	\$ 1,153,232	\$ 36,876,397
2006-07	Agency Fee Arrangements	Ch. 893/00	270	\$ 83,423	\$ -	\$ 83,423	\$ -	\$ -	\$ 83,423	
2006-07	California Grants	Ch. 403/00	302	\$ 21,582	\$ -	\$ 21,582	\$ -	\$ -	\$ 21,582	
2006-07	California State Teachers' Retirement System (CalSTRS)									
2006-07	Service Credit	Ch. 603/94	287	\$ 57,897	\$ -	\$ 57,897	\$ -	\$ -	\$ 57,897	
2006-07	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	\$ 6,202,489	\$ 153,668	\$ 6,048,821	\$ -	\$ -	\$ 6,048,821	
2006-07	Enrollment Fee Collection and Waivers	Title 5	267	\$ 15,525,120	\$ -	\$ 15,525,120	\$ -	\$ -	\$ 15,525,120	
2006-07	Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	\$ 2,287,353	\$ 893,735	\$ 1,393,618	\$ 3,094,765	\$ 2,026,098	\$ 1,068,667	
2006-07	Integrated Waste Management	Ch. 1116/92	256	\$ 4,154,658	\$ -	\$ 4,154,658	\$ -	\$ -	\$ 4,154,658	
2006-07	Mandate Reimbursement Process	Ch. 486/75	237	\$ 853,887	\$ -	\$ 853,887	\$ -	\$ -	\$ 853,887	
2006-07	Open Meetings/Brown Act Reform	Ch. 641/86	238	\$ 1,150,873	\$ 2,083	\$ 1,148,790	\$ -	\$ -	\$ 1,148,790	
2006-07	Prevailing Wage Rate	Ch. 1249/78	303	\$ 72,835	\$ -	\$ 72,835	\$ -	\$ -	\$ 72,835	
2006-07	Tuition Fee Waivers	Ch. 36/77	301	\$ 821,439	\$ -	\$ 821,439	\$ -	\$ -	\$ 821,439	
2006-07 Total				\$ 31,231,556	\$ 1,049,486	\$ 30,182,070	\$ 3,094,765	\$ 2,026,098	\$ 1,068,667	\$ 29,113,403
2005-06	Agency Fee Arrangements	Ch. 893/00	270	\$ 48,319	\$ -	\$ 48,319	\$ -	\$ -	\$ 48,319	
2005-06	California Grants	Ch. 403/00	302	\$ 20,617	\$ -	\$ 20,617	\$ -	\$ -	\$ 20,617	
2005-06	California State Teachers' Retirement System (CalSTRS)									
2005-06	Service Credit	Ch. 603/94	287	\$ 55,370	\$ -	\$ 55,370	\$ -	\$ -	\$ 55,370	
2005-06	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	\$ 5,495,764	\$ 152,149	\$ 5,343,615	\$ -	\$ -	\$ 5,343,615	
2005-06	Enrollment Fee Collection and Waivers	Title 5	267	\$ 16,401,242	\$ -	\$ 16,401,242	\$ -	\$ -	\$ 16,401,242	
2005-06	Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	\$ 3,207,813	\$ 98,174	\$ 3,109,639	\$ -	\$ -	\$ 3,109,639	
2005-06	Integrated Waste Management	Ch. 1116/92	256	\$ 4,243,528	\$ 103,900	\$ 4,139,628	\$ -	\$ -	\$ 4,139,628	
2005-06	Mandate Reimbursement Process	Ch. 486/75	237	\$ 884,380	\$ 884,380	\$ -	\$ -	\$ -	\$ -	
2005-06	Open Meetings/Brown Act Reform	Ch. 641/86	238	\$ 967,993	\$ 62,945	\$ 905,048	\$ 159,704	\$ 145,885	\$ 13,819	
2005-06	Prevailing Wage Rate	Ch. 1249/78	303	\$ 151,809	\$ -	\$ 151,809	\$ -	\$ -	\$ 151,809	
2005-06	Tuition Fee Waivers	Ch. 36/77	301	\$ 771,160	\$ -	\$ 771,160	\$ -	\$ -	\$ 771,160	
2005-06 Total				\$ 32,247,995	\$ 1,301,548	\$ 30,946,447	\$ 267,974	\$ 251,347	\$ 16,627	\$ 30,929,820
2004-05	Agency Fee Arrangements	Ch. 893/00	270	\$ 44,561	\$ -	\$ 44,561	\$ -	\$ -	\$ 44,561	
2004-05	California Grants	Ch. 403/00	302	\$ 18,380	\$ -	\$ 18,380	\$ -	\$ -	\$ 18,380	
2004-05	California State Teachers' Retirement System (CalSTRS)									
2004-05	Service Credit	Ch. 603/94	287	\$ 44,826	\$ -	\$ 44,826	\$ -	\$ -	\$ 44,826	
2004-05	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	\$ 7,277,259	\$ 1,701,273	\$ 5,575,986	\$ -	\$ -	\$ 5,575,986	
2004-05	Enrollment Fee Collection and Waivers	Title 5	267	\$ 14,801,946	\$ 253,258	\$ 14,548,688	\$ -	\$ -	\$ 14,548,688	
2004-05	Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	\$ 7,032,360	\$ 2,651,721	\$ 4,380,639	\$ -	\$ -	\$ 4,380,639	
2004-05	Integrated Waste Management	Ch. 1116/92	256	\$ 4,155,410	\$ 635,895	\$ 3,519,515	\$ -	\$ -	\$ 3,519,515	
2004-05	Prevailing Wage Rate	Ch. 1249/78	303	\$ 39,068	\$ -	\$ 39,068	\$ -	\$ -	\$ 39,068	
2004-05	Tuition Fee Waivers	Ch. 36/77	301	\$ 678,167	\$ -	\$ 678,167	\$ -	\$ -	\$ 678,167	
2004-05 Total				\$ 34,091,977	\$ 5,242,147	\$ 28,849,830	\$ -	\$ -	\$ -	\$ 28,849,830

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
2003-04	Agency Fee Arrangements	Ch. 893/00	270	\$ 44,823	\$ -	\$ 44,823	\$ -	\$ -	\$ 44,823	
2003-04	California Grants	Ch. 403/00	302	\$ 22,466	\$ -	\$ 22,466	\$ -	\$ -	\$ 22,466	
2003-04	California State Teachers' Retirement System (CalSTRS) Service Credit	Ch. 603/94	287	\$ 41,545	\$ 7,708	\$ 33,837	\$ -	\$ -	\$ 33,837	
2003-04	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	\$ 7,314,173	\$ 4,987,683	\$ 2,326,490	\$ -	\$ -	\$ 2,326,490	
2003-04	Enrollment Fee Collection and Waivers	Title 5	267	\$ 15,032,652	\$ 155,838	\$ 14,876,814	\$ -	\$ -	\$ 14,876,814	
2003-04	Integrated Waste Management	Ch. 1116/92	256	\$ 3,906,635	\$ 509,351	\$ 3,397,284	\$ -	\$ -	\$ 3,397,284	
2003-04	Open Meetings/Brown Act Reform	Ch. 641/86	238	\$ 1,117,296	\$ 1,100,666	\$ 16,630	\$ -	\$ -	\$ 16,630	
2003-04	Prevailing Wage Rate	Ch. 1249/78	303	\$ 28,285	\$ -	\$ 28,285	\$ -	\$ -	\$ 28,285	
2003-04	Tuition Fee Waivers	Ch. 36/77	301	\$ 629,328	\$ -	\$ 629,328	\$ -	\$ -	\$ 629,328	
2003-04 Total				\$ 28,137,203	\$ 6,761,246	\$ 21,375,957	\$ -	\$ -	\$ 21,375,957	
2002-03	Agency Fee Arrangements	Ch. 893/00	270	\$ 48,740	\$ 30,019	\$ 18,721	\$ -	\$ -	\$ 18,721	
2002-03	California Grants	Ch. 403/00	302	\$ 22,639	\$ 3,596	\$ 19,043	\$ -	\$ -	\$ 19,043	
2002-03	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	\$ 7,694,198	\$ 7,694,198	\$ -	\$ 595,489	\$ 374,750	\$ 220,739	
2002-03	Enrollment Fee Collection and Waivers	Title 5	267	\$ 16,695,150	\$ 1,706,789	\$ 14,988,361	\$ -	\$ -	\$ 14,988,361	
2002-03	Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	\$ 5,382,514	\$ 5,382,514	\$ -	\$ 3,547,273	\$ 2,825,984	\$ 720,289	
2002-03	Integrated Waste Management	Ch. 1116/92	256	\$ 3,290,939	\$ 990,446	\$ 2,300,493	\$ 118,804	\$ 30,280	\$ 88,524	
2002-03	Tuition Fee Waivers	Ch. 36/77	301	\$ 571,497	\$ -	\$ 571,497	\$ -	\$ -	\$ 571,497	
2002-03 Total				\$ 33,705,677	\$ 15,807,562	\$ 17,898,115	\$ 4,261,566	\$ 3,232,014	\$ 16,868,563	
2001-02	California Grants	Ch. 403/00	302	\$ 14,368	\$ 2,880	\$ 11,488	\$ -	\$ -	\$ 11,488	
2001-02	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	\$ 8,269,673	\$ 8,269,673	\$ -	\$ 964,882	\$ 940,305	\$ 24,577	
2001-02	Enrollment Fee Collection and Waivers	Title 5	267	\$ 15,216,582	\$ 352,300	\$ 14,864,282	\$ -	\$ -	\$ 14,864,282	
2001-02	Health Fee Elimination (On or after 07/01/1994)	Ch. 1/84	234	\$ 4,840,765	\$ 4,840,765	\$ -	\$ 1,190,648	\$ 1,045,133	\$ 145,515	
2001-02	Integrated Waste Management	Ch. 1116/92	256	\$ 3,063,590	\$ 932,371	\$ 2,131,219	\$ 71,339	\$ 36,921	\$ 2,096,801	
2001-02	Tuition Fee Waivers	Ch. 36/77	301	\$ 475,140	\$ -	\$ 475,140	\$ -	\$ -	\$ 475,140	
2001-02 Total				\$ 31,880,118	\$ 14,397,989	\$ 17,482,129	\$ 2,226,869	\$ 2,022,359	\$ 17,277,619	
2000-01	Enrollment Fee Collection and Waivers	Title 5	267	\$ 13,674,783	\$ 212,641	\$ 13,462,142	\$ -	\$ -	\$ 13,462,142	
2000-01	Integrated Waste Management	Ch. 1116/92	256	\$ 1,155,500	\$ 250,487	\$ 905,013	\$ -	\$ -	\$ 905,013	
2000-01 Total				\$ 14,830,283	\$ 463,128	\$ 14,367,155	\$ -	\$ -	\$ 14,367,155	
1999-00	Enrollment Fee Collection and Waivers	Title 5	267	\$ 12,133,039	\$ 172,387	\$ 11,960,652	\$ -	\$ -	\$ 11,960,652	
1999-00	Integrated Waste Management	Ch. 1116/92	256	\$ 692,945	\$ 111,750	\$ 581,195	\$ -	\$ -	\$ 581,195	
1999-00	Open Meetings/Brown Act Reform	Ch. 641/86	238	\$ 239,700	\$ 228,223	\$ 11,477	\$ 46,320	\$ 46,320	\$ 11,477	
1999-00 Total				\$ 13,065,684	\$ 512,360	\$ 12,553,324	\$ 46,320	\$ 46,320	\$ 12,553,324	
1998-99	Enrollment Fee Collection and Waivers	Title 5	267	\$ 9,535,087	\$ 1,229,718	\$ 8,305,369	\$ -	\$ -	\$ 8,305,369	
1998-99	Open Meetings/Brown Act Reform	Ch. 641/86	238	\$ 16,407	\$ -	\$ 16,407	\$ -	\$ -	\$ 16,407	
1998-99 Total				\$ 9,551,494	\$ 1,229,718	\$ 8,321,776	\$ -	\$ -	\$ 8,321,776	
1997-98	Collective Bargaining and Collective Bargaining Agreement Disclosure	Ch. 961/75	232	\$ 1,452,917	\$ 1,452,917	\$ -	\$ 550,342	\$ 546,642	\$ 3,700	
1997-98	Open Meetings/Brown Act Reform	Ch. 641/86	238	\$ 1,469,817	\$ 1,452,917	\$ 16,900	\$ 550,342	\$ 546,642	\$ 13,200	
1997-98 Total				\$ 2,922,734	\$ 2,905,834	\$ 16,900	\$ 550,342	\$ 546,642	\$ 3,700	
1996-97	Open Meetings/Brown Act Reform	Ch. 641/86	238	\$ 18,586	\$ -	\$ 18,586	\$ -	\$ -	\$ 18,586	
1996-97 Total				\$ 18,586	\$ -	\$ 18,586	\$ -	\$ -	\$ 18,586	
1995-96	Open Meetings/Brown Act Reform	Ch. 641/86	238	\$ 17,217	\$ -	\$ 17,217	\$ -	\$ -	\$ 17,217	

State Controller's Office
 Division of Accounting and Reporting
 State Mandated Programs by Fiscal Year 2010-11 and Prior Years
 Claims Received/Adjusted, Payments, Receivables, and Net Deficiencies and Surpluses
 As of September 30, 2012

Fiscal Year	Program Name	Legal Reference	Program Number	ACCOUNTS PAYABLE (A/P)			ACCOUNTS RECEIVABLE (A/R)			Net Balance
				Program Costs	Less: Net Payments	A/P Balance	Established A/R	Less: Recovered Amount	A/R Balance	
1995-96 Total				\$ 17,217	\$ -	\$ 17,217	\$ -	\$ -	\$ -	\$ 17,217
1994-95	Open Meetings/Brown Act Reform	Ch. 641/86	238	\$ 13,033	\$ -	\$ 13,033	\$ -	\$ -	\$ -	\$ 13,033
1994-95 Total				\$ 13,033	\$ -	\$ 13,033	\$ -	\$ -	\$ -	\$ 13,033
1993-94	Open Meetings/Brown Act Reform	Ch. 641/86	238	\$ 1,352	\$ -	\$ 1,352	\$ -	\$ -	\$ -	\$ 1,352
1993-94 Total				\$ 1,352	\$ -	\$ 1,352	\$ -	\$ -	\$ -	\$ 1,352
Grand Total				\$ 384,049,240	\$ 66,312,963	\$ 317,736,277	\$ 13,632,728	\$ 9,680,257	\$ 3,952,471	\$ 313,783,806

Schedule C:
List of Incorrect Reduction Claims
Filed with the Commission on State Mandates

Commission on State Mandates
116 Incorrect Reduction Claims
October 1, 2012

#	R	File Number	Filing Date	Date Comments Filed	Claimant	Fiscal Year	Amount of Claim	Name	Type
1		02-9635802-I-03	9/6/02	7/23/03*	City of Pleasanton	1995-1996, 1996-1997, 1997-1998	\$15,000	Investment Reports	Local
2		02-9635802-I-04	9/6/02	7/22/03*	City of Sunnyvale	1995-1996, 1996-1997, 1997-1998	\$43,978	Investment Reports	Local
3		02-9635802-I-05	9/6/02	7/7/03*	County of Santa Barbara	1995-1996, 1996-1997, 1997-1998	\$41,308	Investment Reports	Local
4		02-9635802-I-06	9/6/02	8/21/03*	City of Hayward	1995-1996, 1996-1997, 1997-1998	\$55,732	Investment Reports	Local
5		02-9635802-I-07	9/6/02	8/21/03*	City of Oakland	1995-1996, 1996-1997, 1997-1998	\$122,530	Investment Reports	Local
6		02-9635802-I-09	9/6/02	5/9/05 (C) 8/21/03 (SCO)	City of Redwood City	1995-1996, 1996-1997, 1997-1998	\$15,755	Investment Reports	Local
7		02-9635802-I-10	9/6/02	8/21/03 (SCO) 6/3/04 (C)	City of San Bernardino	1995-1996, 1996-1997, 1997-1998	\$10,083	Investment Reports	Local
8		02-9635802-I-12	9/6/02	5/9/05 (C) 7/14/03 (SCO)	City of Santa Clara	1995-1996, 1996-1997, 1997-1998	\$47,125	Investment Reports	Local
9		02-9635802-I-14	9/6/02	7/16/03*	County of Plumas	1995-1996, 1996-1997, 1997-1998	\$34,166	Investment Reports	Local
10		02-9635802-I-17	9/6/02	7/14/03*	City of Santa Barbara	1995-1996, 1996-1997, 1997-1998	\$49,049	Investment Reports	Local
11		02-9635802-I-18	9/17/02	7/27/03*	County of Kern	1995-1996, 1997-1998	\$57,160	Investment Reports	Local
12		02-9635802-I-19	9/19/02	7/16/03*	County of Glenn	1995-1996, 1997-1998	\$20,332	Investment Reports	Local
13		02-9635802-I-20	9/19/02	7/14/03*	City of Huntington Beach	1995-1996, 1996-1997	\$21,578	Investment Reports	Local
14		02-9635802-I-22	9/19/02	8/20/04 (C) 7/21/03 (SCO)	City of Redding	1995-1996, 1996-1997	\$13,756	Investment Reports	Local
15		02-9635802-I-23	9/19/02	6/3/04 (C) 7/21/03 (SCO)	City of West Covina	1995-1996, 1996-1997	\$10,380	Investment Reports	Local
16		02-9635802-I-24	9/19/02	6/3/04 (C)	City of Cerritos	1995-1996, 1996-1997	\$26,983	Investment Reports	Local
17		02-9635802-I-25	9/19/02	6/29/04 (C) 7/21/03 (SCO)	City of Irvine	1995-1996, 1996-1997	\$82,486	Investment Reports	Local
18		02-9635802-I-27	9/19/02	7/16/03*	County of Marin	1995-1996, 1997-1998,	\$54,004	Investment Reports	Local
19		02-9635802-I-29	9/19/02	5/9/05 (C) 5/25/03 (SCO)	County of Nevada	1995-1996, 1997-1998	\$30,755	Investment Reports	Local
20		02-9635802-I-30	9/30/02	7/16/03*	County of Riverside	1995-1996, 1997-1998	\$70,510	Investment Reports	Local
21		02-9635802-I-32	9/30/02	3/11/04 (C) 7/23/03 (SCO)	City of Visalia	1995-1996, 1996-1997	\$26,617	Investment Reports	Local
22		02-9635802-I-34	10/11/02	1/30/04 (c) 7/23/03 (SCO)	City of Milpitas	1995-1996, 1996-1997	\$11,129	Investment Reports	Local
23		02-9635802-I-36	10/11/02	1/30/04 (C) 8/18/03 (SCO)	City of Rialto	1995-1996, 1997-1998	\$48,743	Investment Reports	Local
24		02-9635802-I-38	10/11/02	2/17/04 (C) 8/18/03 (SCO)	City of Upland	1995-1996, 1997-1998	\$53,160	Investment Reports	Local
25		02-9635802-I-42	10/11/02	1/30/04 (C) 8/11/03 (SCO)	City of Bell Gardens	1995-1996, 1997-1998	\$78,938	Investment Reports	Local

Commission on State Mandates
116 Incorrect Reduction Claims
October 1, 2012

#	R	File Number	Filing Date	Date Comments Filed	Claimant	Fiscal Year	Amount of Claim	Name	Type
26		02-9635802-1-44	10/11/02	1/20/04 (C) 8/11/03 (SCO)	City of Rancho Cucamonga	1995-1996, 1997-1998	\$96,502	Investment Reports	Local
27		02-9635802-1-48	10/11/02	8/14/03*	City of Costa Mesa	1995-1996, 1997-1998	\$68,546	Investment Reports	Local
28		02-9635802-1-49	10/11/02	1/22/04 (C) 8/14/03 (SCO)	City of Norwalk	1995-1996, 1997-1998	\$56,055	Investment Reports	Local
29		02-9635802-1-50	10/16/02	8/5/03 (C) 6/27/03 (SCO)	City Of Lodi	1995-1996, 1996-1997, 1998-1999	\$17,496	Investment Reports	Local
30		02-9635802-1-52	10/16/02	8/5/03 (C) 6/30/03 (SCO)	City Of Walnut Creek	1995-1996, 1996-1997, 1998-1999	\$48,107	Investment Reports	Local
31		02-9635802-1-53	10/16/02	9/7/05 (C) 7/31/03 (SCO)	City Of South Lake Tahoe	1995-1996, 1996-1997	\$3,683	Investment Reports	Local
32		02-9635802-1-54	10/16/02	8/5/05 (C) 6/25/03 (SCO)	City Of San Carlos	1995-1996, 1996-1997, 1998-1999	\$19,992	Investment Reports	Local
33		02-9635802-1-55	10/16/02	8/2/03 (C) 7/31/03 (SCO)	City Of Reedley	1995-1996	\$2,167	Investment Reports	Local
34		02-9635802-1-56	10/16/02	9/2/03 (C) 7/31/03 (SCO)	City Of Pleasant Hill	1995-1996	\$1,814	Investment Reports	Local
35		02-9635802-1-57	10/16/02	9/2/03 (C) 7/31/03 (SCO)	City Of Albany	1996-1997	\$5,397	Investment Reports	Local
36		02-9635802-1-58	10/16/02	8/5/03 (C) 6/27/03 (SCO)	City Of Concord	1995-1996, 1996-1997	\$3,203	Investment Reports	Local
37		02-9635802-1-61	10/16/02	8/28/03 (C) 7/25/03 (SCO)	City Of Patterson	1995-1996	\$914	Investment Reports	Local
38		02-9635802-1-62	10/16/02	8/28/03 (C) 7/25/03 (SCO)	City Of Lathrop	1995-1996, 1996-1997	\$7,003	Investment Reports	Local
39		02-9635802-1-63	10/16/02	8/5/03 (C) 7/25/03 (SCO)	City Of Monterey	1995-1996, 1996-1997, 1998-1999	\$10,576	Investment Reports	Local
40		02-9635802-1-64	10/16/02	8/28/03 (C) 7/25/03 (SCO)	City Of Gilroy	1995-1996	\$12,810	Investment Reports	Local
41		02-9635802-1-65	10/16/02	8/5/03 (C) 6/25/03 (SCO)	City Of Hanford	1995-1996, 1996-1997, 1998-1999	\$7,935	Investment Reports	Local
42		02-9635802-1-66	10/16/02	8/28/03 (C) 7/25/03 (SCO)	City Of Antioch	1995-1996	\$4,494	Investment Reports	Local
43		02-9635802-1-67	10/16/02	8/5/03 (C) 6/23/03 (SCO)	City Of Stockton	1995-1996, 1996-1997, 1998-1999	\$30,048	Investment Reports	Local
44		02-9635802-1-68	10/16/02	8/5/03 (C) 6/25/03 (SCO)	City Of Turlock	1995-1996, 1996-1997, 1998-1999	\$11,877	Investment Reports	Local
45		02-9635802-1-69	10/16/02	No Comments	City Of San Mateo	1995-1996, 1996-1997, 1998-1999	\$29,810	Investment Reports	Local
46		02-9635802-1-70	10/16/02	7/7/03 (SCO)	City of Coachella	1996-1997	\$2,112	Investment Reports	Local
47		02-9635802-1-71	10/16/02	7/3/03 (C)	City Of Menlo Park	1995-1996, 1996-1997	\$20,283	Investment Reports	Local
48		02-9635802-1-72	10/17/02	2/23/04 (C) 6/23/03 (SCO)	City Of San Marcos	1995-1996, 1996-1997	\$4,767	Investment Reports	Local
49		02-9635802-1-73	10/17/02	2/9/04 (C) 6/23/03 (SCO)	City Of Santa Ana	1996-1997	\$16,535	Investment Reports	Local

Commission on State Mandates
116 Incorrect Reduction Claims
October 1, 2012

#	R	File Number	Filing Date	Date Comments Filed	Claimant	Fiscal Year	Amount of Claim	Name	Type
50		04-4241-I-01	4/13/05	10/17/05*	San Diego Unified School District	2001-2002, 2002-2003	\$1,203,208	Emergency Procedures, Earthquake Procedures, and Disasters	School
51		04-4257-I-367	5/16/05	4/24/08*	County of Santa Clara	1999-2000, 2000-2001, 2001-2002	\$4,653,917	Open Meetings	Local
52	R	04-904133-I-01 Revised 904133-I-04	6/27/05	No Comments	Sweetwater Union High School District	1999-2000, 2000-2001, 2001-2002		Notification of Truancy (Revised)	School
53		05-4206-I-03	9/6/05	12/16/08 (SCO) 8/11/09 (C)	Long Beach Community College District	2001-2002, 2002-2003	\$466,629	Health Fee Elimination	CCD
54		05-4206-I-04	9/6/05	4/24/08 (SCO) 7/15/09 (C)	San Mateo County Community College District	1999-2000, 2000-2001, 2001-2002	\$1,017,386	Health Fee Elimination	CCD
55		05-4206-I-05	9/6/05	02/11/08 (SCO)	State Center Community College District	1999-2000, 2000-2001, 2001-2002	\$887,665	Health Fee Elimination	CCD
56		05-4206-I-06	9/9/05	3/12/08 (SCO) 6/9/09 (C)	Los Rios Community College District	1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002	\$3,205,600	Health Fee Elimination	CCD
57		05-4206-I-07	9/9/05	3/24/08 (SCO) 5/12/09 (C)	Glendale Community College District	2000-2001, 2001-2002	\$131,047	Health Fee Elimination	CCD
58		05-4206-I-08	9/15/05	1/7/08*	San Bernardino Community College District	2001-2002, 2002-2003	\$610,323	Health Fee Elimination	CCD
59		05-4206-I-09	9/15/05	4/24/08 (SCO) 5/12/09 (C)	North Orange County Community College District	2001-2002, 2002-2003	\$346,582	Health Fee Elimination	CCD
60		05-4206-I-10	9/15/05	3/12/08 (SCO) 7/13/09 (C)	Foothill-De Anza Community College District	1999-2000, 2000-2001, 2001-2002	\$1,817,357	Health Fee Elimination	CCD
61		05-4206-I-11	3/27/06	11/24/08 (SCO) 8/11/09 (C)	El Camino Community College District	2000-2001, 2001-2002, 2002-2003	\$399,891	Health Fee Elimination	CCD
62		05-4206-I-12	6/16/06	12/23/08*	Santa Monica Community College District	2001-2002, 2002-2003	\$364,407	Health Fee Elimination	CCD
63		05-4241-I-06	11/10/05	3/12/08 (SCO) 9/3/09 (C)	Poway Unified School District	2000-2001, 2001-2002, 2002-2003	\$738,364	Emergency Procedures, Earthquake Procedures, and Disasters	School
64		05-4282-I-03	5/25/06	6/3/09 (SCO) 3/15/10 (C)	County of San Mateo	1996-1997, 1997-1998, 1998-1999	\$3,232,423	Handicapped and Disabled Students	Local
65		05-4425-I-09	9/6/05	No Comments	San Mateo County Community College District	1999-2000, 2000-2001, 2001-2002	\$735,450	Collective Bargaining	CCD
66		05-4425-I-10	9/19/05	3/10/08 (SCO) 8/24/09 (C)	Foothill-De Anza Community College District	1999-2000, 2000-2001, 2001-2002	\$448,696	Collective Bargaining	CCD
67		05-4425-I-11	12/19/05	3/23/10 (SCO)	Gavilan Joint Community College District	1995-1996	\$124,245	Collective Bargaining	CCD
68		05-4435-I-50	9/6/05	10/11/07 (SCO) 11/5/07 (C)	Clovis Unified School District	1998-1999, 1999-2000, 2000-2001, 2001-2002	\$8,053,485	Graduation Requirements	School
69		05-4452-I-01	6/26/06	No Comments	San Diego Unified School District	2001-2002, 2002-2003	\$354,046	Notification to Teachers: Pupils Subject to Suspension or Expulsion	School
70		05-4485-I-03	9/9/05	2/11/08*	Los Rios Community College District	1999-2000, 2000-2001	\$10,004	Mandate Reimbursement Process	CCD
71		05-904133-I-02	12/12/05	No Comments	Los Angeles Unified School District	1998-1999, 1999-2000, 2000-2001	\$2,352,507	Notification of Truancy	School

Commission on State Mandates
116 Incorrect Reduction Claims
October 1, 2012

#	R	File Number	Filing Date	Date Comments Filed	Claimant	Fiscal Year	Amount of Claim	Name	Type
72	R	05-904133-I-03 Revised 04133-I-06 & 10- 04133-I-08 06-4206-I-13	6/16/06	No Comments	Riverside Unified School District	1999-2000, 2000-2001, 2001-2002		Notification of Truancy (Revised)	School
73		06-4509-I-01	7/3/06	1/7/08*	Pasadena Area Community College District	1999-2000, 2000-2001, 2001-2002	\$375,941	Health Fee Elimination	CCD
74		07-3713-I-02	11/22/06	No Comments	County of Santa Cruz	1999-2000, 2000-2001, 2001-2002	\$173,280	Sexually Violent Predators	Local
75		07-4206-I-14	7/25/07	3/15/10 (SCO)	Santa Clara County	2000-2001, 2001-2002, 2002-2003	\$19,284	Absentee Ballots	Local
76		07-4206-I-15	8/14/07	3/15/10 (SCO)	Pasadena Area Community College District	2002-2003, 2003-2004	\$192,755	Health Fee Elimination	CCD
77		07-4206-I-16	10/2/07	No Comments	Rancho Santiago Community College District	2000-2001, 2001-2002, and 2002-2003	\$1,319,583	Health Fee Elimination	CCD
78		07-4206-I-17	10/11/07	3/15/10 (SCO)	Sierra Joint Community College District	2001-2002, 2002-2003, and 2003-2004	\$560,846	Health Fee Elimination	CCD
79		07-4442-I-01	7/26/07	No Comments	San Diego County Office of Education	2004-2005, 2005-2006	\$13,353	Interdistrict Attendance Permits	School
80		07-4509-I-02	7/25/07	No Comments	Santa Clara County	1998-1999, 1999-2000, 2000-2001	\$203,363	Sexually Violent Predators	Local
81		07-904133-I-04 (Revised) Consolidated with 04- 904133-I-01 07-9628101-I-01	10/5/07	No Comments	Sweetwater Union High School District	1999-2000, 2000-2001, and 2001-2002	\$49,949	Notification of Truancy (Revised)	School
82		07-904133-I-05	8/15/07	No Comments	County of Santa Clara	1998-1999, 1999-2000, 2000-2001	\$748,675	Domestic Violence Treatment Services	Local
83	R	07-904133-I-06 Revised 04133-I-07 08-4206-I-17	12/18/07	No Comments	San Juan Unified School District	1999-2000; 2000-2001; 2001-2002		Notification of Truancy (Revised)	School
84		08-4206-I-18	2/5/09	No Comments	Santa Monica Community College District	2003-2004; 2004-2005; 2005-2006	\$795,942	Health Fee Elimination	CCD
85		08-4237-I-02	2/5/09	No Comments	Los Rios Community College District	2002-2003; 2003-2004; 2004-2005	\$2,554,615	Health Fee Elimination	CCD
86		08-4425-I-15	1/28/09	No Comments	County of Santa Clara	1999-2000; 2000-2001; 2001-2002	\$1,268,210	Child Abduction and Recovery Program	Local
87		08-4425-I-16	7/22/08	No Comments	Contra Costa Community College District	2001-2002; 2002-2003; 2003-2004	\$494,564	Collective Bargaining	CCD
88		08-4435-I-52	2/5/09	No Comments	Los Rios Community College District	2001-2002; 2002-2003; 2003-2004	\$286,895	Collective Bargaining	CCD
89		08-904133-I-06 (Revised) Consolidated with 05- 904133-I-03 & 10- 08-9723-I-01	8/4/08	No Comments	Clovis Unified School District	1998-1999, 1999-2000, 2000-2001, 2001-2002	\$8,053,465	Graduation Requirements	School
90	R		8/26/08	No Comments	Riverside Unified School District	1999-2000, 2000-2001, 2001-2002		Notification of Truancy (Revised)	School
91		08-9723-I-01	5/21/09	No Comments	Sweetwater Union High School District	2004-2005 and 2005-2006	\$160,120	National Norm-Referenced Achievement Test (NNRAT)	School
92		08-9723-I-02	5/21/09	No Comments	Sweetwater Union High School District	1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003 2003-2004	\$1,446,786	Standardized Testing and Reporting (STAR)	School
93		09-4081-I-01	1/14/10	No comments	City of Los Angeles	2003-2004	\$516,132	Firefighter's Cancer Presumption	Local

Commission on State Mandates
116 Incorrect Reduction Claims
October 1, 2012

#	File Number	Filing Date	Date Comments Filed	Claimant	Fiscal Year	Amount of Claim	Name	Type
94	09-4206-I-21 Revised 10-4206-I-36	9/25/09	No comments	Kern Community College District	2003-2004, 2004-2005, 2005-2006, 2006-2007		Health Fee Elimination (Revised)	CCD
95	09-4206-I-22	9/25/09	No comments	Long Beach Community College District	2003-2004, 2004-2005, 2005-2006	\$676,727	Health Fee Elimination	CCD
96	09-4206-I-24	10/5/09	No comments	Foothill-De Anza Community College District	2002-2003, 2003-2004, 2004-2005, 2005-2006	\$440,752	Health Fee Elimination	CCD
97	09-4206-I-25	10/5/09	No Comments	Yosemite Community College District	2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007	\$451,873	Health Fee Elimination	CCD
98	09-4206-I-29	6/15/10	No Comments	San Diego Community College District	2003-2004, 2004-2005, 2005-2006, 2006-2007	\$379,946	Health Fee Elimination	CCD
99	09-4425-I-17	8/4/09	No comments	Sierra Joint Community College District	2002-2003, 2003-2004, 2004-2005, 2005-2006	\$17,971	Collective Bargaining	CCD
100	09-4442-I-02	6/29/10	No Comments	San Diego County Office of Education	2006-2007; 2007-2008	\$11,203	Interdistrict Attendance Permits	School
101	10-4206-I-31	7/16/10	No Comments	San Bernardino Community College District	2003-2004; 2004-2005; 2005-2006; 2006-2007	\$895,614	Health Fee Elimination	CCD
102	10-4206-I-32	9/1/10	No Comments	State Center Community College District	2002-2003, 2003-2004, 2005-2006, 2006-2007	\$902,744	Health Fee Elimination	CCD
103	10-4206-I-33	10/26/10	No Comments	El Camino Community College District	2003-2004, 2004-2005, 2005-2006, 2006-2007	\$674,212	Health Fee Elimination	CCD
104	10-4206-I-34	11/22/10	No Comments	Foothill-De Anza Community College District	2002-2003, 2003-2004, 2004-2005, 2006-2007	\$284,615	Health Fee Elimination	CCD
105	10-4206-I-35	11/29/10	No Comments	San Mateo County Community College District	2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007	\$781,934	Health Fee Elimination	CCD
106	10-4206-I-36 (Revised) Consolidated with 09-4206-I-21	12/9/10	No Comments	Kern Community College District	2003-2004, 2004-2005, 2005-2006, 2006-2007	\$762,882	Health Fee Elimination	CCD
107	10-4425-I-18	2/4/11	No Comments	Sierra Joint Community College District	2002-2003	\$12,116	Collective Bargaining	CCD
108	10-4499-I-01	9/16/10	No Comments	County of Santa Clara	2003-2004, 2004-2005, 2005-2006	\$526,802	Peace Officers Bill of Rights (POBOR)	Local
109	10-904133-I-07 (Revised) Consolidated with 07-10-904133-I-08	7/16/10	No Comments	San Juan Unified School District	1999-2000; 2000-2001; 2001-2002	\$87,312	Notification of Truancy (Revised)	School
110	10-904133-I-08 (Revised) Consolidated with 05-904133-I-03 & 08-904133-I-06	9/13/10	No Comments	Riverside Unified School District	2000-2001, 2001-2002	\$298,282	Notification of Truancy (2nd Revised)	School
111	10-904133-I-09	10/6/10	No Comments	San Juan Unified School District	2002-2003, 2003-2004, 2004-2005, 2005-2006	\$132,847	Notification of Truancy	School
112	10-904133-I-10	11/1/10	No Comments	Riverside Unified School District	2003-2004, 2004-2005, 2005-2006, 2006-2007	\$326,088	Notification of Truancy	School
113	10-9705-I-01	11/10/10	No Comments	County of San Diego	2001-2002, 2002-2003, 2003-2004, 2004-2005	\$1,979,388	Seriously Emotionally Disturbed Pupils (SEDS): Out-of-State Mental Health Services	Local

Commission on State Mandates
 116 Incorrect Reduction Claims
 October 1, 2012

#	R	File Number	Filing Date	Date	Comments Filed	Claimant	Fiscal Year	Amount of Claim	Name	Type
114		11-4451-1-05	7/29/11	No Comments	Chula Vista Elementary School District	1997-1998	\$25,081	School District of Choice: Transfers and Appeals	School	
115		11-9705-1-02	11/9/11	No Comments	County of Orange	2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006	\$2,973,826	Seriously Emotionally Disturbed Pupils (SEDS): Out-of-State Mental Health Services	Local	
116		11-9811-1-01	3/8/12	No Comments	City of Hayward	1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2005-2006, 2006-2007, 2007-2008	\$1,339,152	Animal Adoption	Local	
								\$65,439,867		

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Welfare and Institutions Sections 6250 and
6600 Through 6608, Chapter 762,
Statutes of 1995, Chapter 763, Statutes
of 1995, Chapter 4, Statutes of 1996

By the County of Los Angeles

NO. CSM - 4509

Sexually Violent Predators

STATEMENT OF DECISION
PURSUANT TO GOVERNMENT
CODE SECTION 17500 ET SEQ.;
TITLE 2, CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates was adopted on June 25, 1998.

This Decision shall become effective on June 25, 1998.



PAULA HIGASHI, Executive Director

ITEM # 4

PROPOSED STATEMENT OF DECISION

Welfare and Institutions Sections 6250 and 6600 through 6608

Chapter 762, Statutes of 1995

Chapter 763, Statutes of 1995

Chapter 4, Statutes of 1996

County of Los Angeles, Claimant

Sexually Violent Predators

Executive Summary

On May 28, 1998, the Commission approved this test claim with a 7-0 vote.

The test claim legislation establishes *new* civil commitment procedures for the continued detention and treatment of sexually violent predators following completion of prison term for certain sex-related offenses. Before detention and treatment are imposed, the county attorney is required to file a petition for civil commitment. A trial is then conducted to determine if the inmate is a sexually violent predator beyond a reasonable doubt. If the inmate accused of being a sexually violent predator is indigent, the test claim legislation requires counties to provide the indigent with the assistance of counsel and experts necessary to prepare the defense.

The Commission found that the test claim legislation imposes a new program upon counties since the procedures to commit the sexually violent predator are civil, rather than criminal, and is not within the county's preexisting duty to prosecute crime.

The Commission also recognized that the 6th and 14th Amendments of the U.S. Constitution provide that an indigent accused has the right to counsel and expert services necessary to prepare the defense at public expense.

Nonetheless, the Commission found that the test claim legislation is mandated by the state. There is no federal statutory or regulatory scheme requiring the states to keep sexually violent predators confined. The Commission recognized that what sets the 6th and 14th Amendments in motion and causes the public defender to safeguard the rights of the indigent defendant, is the state's enactment of the sexually violent predator legislation. If the state had not created this program, inmates would be released following completion of their prison term, counties would not be compelled to initiate these proceedings and services from defense counsel and experts would not have to be provided to indigent inmates.

Accordingly, the Commission concluded that the test claim legislation imposes a new program or higher level of service upon local agencies within the meaning of article XIII B, section 6, of the California Constitution.

The Commission **approved** the test claim for reimbursement of the following activities:

- Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601, subd. (i) .)
- Initial review of reports and records by the county's designated counsel to determine if the county concurs with the state's recommendation. (Welf. & Inst. Code, § 6601, subd. (i).)
- Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601, subd. (j).)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602 .)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604 .)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6605, subs. (b) through (d), and 6608, subs. (a) through (d).)
- Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6603 and 6605, subd. (d) .)
- Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602 .)

The Commission denied the remaining provisions of the test claim legislation because they do not impose reimbursable state mandated activities upon local agencies.

Staff Recommendation

Based on the foregoing, staff **recommends** that the Commission approve the attached Proposed Statement of Decision which accurately reflects the Commission's decision to approve this test claim.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Welfare and Institutions Code Sections 6250 and 6600 through 6608 as added by Chapter 762, Statutes of 1995, Chapter 763, Statutes of 1995, and Chapter 4, Statutes of 1996

And filed on May 30, 1996;

By the County of Los Angeles, Claimant.

NO. CSM - 4509

SEXUALLY VIOLENT PREDATORS

PROPOSED STATEMENT OF
DECISION PURSUANT TO
GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2,
CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Presented for adoption on
June 25, 1998)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates (Commission) on May 28, 1998 heard this test claim, during a regularly scheduled hearing. Mr. Leonard Kaye appeared for the County of Los Angeles. Ms. Marsha A. Bedwell, Deputy Attorney General, represented the Department of Finance, and Mr. James Apps appeared for the Department of Finance. The following persons were witnesses for the County of Los Angeles: Mr. Robert Kalunian, Mr. John Vacca, Mr. Kent Cahill, and Ms. Martha Zavala.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

The Commission, by a vote of 7 to 0, approved this test claim.

BACKGROUND

In 1995, the Legislature established civil commitment procedures for the continued detention and treatment of sexually violent offenders following their completion of a prison term for certain sex-related offenses through the enactment of Chapters 762 and 763, Statutes of 1995, and Chapter 4, Statutes of 1996.

Section 1 of Chapter 763, Statutes of 1995, reveals the intent of the test claim legislation as follows:

“The Legislature further finds and declares that while these individuals have been duly punished for their criminal acts, they are, if adjudicated sexually violent predators, a continuing threat to society. The continuing danger posed by these individuals and the continuing basis for their judicial commitment is a currently diagnosed mental disorder which predisposes them to engage in sexually violent criminal behavior. It is the intent of the Legislature that these individuals be committed and treated for their disorders only as long as the disorders persist and *not for any punitive purposes.*” (Emphasis added .)

A sexually violent predator is defined as (1) a person who has been convicted of a sexually violent offense against two or more victims, (2) who has received a determinate sentence for the offense, and (3) who has a diagnosed mental disorder that makes the person a danger to others in that it is likely he or she will engage in sexually violent criminal behavior. (Welf. & Inst., Code § 6600.)¹

Section 6601, subdivisions (a) through (h) ², establishes the process by which the state (through the Department of Corrections, the Board of Prison Terms, and the Department of Mental Health) screens individuals in custody at least six months prior to release for a sex-related offense and determines whether such individuals are sexually violent predators. If the state determines that such individuals are potential sexually violent predators during the screening process, the state may petition the appropriate county for **commitment**.

Section 6601, subdivision (h), provides the following:

“(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this

¹ After this test claim was filed, Article 4 of the Welfare and Institutions Code was amended by Chapters 461 and 462, Statutes of 1996. These chapters expanded the class of potential sexually violent predators by including those persons who (1) were found not guilty by reason of insanity for a sexually violent offense, (2) were convicted of a sexually violent offense in another state even if a determinate sentence was not imposed, and (3) were convicted of a sexually violent offense against a victim under the age of 14 and the offending act involved substantial sexual conduct, as specified. (Welf. & Inst. Code, §§ 6600, subd. (a), and 6600.1.) Chapters 461 and 462 are *not* included in the test claim. Accordingly, reimbursement is not required for the class of persons identified above. (However, if the claimant amends this test claim, or files a new test claim on these chapters, on or before December 31, 1998, then the eligible reimbursement period for Chapters 461 and 462 would commence on July 1, 1997. (Gov. Code, § 17557, subd. (c).)

² Unless otherwise noted, all references are to the Welfare and Institutions Code.

article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the *attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.*”³ (Emphasis added.)

Once the state requests that a petition be filed, either the district attorney or the county counsel (as designated by the county Board of Supervisors) reviews the records and reports forwarded by the state to determine if they concur with the state’s recommendation. If the county’s designated counsel concurs that the person is a sexually violent predator, the county’s designated counsel *must* file a petition for commitment in the superior court. Section 6601, subdivision (i) , specifically provides :

“(i) if the *county ’s designated counsel* concurs with the recommendation, a petition for **commitment** *shall* be filed in the superior court of the county in which the person was convicted of the offense for which he or she is under the jurisdiction of the Department of Corrections. The petition shall be filed, and either the district attorney or the county counsel of that county shall handle the proceedings. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article. ” (Emphasis added.)

Once a petition for **commitment** is filed with the superior court, the court reviews the petition to determine if probable cause exists that the inmate is likely to engage in sexually violent predatory behavior upon release. Pursuant to section 6602, a probable cause hearing is conducted and the inmate “*shall be entitled to the assistance **of counsel***” during the hearing. If the court finds that there is probable cause, the inmate *shall* remain in custody in a secured facility until a trial is completed. At trial, the trier of fact (either the court or a jury, if requested) shall determine whether the person, by reason of a diagnosed mental disorder, is likely to engage in acts of sexual violence upon release.

Section 6603 provides that the inmate is entitled to a trial by jury, the assistance of counsel, and the right to retain experts or professionals to perform an examination on his or her behalf. Section 6603 specifically provides :

“(a) A person subject to this article *shall be entitled to a trial by jury, the assistance **of counsel**, the right to retain experts or professional persons to perform an examination on his or her behalf and have access to all relevant medical and psychological records and reports. In the case **of** a person who is indigent, the court shall appoint counsel to assist him or her, and, upon the person ’s request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person’s behalf.*

“(b) The attorney petitioning for **commitment** under this article shall have the right to demand that the trial be before a jury.

³ Chapter 4, Statutes of 1996, made a minor amendment to section 6601, subdivision (h), by adding the words “in the superior court” at the end of the subdivision.

“(c) If no demand is made by the person subject to this article or the petitioning attorney, the trial shall be before the court without jury.

“(d) A unanimous verdict shall be required in any jury trial. ” (Emphasis added.)

If the court or jury determines, beyond a reasonable doubt, that the person is a sexually violent predator, the person is committed for two years to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secured facility. (Welf. & Inst. Code, § 6604.) The two-year civil commitment is subject to an annual review by the state and extension of the commitment if the mental disorder and danger to the community continue. (Welf. & Inst. Code, § 6605 .)

With each yearly review, the committed person also has a right to petition the court for conditional release. (Welf. & Inst. Code, § 6605, subd. (b) .) If the committed person affirmatively waives the right to petition the court for conditional release, the committed person remains in custody until the end of the two-year commitment. On the other hand, if the committed person does not affirmatively waive this right, the court “*shall set a show cause hearing to determine whether facts exist to warrant a hearing on whether the person’s condition has changed.*” *The inmate has the right to be present and to have an attorney present at the show cause hearing.*

If the court determines at the show cause hearing that the inmate’s mental condition has changed and that he or she is no longer a danger, the court *shall set a hearing on that issue.* (Welf. & Inst. Code, § 6605, subd. (c) .) At this subsequent hearing, the inmate “*has a right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding.*” (Welf. & Inst. Code, § 6605, subd.(d).)

Section 6605, subdivision (d) further provides that:

“*. . .The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person’s diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged.*” (Emphasis added.)

If the court or jury decides against the committed person at the hearing, the term of commitment of the person runs for an additional period of two years from the date of the ruling. If the court or jury decides in favor of the committed person (i.e, that the committed person no longer presents a danger to society), the committed person is unconditionally released. (Welf. & Inst. Code, § 6605, subd. (e).)

In addition, the sexually violent predator can be released, either unconditionally or on an outpatient basis, with the following procedures:

- At any time, the State Department of Mental Health can seek *judicial review pursuant to the habeas corpus procedure* if the state believes the committed person is no longer a sexually violent predator. (Welf. & Inst. Code, § 6605, subd. (f).)
- The State Department of Mental Health can file a report and recommendation for conditional release if the facts suggest that the committed person is not likely to commit acts of predatory sexual violence while under the supervision and treatment in the community. (Welf. & Inst. Code, § 6607 .) If the court accepts the recommendation from the Department of Mental Health, a *hearing* is held pursuant to section 6608, subdivision (b), (c) and (d), to determine if the person would be a danger if released to the community under supervision. *Notice of the hearing is given to the designated county counsel, the attorney who represented the inmate at the initial commitment proceeding, and the Department of Mental Health.* If the court determines that the committed person continues to pose a threat to others, the committed person remains in custody until the end of the two-year commitment. On the other hand, if the court determines that the committed person no longer poses a threat to the community, the committed person is placed in a state-operated conditional release program. At the end of the conditional release program, the court sets a hearing to determine if the committed person should be unconditionally released. (Welf. & Inst. Code, § 6608, subd. (g).)
- After one year of commitment, the sexually violent predator may petition the court directly for conditional outpatient release. The court may dismiss the petition if it determines the petition is without merit. If the petition is not frivolous, the *court shall set a hearing, with notice to the designated county counsel, defense attorney and Department of Mental Health.* (Welf. & Inst. Code, § 6608, subs. (a) and (b).) If the court determines that the committed person remains a threat to others, the committed person remains in custody until the end of the two-year commitment. If, on the other hand, the court determines that the committed person no longer poses a threat to the community, the court places the committed person in a state-operated conditional release program for one year. Thereafter, another hearing is set by the court to determine if the committed person should be unconditionally released. (Welf. & Inst. Code, § 6608, subd. (g) .)

The test claim legislation is similar to the Mentally Disordered Sex Offenders (MDSO) legislation. (Stats. 1977, ch. 164.) Both programs provide for the civil commitment of persons determined to be a MDSO or sexually violent predator to a state mental facility.

The Legislature appropriated funds to reimburse local governments for the costs associated with the MDSO program. However, in 1981, Chapter 928 repealed the MDSO portion of the statute prospectively (Welf. & Inst. Code, § 63 16.2), and provided that persons committed under section 63 16.2 would remain governed by this section until their commitments are terminated. Thus, counties continue to be reimbursed for the MDSO program.

Under former section 6316.2, a person who *suffers from a mental disease, defect, or disorder, and as result of such mental disease, defect, or disorder, is predisposed to the commission of sexual offenses to such a degree that he or she presents a substantial danger of bodily harm to*

others, may be civilly committed to a state mental facility. The statute further specifies that a patient (alleged MDSO) is entitled to the rights guaranteed under the state and federal Constitutions for criminal proceedings. These rights include the right to counsel, defense witnesses, and examinations.

Reimbursement is still provided for costs of transportation, care and custody of the patient (MDSO), trial costs, juror fees, and prosecuting district attorneys' costs if consent is given by the Attorney General for the district attorney to represent the state in proceedings under former section 63 16 .2. It should also be noted that the State Public Defender may contract with county public defenders to provide indigent legal defense. (Gov. Code, § 15402 .)

COMMISSION FINDINGS

Issue 1: Does the sexually violent predator legislation enacted by Chapters 762 and 763 of Statutes of 1995, and Chapter 4 of Statutes of 1996, impose a new program or higher level of service upon local agencies within the meaning of section 6, article XIII B of the California Constitution?⁴

In order for a statute, which is the subject of a test claim, to impose a reimbursable state mandated program, the statutory language must direct or obligate an activity or task upon local governmental entities. Further, the required activity or task must be new or it must create an increased or higher level of service over the former required level of service. To determine if a required activity is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated.⁵

As indicated above, the test claim legislation requires a series of activities for the civil commitment of potential sexually violent predators following completion of their criminal sentence. These activities are described below.

Activities Performed by Counties

The Commission found that the test claim legislation obligates counties to complete the following activities for the civil commitment of sexually violent predators:

- ⚡ Designate counsel to handle sexually violent predator cases referred by the state. (Welf. & Inst. Code, § 6601, subd. (i).)

⁴ Section 6, article XIII B states: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975. "

⁵ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

- Review cases referred by the state to determine if county counsel concurs with the state's recommendation to proceed with civil commitment procedures. (Welf. & Inst. Code, § 6601, subd. (i).⁶)
- File petitions for civil commitment with the superior court. (Welf. & Inst. Code, § 6601, subd. (i) .)
- Represent the State of California and the indigent inmate in the civil commitment probable cause hearing, trial and all subsequent hearings and reviews. (Welf. & Inst. Code, §§ 6601, subd. (i), 6602, 6603, 6605, subds. (b) through (d), and 6608, subds. (a) through (d).)
- Provide the indigent inmate with necessary experts and investigation to prepare the defense for trial and subsequent hearings. (Welf. & Inst. Code, §§ 6603 and 6605, subd. (d).)
- Transport and house the inmate during the civil commitment proceedings. (Welf. & Inst. Code, § 6602.)

The Commission recognized that the activities listed above are performed by counties who carry out a basic governmental function by providing a service to the public. Such activities are not imposed on state residents generally. Therefore, the first requirement necessary to determine whether the Legislature has imposed a reimbursable state mandated program is satisfied.

Moreover, the Commission found that the provisions of the test claim legislation impose new requirements, not previously imposed, upon the counties to implement civil commitment procedures for sexually violent predators following the completion of a criminal sentence. Although the MDSO program imposed similar activities upon counties, that program was repealed before the sexually violent predator legislation was enacted. Additionally, the procedure is civil, rather than criminal. Therefore, the test claim legislation imposes duties on counties that are not within their preexisting duty to prosecute crime relating to sexually violent predators.⁷

Accordingly, the Commission found that the test claim legislation constitutes a new program by satisfying two of the requirements necessary to determine whether legislation imposes a reimbursable state mandated program.

However, the Commission continued its analysis to determine whether the sexually violent predator legislation is state mandated, or merely implements a federal law. Since the finding

⁶ Section 6601, subdivision (i), provides that “if the county’s designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court. ..”. Despite the use of the word “if” in the statute, the Commission found that the designated county attorney does not have discretion to file a petition for civil commitment. Rather, the county’s attorney simply determines if he or she agrees with the state’s recommendation based on the file and records of the inmate. If there is agreement, the county has no choice but to proceed with the filing of the petition. Accordingly, the Commission found this requirement mandatory.

⁷ The Commission noted that the sexually violent predator legislation is *not* subject to the “crimes and infractions” exception to reimbursement under Government Code section 17556, subdivision (g). The US. Supreme Court held that similar sexually violent predator legislation in Kansas did not establish “criminal” proceedings and the involuntary confinement under the legislation was not punitive. (*Hendricks v. Kansas* (1997) 117 S .Ct. 2072.)

that the inmate is a sexually violent predator results in commitment of the person to the custody of the Department of Mental Health and confinement in a locked facility, the 6th Amendment (right to counsel) and 14th Amendment (due process clause) of the U.S. Constitution are implicated.

Issue 2: Is the sexually violent predator legislation state mandated?

The U.S. Supreme Court has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection. (*Addington v. Texas* (1979) 441 U.S. 418, 425, 99 S.Ct. 1804, 1809.) Accordingly, the Commission recognized that the test claim legislation implicates federal due process concerns requiring consideration of due process procedures, including the right to counsel, before one is deprived of liberty.

The Department of Finance asserted that the indigent defense provisions of the test claim legislation merely implements federal law through the 6th and 14th Amendments to the U.S. Constitution and do not impose a reimbursable state mandated program. The Department contended that although they have found no definitive United States Supreme Court authority regarding a right to counsel in civil commitment proceedings, California courts have recognized that legal services for indigent persons at public expense are mandated in mental health matters where a restraint of liberty is possible. Furthermore, where there is a right to counsel, ancillary services, such as experts and investigative services are also provided. The Department stated: “It appears that the requirements of federal due process and equal protection require that indigents subject to the sexually violent predator proceedings be provided counsel and ancillary services, and to that extent, these aspects of the statute are ‘required by federal law’.” (Citing *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 816.)

The claimant, California Public Defenders Association, the County of Monterey, the City and County of San Francisco, the Alameda County Public Defender’s Office and the County of San Joaquin contended that federal law does not require the state to implement the civil commitment of sexually violent predators and, thus, a reimbursable state mandated program exists.

Right to Counsel, Experts and Investigative Services in Civil Commitment Proceedings

The Commission found no United States Supreme Court authority specifically holding that a defendant in a civil commitment proceeding has the right to counsel. However, the United States Supreme Court has recently analyzed similar sexually violent predator legislation enacted in Kansas and recognized that an individual’s constitutionally protected interest in avoiding physical restraint may be overridden in the civil context provided the civil confinement takes place pursuant to “proper procedural and evidentiary standards.” (*Hendricks v. Kansas, supra*, 117 S.Ct. at 2079.)⁸

⁸ The Kansas Sexually Violent Predator Act established procedures for the civil commitment of persons who, due to a “mental abnormality” or a “personality disorder,” are likely to engage in predatory acts of sexual violence. Unlike the test claim legislation, the Kansas statute requires the state attorney general, rather than the local district attorney or county counsel, to initiate commitment procedures.

In addition, some federal courts have found that the assistance of counsel in civil proceedings is *required* to meet federal due process standards. The court in *Heyford v. Parker* (10th Cir. 1968) 396 F.2d 393, held that a civil proceeding resulting in involuntary incarceration for treatment commands observance of the constitutional safeguards of due process, including the right to counsel. (But see *Rud v. Dahl* (7th Cir. 1978) 578 F.2d 674, 678, which held that the Supreme Court has never specifically found that a civil proceeding requires the presence of the respondent as an element of due process.)

California courts have also recognized that legal services for indigent persons at public expense are *mandated* in civil proceedings relating to mental health matters where restraint of liberty is possible. (*Phillips v. Seely* (1974) 43 Cal.App.3d 104, 113; *Waltz v. Zumwalt* (1985) 167 Cal.App.3d 835, 838.)

Finally, case law is clear that where there is a right to representation by counsel, necessary ancillary services, such as experts and investigative services, are within the scope of that right. (*Mason v. State of Arizona* (9th Cir. 1974) 504 F.2d 1345; *People v. Worthy* (1980) 109 Cal.App.3d 514.)

Based on the foregoing authorities, the Commission found that the 6th Amendment right to counsel and the 14th Amendment due process clause of the U.S. Constitution require legal counsel, experts and investigative services be provided to indigent potential sexually violent predators throughout the civil commitment proceedings. Nevertheless, for the reasons stated below, the Commission determined that the test claim legislation represents a state mandated program.

Federal Law Does Not Require the Civil Confinement of Sexually Violent Predators

The court addressed the issue of federal constitutional requirements under the 6th and 14th Amendments in relation to a test claim filed by the County of Los Angeles on Penal Code section 987.9 (CSM-4411) in *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal. App. 4th 805. The test claim legislation in *County of Los Angeles* required counties to pay for investigators and experts in preparation of the defense for indigent defendants in death penalty cases.

The court in *County of Los Angeles* affirmed the Commission's decision to deny the test claim. The court held that Penal Code section 987.9 merely implemented the guarantees under the U.S. Constitution. The court further held that the statute did *not* impose any *new* requirements upon local governmental entities. Accordingly, the court found that counties are still compelled to provide defense services under the 6th and 14th Amendments to indigents facing the death penalty even in the absence of state law.

However, unlike the test claim legislation in *County of Los Angeles*, there is no federal statutory or regulatory scheme mandating the states to implement civil commitment proceedings for sexually violent offenders. Therefore, the Commission recognized that local agencies would *not* be compelled to provide defense and ancillary services to indigent persons accused of being a sexually violent offender following completion of their prison term if the new program had not been created by the state.

Accordingly, the Commission found that the test claim legislation constitutes a state mandated program.

CONCLUSION

Based on the foregoing, the Commission concluded that the test claim legislation imposes a new program or higher level of service upon local agencies within the meaning of article XIII B, section 6, of the California Constitution.

The Commission **approved** the test claim for reimbursement of the following activities:

- Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil **commitment** proceedings. (Welf. & Inst. Code, § 6601, subd. (i).)
- Initial review of reports and records by the county's designated counsel to determine if the county concurs with the state's recommendation. (Welf. & Inst. Code, § 6601, subd. (i).)
- Preparation and filing of the petition for **commitment** by the county's designated counsel. (Welf. & Inst. Code, § 6601, subd. (j).)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604 .)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6605, subds. (b) through (d), and 6608, subds. (a) through (d).)
- Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6603 and 6605, subd. (d).)
- Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

The Commission denied the remaining provisions of the test claim legislation because they do not impose reimbursable state mandated activities upon local agencies.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Welfare Institutions Code Sections 6250 and 6600 through 6608; as added and amended by Chapter 762, Statutes of 1995; Chapter 763, Statutes of 1995; Chapter 4, Statutes of 1996,

And filed on May 30, 1996;

By County of Los Angeles, Claimant.

NO. CSM-4509

Sexually Violent Tredators

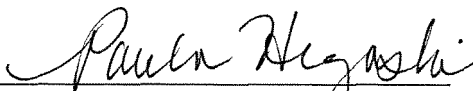
ADOPTION OF PARAMETERS AND GUIDELINES PURSUANT TO GOVERNMENT CODE SECTION 17557 AND TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTIONS 1183.12.

(Adopted on September 24, 1998)

ADOPTED PARAMETERS & GUIDELINES

The attached Parameters & Guidelines of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on September 2.5, 1998.


Paula Higashi, Executive Director

Parameters and Guidelines

Welfare and Institutions Code Sections 6250 and 6600 through 6608
Chapter 762, Statutes of 1995
Chapter 763, Statutes of 1995
Chapter 4, Statutes of 1996

Sexually Violent Predators

I. Summary and Source of the Mandate

Chapters 762 and 763, Statutes of 1995, and Chapter 4, Statutes of 1996, established new civil commitment procedures for the continued detention and treatment of sexually violent offenders following their completion of a prison term for certain sex-related offenses. Before detention and treatment are imposed, the county attorney is required to file a petition for civil commitment. A trial is then conducted to determine if the inmate is a sexually violent predator beyond a reasonable doubt. If the inmate accused of being a sexually violent predator is indigent, the test claim legislation requires counties to provide the indigent with the assistance of counsel and experts necessary to prepare the defense,

On June 25, 1998, the Commission adopted a Statement of Decision which approved reimbursement for the following services:

- Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601, subd. (i).)
- Initial review of reports and records by the county's designated counsel to determine if the county concurs with the state's recommendation. (Welf. & Inst. Code, § 6601, subd. (i).)
- Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601, subd. (j).)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604.)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6605, subds. (b) through (d), and 6608, subds. (a) through (d).)

- Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6603 and 6605, subd. (d).)
- Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

Chapters 762 and 763, Statutes of 1995, were enacted on October 11, 1995, and became operative on January 1, 1996. Chapter 4, Statutes of 1996, relating to the transportation and housing of potential sexually violent predators at a secured facility, was enacted as an urgency measure and became operative on January 25, 1996.

II. Eligible Claimants

Counties or cities and counties.

III. Period of Reimbursement

Section 17557 of the Government Code states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed by the County of Los Angeles on May 30, 1996. Therefore, costs incurred for Chapter 762, Statutes of 1995 and Chapter 763, Statutes of 1995, are eligible for reimbursement on or after January 1, 1996. Costs incurred for Chapter 4, Statutes of 1996, regarding transport and secured custody of defendants, are eligible for reimbursement on or after January 25, 1996.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. Reimbursable Activities

For each eligible claimant, all direct and indirect costs of labor, supplies and services, for the following activities only are eligible for reimbursement:

- A. Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings,
 1. Development of internal policies and procedures (one-time activity).
 2. One-time training for each employee who normally works on the sexually violent predator program on the county's internal policies and procedures.
- B. The following reimbursable activities must be specifically identified to a defendant:

1. Initial review of reports and records by the county's designated counsel to determine if the county concurs with the state's recommendation. Such activity includes the following:
 - a. Secretarial and paralegal services to assist the county's designated counsel; and
 - b. Copying and making long distance telephone calls
 - c. Investigator services that are necessary to determine the sufficiency of the factual evidence supporting a petition.
2. Preparation and filing of the petition for commitment by the county's designated counsel. Such activities include secretarial and paralegal services to assist the county's designated counsel in the preparation and filing of the petition for commitment.
3. Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. Preparation for the probable cause hearing includes the following:
 - a. Secretarial, paralegal and investigator services;
 - b. Copying and making long distance telephone calls; and
 - c. Travel.
4. Preparation and attendance by the county's designated counsel and indigent defense counsel at pre-trial and trial hearings. Preparation for the pre-trial and trial hearings include the following:
 - a. Secretarial, paralegal and investigator services;
 - b. Copying and making long distance telephone calls; and
 - c. Travel.
5. Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. Preparation for the subsequent hearings includes the following:
 - a. Secretarial, paralegal and investigator services;
 - b. Copying and making long distance telephone calls; and
 - c. Travel.
6. Retention of court-approved experts, investigators, and professionals for the indigent defendant in preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. Such activity includes the following:
 - a. Copying and long distance telephone calls made by the court-approved expert, investigator and/or professional; and
 - b. Travel.
7. Transportation and housing costs for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. Counties shall be entitled to reimbursement for such

transportation and housing costs, regardless of whether the secured facility is a state facility or county facility, except in those circumstances when the State has directly borne the costs of housing and transportation, in which case no reimbursement of such costs shall be permitted.

V. Claim Preparation and Submission

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of this document.

SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

A. Direct Costs

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions,

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved.

Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, productive hourly rate and related fringe benefits.

Reimbursement for personal services include compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contribution of social security, pension plans, insurance and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

2. Materials and Supplies

Only expenditures that can be identified as a direct cost of this mandate may be claimed.

List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Attach consultant invoices to the claim.

4. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

5. Training

The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, transportation, lodging, per diem, and registration fees.

6. Fixed Assets

List the costs of the fixed assets that have been acquired specifically for the purpose of this mandate. If the fixed asset is utilized in some way not directly related to the mandated program, only the pro-rata portion of the asset which is used for the purposes of the mandated program is reimbursable.

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VI. Supporting Data

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

VII. Data for Development of a Statewide Cost Estimate

The State Controller's Office is directed to include in the claiming instructions a request that claimants send an additional copy of the test claim specific form for the initial years' reimbursement claim by mail or facsimile to the Commission on State Mandates, 1300 I Street, Suite 950, Sacramento, California 95814, Facsimile number: (916) 445-0278. Although providing this information to the Commission on State Mandates is not a condition of reimbursement, claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate which will be the basis for the Legislature's appropriation for this program.

VIII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

IX. State Controller's Office Required Certification

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

Commission on State Mandates

Mailing List

24-Sep-98

CSM/SB# and Claim Title CSM-4509

Test Claim of County of Los Angeles

Government Code Sec. Welfare & Institutions Code sections 6250 and 6600 et seq.

Chapters 762195, 763/95, and 4/96

Originated: 07-Jun-96

Issue Sexually Violent Predators (SVP)

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Issue Sexually Violent Predators (SVP)

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CSM/SB# and Claim Title CSM-4509

Test Claim of County of Los Angeles

Government Code Sec. Welfare & Institutions Code sections 6250 and 6600 et seq.

Chapters 762/95, 763/95, and 4/96

Originated: 07-Jun-96

Issue Sexually Violent Predators (SVP)

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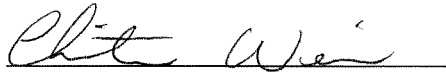
DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment and business address is 1300 I Street, Suite 950, Sacramento, California 95814.

On September 25, 1998, I served the attached Parameters and Guidelines for “Sexually Violent Predators”, CSM 4509 of the Commission on State Mandates by placing a true copy thereof in an envelope addressed to each of the persons listed on the **attached mailing list**, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 25, 1998, at Sacramento, California.


CHRISTINE WEIN

Amended: October 30, 2009
 Adopted: September 24, 1998

AMENDMENT TO PARAMETERS AND GUIDELINES

Welfare and Institutions Code Sections 6250 and 6600 through 6608

Statutes 1995, Chapter 762

Statutes 1995, Chapter 763

Statutes 1996, Chapter 4

Sexually Violent Predators

05-PGA-43 (CSM-4509)

This amendment is effective beginning with claims filed for the
 July 1, 2005 through June 30, 2006 period of reimbursement.

I. Summary and Source of the Mandate

Chapters 762 and 763, Statutes of 1995, and Chapter 4, Statutes of 1996, established new civil commitment procedures for the continued detention and treatment of sexually violent offenders following their completion of a prison term for certain sex-related offenses. Before detention and treatment are imposed, the county attorney is required to file a petition for civil commitment. A trial is then conducted to determine if the inmate is a sexually violent predator beyond a reasonable doubt. If the inmate accused of being a sexually violent predator is indigent, the test claim legislation requires counties to provide the indigent with the assistance of counsel and experts necessary to prepare the defense.

On June 25, 1998, the Commission adopted a Statement of Decision which approved reimbursement for the following services:

- Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601, subd. (i).)
- Initial review of reports and records by the county's designated counsel to determine if the county concurs with the state's recommendation. (Welf. & Inst. Code, § 6601, subd. (i).)
- Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601, subd. (j).)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604.)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6605, subds. (b) through (d), and 6608, subds. (a) through (d).)

- Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6603 and 6605, subd. (d).)
- Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

Chapters 762 and 763, Statutes of 1995, were enacted on October 11, 1995, and became operative on January 1, 1996. Chapter 4, Statutes of 1996, relating to the transportation and housing of potential sexually violent predators at a secured facility, was enacted as an urgency measure and became operative on January 25, 1996.

II. Eligible Claimants

Counties or cities and counties.

III. Period of Reimbursement

This amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement.

Section 17557 of the Government Code states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed by the County of Los Angeles on May 30, 1996. Therefore, costs incurred for Chapter 762, Statutes of 1995 and Chapter 763, Statutes of 1995, are eligible for reimbursement on or after January 1, 1996. Costs incurred for Chapter 4, Statutes of 1996, regarding transport and secured custody of defendants, are eligible for reimbursement on or after January 25, 1996.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. Reimbursable Activities

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and

declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, all direct and indirect costs of labor, supplies and services, for the following activities only are eligible for reimbursement:

- A. Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings.
 - 1. Development of internal policies and procedures (one-time activity).
 - 2. One-time training for each employee who normally works on the sexually violent predator program on the county's internal policies and procedures.
- B. The following reimbursable activities must be specifically identified to a defendant:
 - 1. Initial review of reports and records by the county's designated counsel to determine if the county concurs with the state's recommendation. Such activity includes the following:
 - a. Secretarial and paralegal services to assist the county's designated counsel; and
 - b. Copying and making long distance telephone calls.
 - c. Investigator services that are necessary to determine the sufficiency of the factual evidence supporting a petition.
 - 2. Preparation and filing of the petition for commitment by the county's designated counsel. Such activities include secretarial and paralegal services to assist the county's designated counsel in the preparation and filing of the petition for commitment.
 - 3. Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. Preparation for the probable cause hearing includes the following:
 - a. Secretarial, paralegal and investigator services;
 - b. Copying and making long distance telephone calls; and
 - c. Travel.
 - 4. Preparation and attendance by the county's designated counsel and indigent defense counsel at pre-trial and trial hearings. Preparation for the pre-trial and trial hearings include the following:

- a. Secretarial, paralegal and investigator services;
 - b. Copying and making long distance telephone calls; and
 - c. Travel.
5. Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. Preparation for the subsequent hearings includes the following:
 - a. Secretarial, paralegal and investigator services;
 - b. Copying and making long distance telephone calls; and
 - c. Travel.
 6. Retention of court-approved experts, investigators, and professionals for the indigent defendant in preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. Such activity includes the following:
 - a. Copying and long distance telephone calls made by the court-approved expert, investigator and/or professional; and
 - b. Travel.
 7. Transportation and housing costs for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. Counties shall be entitled to reimbursement for such transportation and housing costs, regardless of whether the secured facility is a state facility or county facility, except in those circumstances when the State has directly borne the costs of housing and transportation, in which case no reimbursement of such costs shall be permitted.

V. Claim Preparation and Submission

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of this document.

SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

A. Direct Costs

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, productive hourly rate and related fringe benefits.

Reimbursement for personal services include compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contribution of social security, pension plans, insurance and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

2. Materials and Supplies

Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Attach consultant invoices to the claim.

4. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

5. Training

The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, transportation, lodging, per diem, and registration fees.

6. Fixed Assets

List the costs of the fixed assets that have been acquired specifically for the purpose of this mandate. If the fixed asset is utilized in some way not directly related to the mandated program, only the pro-rata portion of the asset which is used for the purposes of the mandated program is reimbursable.

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VI. Record Retention

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If the Controller has initiated an audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. Data for Development of a Statewide Cost Estimate

The State Controller's Office is directed to include in the claiming instructions a request that claimants send an additional copy of the test claim specific form for the initial years' reimbursement claim by mail or facsimile to the Commission on State Mandates, 1300 I Street, Suite 950, Sacramento, California 95814, Facsimile number: (916) 445-0278. Although providing this information to the Commission on State Mandates is not a condition of reimbursement, claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate which will be the basis for the Legislature's appropriation for this program.

VIII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

IX. State Controller's Office Required Certification

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Received
February 13, 2013
Commission on
State Mandates



JOHN CHIANG
California State Controller
Division of Accounting and Reporting

February 15, 2013

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Notice of Complete Filing and Schedule for Comments
Mandate Redetermination Request, 12-MR-01
Sexually Violent Predators (SVP), (CSM-4509)
Welfare and Institutions Code Sections 6601 through 6608
Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1996, Chapter 4
California Department of Finance, Requester

Dear Ms. Halsey:

The State Controller's Office (SCO) reviewed the Department of Finance's (DOF) request to adopt a new test claim decision to supersede the prior decision on the above-named matter. The DOF recommends eight activities to no longer be reimbursable.

The SCO agrees that the eight activities previously determined to be reimbursable in the Statement of Decision adopted on June 25, 1998 cease to be reimbursable. This is pursuant to the amended, reenacted or referenced code sections expressly included in, or necessary to implement Proposition 83, pursuant to Government Code sections 17570 and 17556 (f).

Should you have any questions regarding the above, please contact Tiffany Hoang at (916) 323-1127 or e-mail thoang@sco.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Lal", written over a light blue horizontal line.

JAY LAL, Manager
Local Reimbursements Section



CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

921 11th Street, Suite 300 • Sacramento, CA 95814 • (916) 443-2017 • www.cdaa.org

Received
March 19, 2013
Commission on
State Mandates

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W. SCOTT THORPE

March 19, 2013

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

RE: 12-4509-MR-01- Sexually Violent Predators (CSM 4509)

Dear Commissioners:

As President of the California District Attorneys Association (CDAА), I am responding to the California Department of Finance request to adopt a new test claim, asking this commission to find that the state mandated reimbursement for specified sexually violent predator (SVP) activities mandated by Welfare and Institutions Code § 6601 through § 6604 are no longer state reimbursable activities.

I strongly disagree with the Department of Finance conclusion that the 2006 passage of Proposition 83 - Jessica's Law - has ended the state's obligation to reimburse pursuant to California Constitution Article XIII B § 6. The application of Government Code § 17556(f) to Proposition 83 in order to terminate state subvention of mandated sexually violent predators is legally incorrect.

With the enactment of Proposition 4 containing Article XIII B § 6, the electorate made a direct statement to the legislative and executive branches of government that they could not force non-discretionary programs on local government without paying for them. The intent was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government. *See County of Los Angeles v State of California* (1987) 43 Cal. 3d 46, 56-57.

The Department of Finance contention that the mere recitation of any portion of a statute contained in a proposition, brings it within the "expressly included in" language of Government Code § 17556(f) regardless of whether the sections mandating local activity were amended or not, and whether or not the intent of the initiative and purpose of the initiative was to eliminate the subvention requirements of Article XIII B §6 by operation of Government Code § 17566(f), is not warranted. Such an interpretation would make the application of the statute so over broad and vague that no voter, local official, or legal analyst could accurately predict whether state mandated subvention would cease to exist as they voted to pass any ballot initiative that referenced existing law.

Such overbreadth and vagueness is constitutionally impermissible. This interpretation and effect would also violate the constitutional governmental transparency provisions of Article 1 § 3(b)(1). This interpretation of the statute would not only clearly be in conflict with the express language of the California Constitution, “*Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service...*” (emphasis added) but, also, make it meaningless.

In *California School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183 the Court of Appeal noted, that in the context of *Open Meetings Act* and *Brown Act Reform* test claims, and the enactment of Proposition 59’s transparency in government provisions, the “reasonably within the scope” language of former Government Code § 17556(f) would bring virtually any statute that has anything to do with open government within the scope of Proposition 59. The Court of Appeal struck out this language in former Government Code § 17556(f) as unconstitutionally overbroad.

The Department of Finance’s flawed interpretation of the “expressly included” language of Government Code § 17556(f) fails to consider whether the ballot language intended to enact or change the state reimbursement of mandated activities. This reading would give current Government Code § 17556(f) the same legal effect as the “expressly included” language in *California School Boards Assn. v. State of California* which the court of appeal found overbroad and unconstitutional.

With the Department of Finance’s interpretation of Government Code § 17556(f), there could be no mention of the Sexually Violent Predator Act, in whatever context, in whatever ballot measure, that would not bring it within the reimbursement exclusions of section 17556(f). Such an interpretation “so clearly contravenes the intent of the voters in passing Proposition 4” that it must be limited. *see California School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183,1215-1216. In order to not violate these constitutional provisions, the interpretation of Government Code § 17556(f) suggested by the Department of Finance must be denied.

In addition, the text of statutory changes in Proposition 83 contained no language that existing state reimbursement for current locally mandated activities pursuant to the Sexually Violent Predator Act would terminate with the passage of Proposition 83. Government Code § 17556(f) is not referenced at all in the initiative. The textual changes to the Sexually Violent Predator Act were: procedural changes to expand the class of felons eligible to be declared sexually violent predators, extension of the period of commitment between hearings and changing the court procedures for hearings and trials. The statutory changes in the initiative do not relieve the counties of their preexisting state mandated activities.

In the analysis submitted by the Department of Finance, there is no assertion that the voters intended by these procedural changes to relieve the state of its constitutional requirement of subvention. Significantly, the Department of Finance, in its application to adopt a new test claim, concedes in section 5, page 2 that as to Mandated Activity 2, pertaining to the review of reports by the counties’ designated attorney, and Mandated Activity 3, pertaining to the preparation and filing of petitions, the proposition made no change to the statutory language.

Activities 4, 5, and 6 addressed in the application deal with preparation and attendance of the district attorney and defense counsel at various hearings. The Department of Finance

application concludes that these activities are no longer mandated because they are necessary to implement Proposition 83. This argument is spurious; the mandated activities are legal representation by the district attorney and defense counsel at *whatever* hearings are required in Sexually Violent Predator Act cases. It is the mandate to represent that was created in the original legislation and remains unchanged in Proposition 83. The names of the hearing or the intervals between hearings are procedural changes having nothing to do with the termination of the mandated representation. The legal representation is necessary to implement the original and continuing Sexually Violent Predator Act passed by the legislature, not to specifically implement Proposition 83. Nothing in the language of the initiative addresses the specific termination of state reimbursement for these activities. For similar reasons, the application to terminate reimbursement for Activity 7, the retention of experts, investigators and professionals for trials and hearings are not necessary to implement Proposition 83, but are necessary for competent legal representation mandated by the SVP act.

In addition to the absence of language in Proposition 83 indicating that the SVP act activities would no longer be reimbursable, examination of the ballot materials, arguments, and Department of Finance fiscal analysis provided to the Attorney General for preparation of the distributed ballot materials provide ample evidence that no termination of the state's Article XIII B § 6 responsibility to reimburse was intended.

In interpreting the intent of the voters, an examination of the ballot summary, arguments and analysis presented to the electorate may be examined. *see Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245-246.

The ballot pamphlet summary of proposition reads:

“Increases penalties for violent and habitual sex offenders and child molesters. Prohibits residence near schools and parks. Requires Global Positioning System monitoring of registered sex offenders. Fiscal Impact: Net state operating costs within ten years of up to a couple hundred million dollars annually; potential one-time state construction costs up to several hundred million dollars; *unknown net fiscal impact on local governments*” [emphasis added] (The voter pamphlet is attached to the department of finance application).

The Attorney General's summary and the accompanying legislative analyst's estimate make no statement indicating the fiscal impact on local government would be to terminate the reimbursement for SVP activities.

Clearly, absent an intent to deceive the voters, any indication that the SVP activities would no longer be reimbursable and would constitute a large increase to local government would have necessarily replaced the circulated ballot pamphlet language had that been the intended effect of Proposition 83.

The strongest evidence that Proposition 83 would not and did not eliminate the state mandate for reimbursement is contained in a September 2, 2005 joint letter from Elizabeth Hill, the State Legislative Analyst, and Tom Campbell, the Director of Finance, to Attorney General Bill Lockyer.

The letter, prepared pursuant to Elections Code § 9005 analyzes the fiscal impact of the proposed Sexual Predator Punishment and Control Act: Jessica's Law. (A copy of the letter retrieved from the LAO online Proposition 83 materials is attached). The unequivocal conclusion of both officials is that the costs of the SVP program would remain a reimbursable by the state. "The portion of costs related to changes in the Sexual Violent Predators program would be reimbursed by the state." Since official duties are presumed to be correctly performed (Evidence Code § 664), the Director of Finance, the Legislative Analyst and the Attorney General must have been aware of the interaction of Government Code § 17556(f) on Proposition 83 and the state mandate in Article XIII B §6 in drawing their conclusion that the SVP program would remain reimbursable. Strong weight should be given to this conclusion, despite the Department of Finance's now changed opinion.

For these reasons, the California District Attorneys Association respectfully urges this Commission on State Mandates to determine that there is no valid legal basis to adopt the application for a new test claim regarding sexually violent predator activity.

Sincerely,

A handwritten signature in cursive script that reads "Carl V. Adams".

Carl V. Adams
President

Attachment

September 2, 2005

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Tricia Knight
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative cited as the "Sexual Predator Punishment and Control Act: Jessica's Law" (File No. SA2005RF0092).

PROPOSAL

The proposed initiative amends current law related to sex offenses. The measure would (1) increase penalties for some sex offenses, (2) require certain sex offenders to wear global positioning system (GPS) devices for life after release from prison, (3) limit where registered sex offenders can live, and (4) make more offenders subject to commitment to state mental hospitals as Sexually Violent Predators (SVPs). Each of these changes is described in more detail below.

Increase Penalties for Sex Offenses. Current law defines sex-related crimes and specifies the penalties for such offenses. This measure increases the penalties for specified sex offenses. It does this in several ways. In some cases, it broadens the definition of what constitutes certain sex offenses. In other cases, it increases existing penalties for specified sex offenses. In addition, the measure prohibits probation in lieu of prison for some sex offenses, eliminates the ability of some inmates convicted of certain sex offenses to earn early release credits, and extends parole for specified sex offenders. Each of these changes would result in longer prison and parole terms for the affected offenders. This measure would also impose additional fees (through an increase in an existing court-imposed fee and a new fee for parolees) for offenders who are required to register as sex offenders.

Require GPS Devices. Current law requires certain convicted sex offenders to register with local law enforcement officials. Under this measure, all individuals who

have been convicted and sent to prison for the commission of, or an attempt to commit, a felony sex offense that requires registration would be monitored by GPS devices for life. The Department of Corrections and Rehabilitation (CDCR) would be authorized to collect fees from affected sex offenders for the costs of GPS monitoring.

Limit Where Registered Sex Offenders May Live. Current law bars anyone convicted of specified sex offenses against a child from residing within one-quarter mile of an elementary or middle school while on parole. This measure would broaden this prohibition to bar any person required to register as a sex offender from living within 2,000 feet (about four-tenths of a mile) of any school or park. In addition, the measure authorizes local governments to further limit these residency restrictions.

Changes in SVP Laws. Under current law, an SVP is defined as “a person who has been convicted of a sexually violent offense against two or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent behavior.” Certain inmates who are completing their prison sentences are referred by CDCR to the Department of Mental Health (DMH) for screening and psychiatric evaluation to determine whether they meet the criteria for an SVP. Those offenders who meet the criteria are referred to district attorneys, who determine whether to pursue their commitment by the courts in a civil proceeding as an SVP. Offenders subject to SVP proceedings are often represented by public defenders. While these court proceedings are pending, an offender may be in prison. However, if his prison sentence has been completed, he may be housed either in a county jail or in a state mental hospital. Offenders designated as an SVP by the courts are committed to a state mental hospital for up to two years. An offender can be recommitted by the courts in subsequent court proceedings.

This measure would generally make more sex offenders eligible for an SVP commitment by (1) reducing from two to one the number of prior victims of sexually violent crimes needed to qualify as an offender for an SVP commitment, and (2) making additional prior offenses, such as certain crimes committed by a person while a juvenile, “countable” for purposes of an SVP commitment. Also, SVPs would receive an indeterminate commitment to a state mental hospital from a court rather than the renewable two-year commitment allowed for under existing law. In addition, the measure would change the standard that courts would consider for release of SVPs from a state mental hospital.

FISCAL EFFECT

This measure would have a number of significant fiscal effects on both state and county governments. The major fiscal effects are discussed below.

Fiscal Impact on the State

Net Prison Operating and Capital Outlay Costs. Several of this measure's provisions would likely result in a significant, though unknown, increase in prison operating costs due to increased prison population. In particular, the measure's provisions that increase sentences for sex offenders would result in some sex offenders being sentenced to and remaining in prison for longer periods, resulting in a greater prison population over time. In addition, the provisions requiring some parolees and other registered sex offenders to wear GPS devices could result in an increase in the number of offenders who are identified as (1) violating the conditions of their parole and therefore are returned to prison or (2) committing new crimes. An increase in parolee revocations would also result in an increase in revocation hearing workload. In addition, it is possible that in the longer term this measure could result in unknown, but potentially significant, additional capital outlay costs to accommodate the increase in the inmate population.

There could be some unknown, but potentially significant, offsetting savings in prison and revocation hearing costs to the extent that the GPS requirement reduces the likelihood that sex offenders commit new crimes or violations of parole that return offenders to prison.

As noted above, this measure would likely result in significant costs and some unknown, but potentially significant, savings. These savings are not likely to offset the costs.

Net Parole and Monitoring Costs. The initiative's provisions requiring GPS devices for some registered sex offenders for life—including additional parole staff to track offenders in the community—would likely result in an increase in state parole operating costs in the several tens of millions of dollars annually within a few years. These costs would grow to about \$100 million annually after ten years, with costs continuing to increase significantly in subsequent years. Because the measure does not specify whether the state or local governments would be responsible for monitoring sex offenders who have been discharged from state parole supervision, it is unclear the degree to which local governments would bear some of these long-term costs.

Also, the state may incur initial unknown costs to relocate parolees who currently would be in violation of the 2,000 foot restriction around schools and parks. The initiative could also result in significant, though unknown, parole supervision costs for increases in the parole population. These costs would occur to the extent that the potential deterrent effect of GPS monitoring keeps more parolees under parole supervision instead of being returned to prison for new crimes or violations of parole.

On the other hand, the measure could result in reductions in the parole population—and, therefore, parole supervision savings—to the extent that (1) the longer prison sentences and changes to the SVP law result in fewer releases of sex offenders to parole, and (2) the GPS requirement results in more parolees being returned to prison for new crimes or violations of parole.

The measure would result in additional fee revenues that would partially offset the monitoring costs. Specifically, the measure's provisions that (1) allow the department to collect fees from affected parolees and (2) require some of the increased court penalty fees to go to the department could provide as much as a few million dollars annually, depending in large part on offenders' ability to pay these costs.

The net fiscal impact on parole operations is likely to be increased costs of several tens of millions of dollars annually for the first few years, probably reaching at least \$100 million in about ten years, and increasing significantly thereafter.

State SVP Program Net Costs. This measure is likely to result in an increase in state operating costs in the tens of millions of dollars annually to (1) conduct preliminary screenings of additional sex offenders referred to DMH by CDCR for an SVP commitment, (2) complete full evaluations by psychiatrists or psychologists to ascertain the mental condition of criminal offenders being further considered for an SVP commitment, (3) provide court testimony in SVP commitment proceedings, and (4) reimburse counties for their costs for participation in the SVP commitment process.

This measure would result in increased commitments of SVPs to state mental hospitals. Also, some additional offenders who had completed their prison sentences would be held in state mental hospitals while the courts considered whether they should receive an SVP commitment. The resulting net costs to the state for operating these additional state mental hospital beds could eventually reach \$100 million annually after a few years and would continue to grow significantly thereafter. In addition, this measure could result in one-time net capital outlay costs amounting to the low hundreds of millions of dollars for the construction of additional state hospital beds for SVPs.

All of these operating and capital outlay costs would be partly offset in the long term, to the extent that the longer prison sentences required by this measure for certain crimes eventually resulted in fewer SVP referrals and commitments to state mental hospitals. These offsetting savings are unknown but are likely to be significant in the long term. In addition, the state is likely to save on the costs of evaluations and court testimony related to recommitments because of the provisions in this measure that would impose indeterminate commitments for persons found to be SVPs. These state savings would probably be more than \$1 million annually.

Taking both the costs and savings identified above into consideration, we believe that the SVP-related provisions of this measure could result in a net increase in state operating costs of at least \$100 million after a few years. It is also likely to result in net capital outlay costs within a few years in the low hundreds of millions of dollars.

Fiscal Impact on Court Operations. An increase in the number of DMH referrals to county district attorneys would result in increased court costs related to the commitment process. However, the measure would potentially result in court savings by eliminating recommitment hearings, since it allows for indeterminate commitments instead of the two-year recommitment process currently in place.

In addition, various provisions of this measure could increase or decrease court workload to the extent that they affect the number of sex offenders who are tried for new crimes. For example, the GPS requirements could result in more offenders being caught and tried for new offenses, thereby increasing court workload. On the other hand, to the extent that sex offenders are serving longer terms in prison and mental hospitals because of this measure, those individuals would not be in the community able to commit and be prosecuted for new crimes. Given the potential for these factors to offset each other, the net fiscal impact of this measure on state court costs is indeterminable.

Fiscal Impact on Local Governments

This measure would also likely have a significant, though unknown, net fiscal impact on county governments. Specifically, the provisions of this measure related to increased criminal penalties and GPS monitoring of sex offenders could result in additional savings and costs for counties. The provisions related to the SVP program could also result in county savings and costs, with these costs subsequently being reimbursed by the state.

Changes to Criminal Penalties and Supervision. The provisions of this measure that increase criminal penalties and require GPS monitoring of sex offenders could affect county jail, probation, district attorney, and public defender costs. Several provisions of this measure require stricter penalties for certain sex offenses, making it more likely that some offenders will be housed in state prisons and mental hospitals who would otherwise be in local jails or on probation under current law. To the extent that this occurs, local governments would likely experience some criminal justice system savings. The provisions regarding GPS tracking could affect local government expenditures due primarily to more offenders being prosecuted for crimes, thereby increasing costs.

SVP Program. The provisions of this measure related to the SVP program could increase county costs. The additional SVP commitment petitions that are likely to result

from this measure would increase costs for district attorneys and public defenders to handle these civil cases. Also, county jail operating costs would increase to the extent that offenders who have court decisions pending on their SVP cases were held in local jail facilities instead of state mental hospitals. Counties would be reimbursed in full for all of these costs after they had filed and processed claims with the state.

Finally, the provisions in this measure allowing for the indeterminate commitment of SVPs instead of the current two-year recommitment process could reduce county costs for SVP commitment proceedings and the claims that counties would file with the state for reimbursement of such costs.

SUMMARY OF FISCAL EFFECT

This measure would have the following net fiscal effects:

- Unknown net costs to the state, within a few years, potentially in the low hundreds of millions of dollars annually due primarily to increased state prison, parole supervision, and mental health program costs. These costs would grow significantly in the long term.
- Potential one-time state capital outlay costs, within a few years, in the low hundreds of millions of dollars for construction of additional state mental hospital and prison beds.
- Unknown but potentially significant net operating costs or savings to counties for jail, probation supervision, district attorneys, and public defenders. The portion of costs related to changes in the Sexual Violent Predators program would be reimbursed by the state.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Tom Campbell
Director of Finance

California State Association of Counties

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 March 22, 2013
 Commission on
 State Mandates



March 22, 2013

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RE: Redetermination of the Sexually Violent Predators Mandate (12-MR-01)

Dear Commissioners:

On behalf of the California State Association of Counties, I respectfully submit our opposition to the mandate redetermination request 12-MR-01.

The state's obligation to provide reimbursement for the Sexually Violent Predators mandate has not ceased, and its liability has not been modified. Therefore, the Commission should reject the claim made by the Department of Finance.

First of all, and most importantly, the language in the California Constitution makes it clear that the state is required to reimburse counties for the costs of the program. Secondly, the parts of the SVP program that established a reimbursable mandate were unaffected by the passage Proposition 83 (2006). Third, voters did not make the changes the Department of Finance alleges they did in passing Proposition 83. Finally, voters were specifically told in official materials for Proposition 83, by the Director of Finance himself, that counties would be reimbursed in full by the state for their costs for participation in the SVP commitment process.

1. The California Constitution is clear that the state is still required to reimburse counties for the costs of the program.

The Constitution is unequivocal. Whenever the Legislature or a state agency mandates a new program, the state must provide funds to reimburse the costs of the program. There are four exceptions, but none of them are relevant in this case.

In particular, there is no exception for a ballot measure that voters pass years later that does not substantively amend any of the language that established the mandate in the first place.

The Department of Finance does not dispute in its claim that the Legislature established the program. This is the only test the Constitution requires for whether or not a mandate is reimbursable. The ballot measure only enhanced punishment, it neither established a new program nor did it appreciably change the program. The Constitution puts the onus on the state to reimburse counties.

The fact that a statute — Government Code Section 17556 (f) — purportedly allows a redetermination of a mandate claim on this basis does not trump the fact that the Constitution clearly does not allow it. The Commission, in its quasi-judicial role, must reject the Department’s claim on this basis alone.

2. The parts of the SVP program that established a reimbursable mandate were unaffected by the passage of Proposition 83.

Of the fourteen sections and subsections that formed the basis of the Commission’s 1998 Statement of Decision, Proposition 83 amended only three (and in fact did not amend even these; see point three below).

One of those amendments was technical in nature (WIC 6608(a)), one changes the circumstances of hearings (WIC 6605(b)), and one extends sentence lengths, which does not affect the mandated activities (WIC 6604).

Because the ballot measure made no substantive changes to the reimbursable aspects of the program, the SVP program established by the Legislature would have remained in place whether voters approved or disapproved Proposition 83.

The Department of Finance further claims that even the sections that did not appear in the ballot language by accident of construction are “necessary to implement” changes the voters made. But the only effect of the voters’ action was to enhance penalties for a population of offenders that were already identified for special procedures under a body of law previously established by the Legislature. As a result, the only necessary implementation for what the voters approved is to identify sexually violent predators.

The phrase “necessary to implement” requires necessity. Many other less onerous statutory schemes were available to the Legislature. They could have said that SVPs are identified by various psychological tests, or by the sentencing judge, or even simply by the offenses of which they were convicted. The complex, onerous scheme established by the Legislature is not necessary to implement enhanced penalties for a certain group of offenders.

As argued by the California District Attorneys Association in their comments on this matter dated March 19, 2013, the Department of Finance claims Government Code Section 17556(f) applies so broadly as to make it no different than the interpretation already ruled unconstitutional by the courts (*School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183).

3. Voters did not make the changes the Department of Finance alleges they did in Proposition 83.

The Department of Finance’s claim ignores the fact that many of the changes they claim voters made were in fact made by the Legislature. Their claim that voters reenacted several sections of the mandated program is contingent on the provision of the Constitution that says a section of statute cannot be amended unless the section is re-enacted as amended.

SB 1128, by Senator Alquist, amended Sections 6600, 6601, 6604, 6604.1, and 6605 of the Welfare and Institutions Code, among many others. The bill was an urgency statute, going into effect immediately; its chaptering date was September 20, 2006.

The Commission should take a careful look at which changes Proposition 83 actually made, based on the changes SB 1128 made before it. We are sure that the Commission will note the provisions that were previously identified as constituting reimbursable mandates remain unchanged by Proposition 83.

4. The Director of Finance told voters that counties would be reimbursed in full by the state.

At the time Proposition 83 went to the ballot, the chief analysts representing both the Administration and the Legislature — the Director of Finance and the Legislative Analyst — agreed that all county costs related to the SVP commitment process would be reimbursed by the state. They stated the fact that counties would be reimbursed four times in their official fiscal analysis provided to the Attorney General, and voters decided the outcome of Proposition 83 based in part on that assurance.

In their official fiscal analysis of the ballot measure required by law, the Legislative Analyst and Director of Finance state unequivocally that Proposition 83 would increase state costs to, among other things, “reimburse counties for their costs for participation in the SVP commitment process.”

Later, when analyzing the measure’s fiscal impacts on local governments, the letter states that “[t]he provisions related to the SVP program could also result in county savings and costs, with these costs subsequently being reimbursed by the state.”

And then again in a paragraph detailing local costs, referring specifically to the costs of district attorneys and public defenders handling these civil cases and to jail operating costs: “Counties would be reimbursed in full for all of these costs after they had filed and processed claims with the state.”

And finally, in the very last sentence of the letter, summarizing the fiscal effect on local government: “The portion of costs related to changes in the Sexual Violent Predators program would be reimbursed by the state.”

For all these reasons, CSAC respectfully requests that you reject this claim when it comes before you for a vote. If you have any questions about our position, please do not hesitate to contact Geoffrey Neill at 916/327-7500.

Thank you for your careful attention to this matter.

Respectfully,



Matt Cate

Executive Director



CPDA

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A Statewide Association of Public Defenders and Criminal Defense Counsel

March 18, 2013

Ms. Heather Halsey
 Executive Director
 California Commission on State Mandates
 900 Ninth Street, Suite 300
 Sacramento, CA 95814

Re: Mandate Redetermination Request 12-MR-01
 Sexually Violent Predator (CSM-4509)

Dear Ms. Halsey:

The California Public Defenders Association (CPDA) is the largest association of criminal defense attorneys and public defenders in the State of California with a membership consisting of over 3,700 public defenders and attorneys in private practice. An integral component of CPDA is the California Council of Chief Public Defenders (CCCD). The CCCD is comprised of the county public defender department heads who represent over 90 percent of all criminal cases processed through the California judicial system and are responsible for supervising the work performed by over 2,600 defense attorneys. These department heads meet regularly to discuss management, legislative, and policy issues.

On June 25, 1988, the California Commission on State Mandates (CSM) adopted the Statement of Decisions for the Sexually Violent Predator mandate (CSM-4509) and approved reimbursement for specified activities mandated under Welfare and Institutions Code sections 6601-6608.

On January 24, 2013, the California Commission on State Mandates (CSM) issued a notice soliciting responses to the California Department of Finance's (DOF) January 15, 2013, Mandate Redetermination Request, 12-MR-01, Sexually Violent Predators CSM-4509. This letter is written in response to that notice.

CPDA opposes the DOF's request to redetermine the Sexually Violent Predator Mandate (CSM-4509). The basis for CPDA's objections are: (1) The 2012 legislative amendment and re-enactment of the Sexually Violent Predator Act (SVPA) either confirmed the viability of the Sexually Violent Predator Mandate (CSM-4509), or, *arguendo*, superseded any impact that Proposition 83 may have affected on the mandate; (2) Misrepresentation and the doctrines of estoppel and unclean hands bar the DOF's redetermination request; (3) Proposition 83 did not effectuate a "subsequent change in the law"

Received
 March 26, 2013
 Commission on
 State Mandates

Ms. Heather Halsey
March 18, 2013
Page 2

as contemplated by Government Code section 17570; and (4) Government Code section 17570 is unconstitutional.

(1) The 2012 Legislative Amendment and Re-Enactment of the SVPA Either Confirmed the Viability of the Sexually Violent Predator Mandate (CSM-4509), or, Arguendo, Superseded Any Impact That Proposition 83 May Have Affected on the Mandate.

Subsequent to the passage of Proposition 83 in 2006, the California Legislature in 2012 amended the SVPA in three separate pieces of legislation. Welfare and Institutions Code section 6603, the operative section providing for the defense of an accused at trial, provides: “A person subject to this article, shall be entitled to a trial by jury, to the assistance of counsel, to the right to retain experts or professional persons to perform an examination on his or her behalf, and to have access to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall appoint counsel to assist him or her, and, upon the person’s request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person’s behalf.” (§ 6603, subd. (a).)

Significantly, subsequent to the passage of Proposition 83 in 2006, Welfare and Institutions Code section 6603 was amended twice by the Legislature in 2012. (Stats.2012, ch. 440 (A.B. 1488) § 66, eff. Sept. 22, 2012; Stats.2012, ch. 790 (S.B. 760) § 1, eff. Sept. 29, 2012.) Additionally, Welfare and Institutions Code section 6602, which provides for the assistance of counsel for the accused at the probable cause hearing, was also amended by the Legislature in 2012. (Stats.2012, ch. 24 (A.B. 1470) § 141, eff. June 27, 2012.) Finally, in 2012 the Legislature amended ten additional Welfare and Institutions Code sections pertaining to the SVPA – i.e., sections 6600, 6600.5, 6601, 6601.3, 6602, 6602.5, 6604, 6605, 6606, and 6608. (Stats.2012, ch. 24 (A.B. 1470) eff. June 27, 2012.)

The enactment of A.B. 1488, A.B. 1470, and S.B. 760 in 2012 pertaining to the SVPA result in a cost mandated by the state as defined by Government Code section 17514. The entire text of the sections amended by legislation in 2012, including the portions not amended, was reenacted by the Legislature pursuant to Article IV, section 9, of the California Constitution. The remainder of the SVPA sections that were not expressly included in the 2012 legislation are, nevertheless, necessary to implement the 2012 legislation under Government Code section 17556, subdivision (f), and therefore are mandated by statute and thus reimbursable under California Constitution Article XIII B, section 6. Therefore, Proposition 83 is no longer the statutory authority supporting the SVPA; consequently the cost incurred by local agencies to comply with the 2012 legislatively enacted SVPA is a cost mandated by the state.

Ms. Heather Halsey
March 18, 2013
Page 3

(2) Misrepresentation, Unclean Hands, and Estoppel Bar the DOF's Redetermination Request

In a letter dated September 2, 2005, addressed to the Honorable Bill Lockyer, California Attorney General, issued pursuant to Elections Code section 9005, authored by Elizabeth G. Hill, Director of the Legislative Analyst's Office (LAO) and Tom Campbell, Director of the DOF, the authors stated no less than four times Proposition 83 would not affect state reimbursement to counties:

“State SVP Program Net Costs. This measure is likely to result in an increase in state operating costs in the tens of millions of dollars annually to (1) conduct preliminary screenings of additional sex offenders referred to DMH by CDCR for an SVP commitment, (2) complete full evaluations by psychiatrists or psychologists to ascertain the mental condition of criminal offenders being further considered for an SVP commitment, (3) provide court testimony in SVP commitment proceedings, and (4) **reimburse counties for their costs for participation in the SVP commitment process.**” (*Id.*, at p. 4, Emphasis added.)

“Fiscal Impact on Local Governments. This measure would also likely have a significant, though unknown, net fiscal impact on county governments. Specifically, the provisions of this measure related to increased criminal penalties and GPS monitoring of sex offenders could result in additional savings and costs for counties. The provisions related to the SVP program could also result in county savings and costs, **with these costs subsequently being reimbursed by the state.**” (*Id.*, at p. 5, Emphasis added.)

“SVP Program. The provisions of this measure related to the SVP program could increase county costs. The additional SVP commitment petitions that are likely to result from this measure would increase costs for district attorneys and public defenders to handle these civil cases. Also, county jail operating costs would increase to the extent that offenders who have court decisions pending on their SVP cases were held in local jail facilities instead of state mental hospitals. **Counties would be reimbursed in full for all of these costs after they had filed and processed claims with the state.** (*Id.*, at pp. 5-6, Emphasis added.)

“SUMMARY OF FISCAL EFFECT. . . [¶] Unknown but potentially significant net operating costs or savings to counties for jail, probation supervision, district attorneys, and public defenders. **The portion of costs related to changes in the Sexual Violent Predators program would be reimbursed by the state.** (*Id.*, at p. 6, Emphasis added.)

Given the DOF's stated position that the passage of Proposition 83 would not affect state reimbursement to counties, the DOF has “unclean hands” and should be estopped from currently asserting the Sexually Violent Predator mandate (CSM-4509) is no longer a cost mandated by the state.

Ms. Heather Halsey
March 18, 2013
Page 4

The resulting financial analysis of Proposition 83 included in the voter materials for Proposition 83 was misleading. The LAO financial analysis failed to discuss any potential financial impact on mandates and resulting added costs to the counties. Specifically, the Analysis stated that the “fiscal effects” on “State and Local Governments” were only that “[t]here could be other savings to the extent that offenders imprisoned for longer periods require fewer government services, or commit fewer crimes that result in victim related government costs. Alternatively, there could be an offsetting loss of revenue to the extent that offenders serving longer prison terms would have become taxpaying citizens under current law. The extent and magnitude of these impacts is unknown.” (Voter Information Guide, Gen. Elect. (Nov. 7, 2006).)

Not only was the electorate misled by the foregoing analysis and the September 2, 2005, letter, so were local government officials. Had local government officials not been lulled into a false sense of security, it is reasonably probable they would have publically opposed Proposition 83 given the financial ramifications due to the loss of mandate monies now proposed by the DOF. It is also reasonably probable that the electorate would have rejected Proposition 83 due to the same concerns. Furthermore, the probability of defeat would have increased had the electorate been accurately apprised of what law they were voting to replace – i.e., S.B. 1128 and not the language included in the ballot proposition, as discussed in the next section.

(3) Proposition 83 did not effectuate a “Subsequent Change in the Law” as Contemplated by Government Code Section 17570

The DOF’s obscuration of Proposition 83 continues in its January 15, 2013 request for a redetermination of the SVP Mandate (CSM-4509). The request is misleading because the statutory language quoted from the SVPA by the DOF’s January 15, 2013, request, as well as that include in the actual proposition, was not the statutory language in effect at the time Proposition 83 was passed on November 7, 2006.

On August 31, 2006, the Legislature amended the SVPA in anticipation of Proposition 83. (Stats.2006, ch. 337 (S.B. 1128) § 62, eff. Sept. 20, 2006.) S.B. 1128 contained many of the same or substantially similar amendments to the SVPA as did Proposition 83, for example, providing for indeterminate commitments and expansion of the list of qualifying offenses. Therefore, Proposition 83 does not constitute a “subsequent change in the law” as contemplated by Government Code section 17570.

Had the electorate been informed of the true state of the law it is reasonably probably that Proposition 83 would have failed especially given the potential loss of mandate monies that would have to be absorbed on the local level. The only component relating to the SVPA that Proposition 83 promoted to the electorate was the imposition of indeterminate commitments, which was already the law under S.B. 1128.

Ms. Heather Halsey
March 18, 2013
Page 5

The “Findings and Declarations” in Section 2 of Proposition 83, subdivision (k), contains the only statement specifically pertaining to the SVPA, states “[t]he People find and declare each of the following: . . . (k) California is the only state, of the number of states that have enacted laws allowing involuntary civil commitments for persons identified as sexually violent predators, which does not provide for indeterminate commitments. California automatically allows for a jury trial every two years irrespective of whether there is any evidence to suggest or prove that the committed person is no longer a sexually violent predator. As such, this act allows California to protect the civil rights of those persons committed as a sexually violent predator while at the same time protect society and the system from unnecessary or frivolous jury trial actions where there is no competent evidence to suggest a change in the committed person.” (Voter Information Guide, Gen. Elect. (Nov. 7, 2006).)

Apart from the conversion of commitments under the SVPA from two years to indeterminate, Proposition 83’s Findings and Declarations readily demonstrate by its silence that the remaining changes to the Act were merely considered to be secondary, technical, and *de minimis*.

Significantly, Proposition 83 does not constitute a “subsequent change in the law” because the intent, purpose, and focus of the SVPA – i.e., protection of society from individuals convicted of sex offense and treatment – under the SVPA as originally enacted, S.B. 1128, and Proposition 83 are consistent. (Cf. *Hubbart v. Superior Court* (1999) 19 Cal.4th 1138 and *In re Lucas* (2012) 53 Cal.4th 839.)

Additionally, Proposition 83 also does not constitute a “subsequent change in the law” because in 2006 the SVPA contained 22 sections. Of those 22 sections, Proposition 83 only amended 7 of those sections. Thus, Proposition 83 left 15 sections intact, including Welfare and Institutions Code sections 6602 and 6603 pertaining to the right to counsel and right to obtain experts at the probable cause hearing and at trial. Of the 7 sections Proposition 83 amended, 5 sections were either identical or substantially similar to those enacted by S.B. 1128 – i.e., Welfare and Institutions Code sections 6601, 6604, 6604.1, 6605, and 6608. The remaining 2 section Proposition 83 amended contained relatively insignificant or technical changes.

Finally, Government Code 17570, subdivision (b), provides “[t]he commission may adopt a new test claim decision to supersede a previously adopted test claim decision only upon a showing that the state’s liability for that test claim decision. . . has been modified based on a subsequent change in the law.” In fact, the “state’s liability” for local costs associated with prosecuting cases filed under the SVPA has decreased. In its January 2010 Recommendations Report, the California Sex Offender Management Board found that while

Ms. Heather Halsey
March 18, 2013
Page 6

costs regarding the pre-filing intake process had significantly increased, the actual number of cases prosecuted under the SVPA decreased, “[t]wo years and eight months into the implementation of Proposition 83, the number of persons committed on average dropped from approximately 4 per month, to 3 per month.” (Id., at p. 61.)

(4) Government Code section 17570 Is Unconstitutional

In *California School Boards Ass’n v. State* (2009) 171 Cal.App.4th 1183 (*California School Boards*), the court struck down legislation (Stats.2005, ch. 72 (A.B. 138) §17b) directing the CSM to redecide cases that were already final. It held “such direction exceeds the Legislature’s power” and violates the California Constitution’s separation of powers doctrine (Cal. Const., art. III, § 3). (Id., at p. 1189.) However, in dicta the court left open the question whether or not “[o]ver time, any particular decision of the Commission may be rendered obsolete by changes in the law and material circumstances that originally justified the Commission’s decision. While decisions of the Commission are not subject to collateral attack, logic may dictate that they must be subject to some procedure for modification after changes in the law or material circumstances. . . We conclude that we need not decide this question.” (Id., at p. 1202.)

Subsequent to the decision in *California School Boards*, Government Code Section 17570 was enacted which permits “The commission may adopt a new test claim decision to supersede a previously adopted test claim decision only upon a showing that the state’s liability for that test claim decision pursuant to subdivision (a) of Section 6 of Article XIII B of the California Constitution has been modified based on a subsequent change in law.” (Stats.2010, ch. 719 (S.B. 856) § 33, eff. Oct. 19, 2010.)

The DOF under the apparent authority of the 2010 amendment to Government Code Section 17570, has requested the CSM to redetermine the Sexually Violent Predator mandate (CSM-4509). CPDA submits that the judicially untested Government Code Section 17570, violates the California Constitution’s separation of power doctrine and the decision in *California School Boards*. (Cal. Const., art. III, § 3; *California School Boards Ass’n v. State*, *supra*, 171 Cal.App.4th 1183.)

Lastly, the term “subsequent change in the law” as used in Government Code section 17570 is undefined. As a result, it is unconstitutionally vague and will result in arbitrary and capricious application. For example, does “subsequent change in the law” merely contemplate a change in punctuation, a changing of the law’s intent, or something in between in order to trigger the redetermination of an existing mandate?

Ms. Heather Halsey
March 18, 2013
Page 7

Conclusion

Based on the forgoing analysis, CPDA respectfully requests the CSM to deny the DOF's January 15, 2013, request for a redetermination of the June 25, 1988, the CSM's Statement of Decisions for the Sexually Violent Predator mandate (CSM-4509).

Sincerely,



Juliana B. Humphrey
President, CPDA

September 2, 2005

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Tricia Knight
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative cited as the "Sexual Predator Punishment and Control Act: Jessica's Law" (File No. SA2005RF0092).

PROPOSAL

The proposed initiative amends current law related to sex offenses. The measure would (1) increase penalties for some sex offenses, (2) require certain sex offenders to wear global positioning system (GPS) devices for life after release from prison, (3) limit where registered sex offenders can live, and (4) make more offenders subject to commitment to state mental hospitals as Sexually Violent Predators (SVPs). Each of these changes is described in more detail below.

Increase Penalties for Sex Offenses. Current law defines sex-related crimes and specifies the penalties for such offenses. This measure increases the penalties for specified sex offenses. It does this in several ways. In some cases, it broadens the definition of what constitutes certain sex offenses. In other cases, it increases existing penalties for specified sex offenses. In addition, the measure prohibits probation in lieu of prison for some sex offenses, eliminates the ability of some inmates convicted of certain sex offenses to earn early release credits, and extends parole for specified sex offenders. Each of these changes would result in longer prison and parole terms for the affected offenders. This measure would also impose additional fees (through an increase in an existing court-imposed fee and a new fee for parolees) for offenders who are required to register as sex offenders.

Require GPS Devices. Current law requires certain convicted sex offenders to register with local law enforcement officials. Under this measure, all individuals who

have been convicted and sent to prison for the commission of, or an attempt to commit, a felony sex offense that requires registration would be monitored by GPS devices for life. The Department of Corrections and Rehabilitation (CDCR) would be authorized to collect fees from affected sex offenders for the costs of GPS monitoring.

Limit Where Registered Sex Offenders May Live. Current law bars anyone convicted of specified sex offenses against a child from residing within one-quarter mile of an elementary or middle school while on parole. This measure would broaden this prohibition to bar any person required to register as a sex offender from living within 2,000 feet (about four-tenths of a mile) of any school or park. In addition, the measure authorizes local governments to further limit these residency restrictions.

Changes in SVP Laws. Under current law, an SVP is defined as “a person who has been convicted of a sexually violent offense against two or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent behavior.” Certain inmates who are completing their prison sentences are referred by CDCR to the Department of Mental Health (DMH) for screening and psychiatric evaluation to determine whether they meet the criteria for an SVP. Those offenders who meet the criteria are referred to district attorneys, who determine whether to pursue their commitment by the courts in a civil proceeding as an SVP. Offenders subject to SVP proceedings are often represented by public defenders. While these court proceedings are pending, an offender may be in prison. However, if his prison sentence has been completed, he may be housed either in a county jail or in a state mental hospital. Offenders designated as an SVP by the courts are committed to a state mental hospital for up to two years. An offender can be recommitted by the courts in subsequent court proceedings.

This measure would generally make more sex offenders eligible for an SVP commitment by (1) reducing from two to one the number of prior victims of sexually violent crimes needed to qualify as an offender for an SVP commitment, and (2) making additional prior offenses, such as certain crimes committed by a person while a juvenile, “countable” for purposes of an SVP commitment. Also, SVPs would receive an indeterminate commitment to a state mental hospital from a court rather than the renewable two-year commitment allowed for under existing law. In addition, the measure would change the standard that courts would consider for release of SVPs from a state mental hospital.

FISCAL EFFECT

This measure would have a number of significant fiscal effects on both state and county governments. The major fiscal effects are discussed below.

Fiscal Impact on the State

Net Prison Operating and Capital Outlay Costs. Several of this measure's provisions would likely result in a significant, though unknown, increase in prison operating costs due to increased prison population. In particular, the measure's provisions that increase sentences for sex offenders would result in some sex offenders being sentenced to and remaining in prison for longer periods, resulting in a greater prison population over time. In addition, the provisions requiring some parolees and other registered sex offenders to wear GPS devices could result in an increase in the number of offenders who are identified as (1) violating the conditions of their parole and therefore are returned to prison or (2) committing new crimes. An increase in parolee revocations would also result in an increase in revocation hearing workload. In addition, it is possible that in the longer term this measure could result in unknown, but potentially significant, additional capital outlay costs to accommodate the increase in the inmate population.

There could be some unknown, but potentially significant, offsetting savings in prison and revocation hearing costs to the extent that the GPS requirement reduces the likelihood that sex offenders commit new crimes or violations of parole that return offenders to prison.

As noted above, this measure would likely result in significant costs and some unknown, but potentially significant, savings. These savings are not likely to offset the costs.

Net Parole and Monitoring Costs. The initiative's provisions requiring GPS devices for some registered sex offenders for life—including additional parole staff to track offenders in the community—would likely result in an increase in state parole operating costs in the several tens of millions of dollars annually within a few years. These costs would grow to about \$100 million annually after ten years, with costs continuing to increase significantly in subsequent years. Because the measure does not specify whether the state or local governments would be responsible for monitoring sex offenders who have been discharged from state parole supervision, it is unclear the degree to which local governments would bear some of these long-term costs.

Also, the state may incur initial unknown costs to relocate parolees who currently would be in violation of the 2,000 foot restriction around schools and parks. The initiative could also result in significant, though unknown, parole supervision costs for increases in the parole population. These costs would occur to the extent that the potential deterrent effect of GPS monitoring keeps more parolees under parole supervision instead of being returned to prison for new crimes or violations of parole.

On the other hand, the measure could result in reductions in the parole population—and, therefore, parole supervision savings—to the extent that (1) the longer prison sentences and changes to the SVP law result in fewer releases of sex offenders to parole, and (2) the GPS requirement results in more parolees being returned to prison for new crimes or violations of parole.

The measure would result in additional fee revenues that would partially offset the monitoring costs. Specifically, the measure's provisions that (1) allow the department to collect fees from affected parolees and (2) require some of the increased court penalty fees to go to the department could provide as much as a few million dollars annually, depending in large part on offenders' ability to pay these costs.

The net fiscal impact on parole operations is likely to be increased costs of several tens of millions of dollars annually for the first few years, probably reaching at least \$100 million in about ten years, and increasing significantly thereafter.

State SVP Program Net Costs. This measure is likely to result in an increase in state operating costs in the tens of millions of dollars annually to (1) conduct preliminary screenings of additional sex offenders referred to DMH by CDCR for an SVP commitment, (2) complete full evaluations by psychiatrists or psychologists to ascertain the mental condition of criminal offenders being further considered for an SVP commitment, (3) provide court testimony in SVP commitment proceedings, and (4) reimburse counties for their costs for participation in the SVP commitment process.

This measure would result in increased commitments of SVPs to state mental hospitals. Also, some additional offenders who had completed their prison sentences would be held in state mental hospitals while the courts considered whether they should receive an SVP commitment. The resulting net costs to the state for operating these additional state mental hospital beds could eventually reach \$100 million annually after a few years and would continue to grow significantly thereafter. In addition, this measure could result in one-time net capital outlay costs amounting to the low hundreds of millions of dollars for the construction of additional state hospital beds for SVPs.

All of these operating and capital outlay costs would be partly offset in the long term, to the extent that the longer prison sentences required by this measure for certain crimes eventually resulted in fewer SVP referrals and commitments to state mental hospitals. These offsetting savings are unknown but are likely to be significant in the long term. In addition, the state is likely to save on the costs of evaluations and court testimony related to recommitments because of the provisions in this measure that would impose indeterminate commitments for persons found to be SVPs. These state savings would probably be more than \$1 million annually.

Taking both the costs and savings identified above into consideration, we believe that the SVP-related provisions of this measure could result in a net increase in state operating costs of at least \$100 million after a few years. It is also likely to result in net capital outlay costs within a few years in the low hundreds of millions of dollars.

Fiscal Impact on Court Operations. An increase in the number of DMH referrals to county district attorneys would result in increased court costs related to the commitment process. However, the measure would potentially result in court savings by eliminating recommitment hearings, since it allows for indeterminate commitments instead of the two-year recommitment process currently in place.

In addition, various provisions of this measure could increase or decrease court workload to the extent that they affect the number of sex offenders who are tried for new crimes. For example, the GPS requirements could result in more offenders being caught and tried for new offenses, thereby increasing court workload. On the other hand, to the extent that sex offenders are serving longer terms in prison and mental hospitals because of this measure, those individuals would not be in the community able to commit and be prosecuted for new crimes. Given the potential for these factors to offset each other, the net fiscal impact of this measure on state court costs is indeterminable.

Fiscal Impact on Local Governments

This measure would also likely have a significant, though unknown, net fiscal impact on county governments. Specifically, the provisions of this measure related to increased criminal penalties and GPS monitoring of sex offenders could result in additional savings and costs for counties. The provisions related to the SVP program could also result in county savings and costs, with these costs subsequently being reimbursed by the state.

Changes to Criminal Penalties and Supervision. The provisions of this measure that increase criminal penalties and require GPS monitoring of sex offenders could affect county jail, probation, district attorney, and public defender costs. Several provisions of this measure require stricter penalties for certain sex offenses, making it more likely that some offenders will be housed in state prisons and mental hospitals who would otherwise be in local jails or on probation under current law. To the extent that this occurs, local governments would likely experience some criminal justice system savings. The provisions regarding GPS tracking could affect local government expenditures due primarily to more offenders being prosecuted for crimes, thereby increasing costs.

SVP Program. The provisions of this measure related to the SVP program could increase county costs. The additional SVP commitment petitions that are likely to result

from this measure would increase costs for district attorneys and public defenders to handle these civil cases. Also, county jail operating costs would increase to the extent that offenders who have court decisions pending on their SVP cases were held in local jail facilities instead of state mental hospitals. Counties would be reimbursed in full for all of these costs after they had filed and processed claims with the state.

Finally, the provisions in this measure allowing for the indeterminate commitment of SVPs instead of the current two-year recommitment process could reduce county costs for SVP commitment proceedings and the claims that counties would file with the state for reimbursement of such costs.

SUMMARY OF FISCAL EFFECT

This measure would have the following net fiscal effects:

- Unknown net costs to the state, within a few years, potentially in the low hundreds of millions of dollars annually due primarily to increased state prison, parole supervision, and mental health program costs. These costs would grow significantly in the long term.
- Potential one-time state capital outlay costs, within a few years, in the low hundreds of millions of dollars for construction of additional state mental hospital and prison beds.
- Unknown but potentially significant net operating costs or savings to counties for jail, probation supervision, district attorneys, and public defenders. The portion of costs related to changes in the Sexual Violent Predators program would be reimbursed by the state.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Tom Campbell
Director of Finance

Received
March 25, 2013
Commission on
State Mandates



County of San Bernardino
Office of the District Attorney
MICHAEL A. RAMOS, District Attorney

March 18, 2013

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

RE: 12-4509-MR-01- Sexually Violent Predators (CSM 4509)

Dear Commissioners:

As the San Bernardino County District Attorney, I am responding to the California Department of Finance request to adopt a new test claim, asking this commission to find that the state mandated reimbursement for specified sexually violent predator (SVP) activities mandated by Welfare and Institutions Code § 6601 through § 6604 are no longer state reimbursable activities.

I strongly disagree with the Department of Finance conclusion that the 2006 passage of Proposition 83 - Jessica's Law - has ended the state's obligation to reimburse pursuant to California Constitution Article XIII B § 6. The application of Government Code § 17556(f) to Proposition 83 in order to terminate state subvention of mandated sexually violent predators is legally incorrect.

With the enactment of Proposition 4 containing Article XIII B § 6, the electorate made a direct statement to the legislative and executive branches of government that they could not force non-discretionary programs on local government without paying for them. The intent was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government. *See County of Los Angeles v State of California* (1987) 43 Cal. 3d 46, 56-57.

The Department of Finance contention that the mere recitation of any portion of a statute contained in a proposition, brings it within the "expressly included in" language of Government Code § 17556(f) regardless of whether the sections mandating local activity were amended or not, and whether or not the intent of the initiative and purpose of the initiative was to eliminate the subvention requirements of Article XIII B §6 by operation of Government Code § 17566(f), is not warranted. Such an interpretation would make the application of the statute so overbroad and vague that no voter, local official, or legal analyst could accurately predict whether state mandated subvention would cease to exist as they voted to pass any ballot initiative that referenced existing law.

Such overbreadth and vagueness is constitutionally impermissible. This interpretation and effect would also violate the constitutional governmental transparency provisions of Article 1 § 3(b)(1). This interpretation of the statute would not only clearly be in conflict with the express language of the California Constitution, “*Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service...*” (emphasis added) but, also, make it meaningless.

In *California School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183 the Court of Appeal noted, that in the context of *Open Meetings Act* and *Brown Act Reform* test claims, and the enactment of Proposition 59’s transparency in government provisions, the “reasonably within the scope” language of former Government Code § 17556(f) would bring virtually any statute that has anything to do with open government within the scope of Proposition 59. The Court of Appeal struck out this language in former Government Code § 17556(f) as unconstitutionally overbroad.

The Department of Finance’s flawed interpretation of the “expressly included” language of Government Code § 17556(f) fails to consider whether the ballot language intended to enact or change the state reimbursement of mandated activities. This reading would give current Government Code § 17556(f) the same legal effect as the “expressly included” language in *California School Boards Assn. v. State of California* which the court of appeal found overbroad and unconstitutional.

With the Department of Finance’s interpretation of Government Code § 17556(f), there could be no mention of the Sexually Violent Predator Act, in whatever context, in whatever ballot measure, that would not bring it within the reimbursement exclusions of section 17556(f). Such an interpretation “so clearly contravenes the intent of the voters in passing Proposition 4” that it must be limited. *see California School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183,1215-1216. In order to not violate these constitutional provisions, the interpretation of Government Code § 17556(f) suggested by the Department of Finance must be denied.

In addition, the text of statutory changes in Proposition 83 contained no language that existing state reimbursement for current locally mandated activities pursuant to the Sexually Violent Predator Act would terminate with the passage of Proposition 83. Government Code § 17556(f) is not referenced at all in the initiative. The textual changes to the Sexually Violent Predator Act were: procedural changes to expand the class of felons eligible to be declared sexually violent predators, extension of the period of commitment between hearings and changing the court procedures for hearings and trials. The statutory changes in the initiative do not relieve the counties of their preexisting state mandated activities.

In the analysis submitted by the Department of Finance, there is no assertion that the voters intended by these procedural changes to relieve the state of its constitutional requirement of subvention. Significantly, the Department of Finance, in its application to adopt a new test claim, concedes in section 5, page 2 that as to Mandated Activity 2, pertaining to the review of reports by the counties' designated attorney, and Mandated Activity 3, pertaining to the preparation and filing of petitions, the proposition made no change to the statutory language.

Activities 4, 5, and 6 addressed in the application deal with preparation and attendance of the district attorney and defense counsel at various hearings. The Department of Finance application concludes that these activities are no longer mandated because they are necessary to implement Proposition 83. This argument is spurious; the mandated activities are legal representation by the district attorney and defense counsel at *whatever* hearings are required in Sexually Violent Predator Act cases. It is the mandate to represent that was created in the original legislation and remains unchanged in Proposition 83. The names of the hearing or the intervals between hearings are procedural changes having nothing to do with the termination of the mandated representation. The legal representation is necessary to implement the original and continuing Sexually Violent Predator Act passed by the legislature, not to specifically implement Proposition 83. Nothing in the language of the initiative addresses the specific termination of state reimbursement for these activities. For similar reasons, the application to terminate reimbursement for Activity 7, the retention of experts, investigators and professionals for trials and hearings are not necessary to implement Proposition 83, but are necessary for competent legal representation mandated by the SVP act.

In addition to the absence of language in Proposition 83 indicating that the SVP act activities would no longer be reimbursable, examination of the ballot materials, arguments, and Department of Finance fiscal analysis provided to the Attorney General for preparation of the distributed ballot materials provide ample evidence that no termination of the state's Article XIII B § 6 responsibility to reimburse was intended.

In interpreting the intent of the voters, an examination of the ballot summary, arguments and analysis presented to the electorate may be examined. *see Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245-246.

The ballot pamphlet summary of proposition reads:

“Increases penalties for violent and habitual sex offenders and child molesters. Prohibits residence near schools and parks. Requires Global Positioning System monitoring of registered sex offenders. Fiscal Impact: Net state operating costs within ten years of up to a couple hundred million dollars annually; potential one-time state construction costs up to several hundred million dollars; *unknown net fiscal impact on local governments*” [emphasis added] (The voter pamphlet is attached to the department of finance application).

The Attorney General's summary and the accompanying legislative analyst's estimate make no statement indicating the fiscal impact on local government would be to terminate the reimbursement for SVP activities.

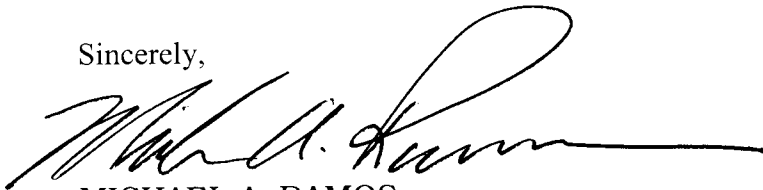
Clearly, absent an intent to deceive the voters, any indication that the SVP activities would no longer be reimbursable and would constitute a large increase to local government would have necessarily replaced the circulated ballot pamphlet language had that been the intended effect of Proposition 83.

The strongest evidence that Proposition 83 would not and did not eliminate the state mandate for reimbursement is contained in a September 2, 2005 joint letter from Elizabeth Hill, the State Legislative Analyst, and Tom Campbell, the Director of Finance, to Attorney General Bill Lockyer.

The letter, prepared pursuant to Elections Code § 9005 analyzes the fiscal impact of the proposed Sexual Predator Punishment and Control Act: Jessica's Law. (A copy of the letter retrieved from the LAO online Proposition 83 materials is attached). The unequivocal conclusion of both officials is that the costs of the SVP program would remain a reimbursable by the state. "The portion of costs related to changes in the Sexual Violent Predators program would be reimbursed by the state." Since official duties are presumed to be correctly performed (Evidence Code § 664), the Director of Finance, the Legislative Analyst and the Attorney General must have been aware of the interaction of Government Code § 17556(f) on Proposition 83 and the state mandate in Article XIII B §6 in drawing their conclusion that the SVP program would remain reimbursable. Strong weight should be given to this conclusion, despite the Department of Finance's now changed opinion.

For these reasons, the San Bernardino County District Attorney's office, respectfully urges this Commission on State Mandates to determine that there is no valid legal basis to adopt the application for a new test claim regarding sexually violent predator activity.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Ramos", with a long horizontal flourish extending to the right.

MICHAEL A. RAMOS
District Attorney

Attachment



COUNTY OF SAN BERNARDINO

BOARD OF SUPERVISORS

COUNTY ADMINISTRATIVE OFFICE

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GOVERNMENTAL & LEGISLATIVE AFFAIRS
385 North Arrowhead Avenue
San Bernardino, CA 92415-0110
(909) 387-4821

GREGORY C. DEVEREAUX
Chief Executive Officer

Received
March 26, 2013
Commission on
State Mandates

March 25, 2013

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: Sexually Violent Predators Mandate Redetermination Request

Dear Ms. Halsey,

The County of San Bernardino opposes the California Department of Finance's request to adopt a new test claim to find that costs associated with the sexually violent predator (SVP) mandate (Welfare and Institutions Code section 6001 through 6604) are no longer state reimbursable activities.

The County of San Bernardino disagrees with the Department of Finance's conclusion that the 2006 passage of Proposition 83—Jessica's Law—ends the state's obligation to reimburse local governments. The application of Government Code Section 17556 (f) to Proposition 83 in order to terminate state reimbursement of mandated sexually violent predators is legally incorrect. Under the California Constitution, Article 13 B, Section 6, the state shall provide a subvention of funds to reimburse local governments for the costs of a program or increased level of service mandated by the Legislature or a state agency.

The Department of Finance's flawed interpretation of the "expressly included" language of Government Code Section 17556(f) fails to consider whether the ballot language intended to enact or change the state reimbursement of mandated activities. This reading would give current Government Code Section 17556(f) the same legal effect as the "expressly included" language in California School Boards Assn. v. State of California, which the court of appeal found overbroad and unconstitutional.

Under Prop 83, textual changes to the Sexually Violent Predator Act include procedural changes to expand the class of felons eligible to be declared sexually violent predators, extension of the period of commitment between hearings, and changing the court procedures for hearings and trials. The statutory changes in the initiative did not relieve counties of their preexisting state mandated activities per Welfare and Institutions Code section 6001 through 6604.

For these reasons, the County of San Bernardino in partnership with our District Attorney respectfully urges the Commission on State Mandates to determine there is no valid legal basis to adopt the application for a new test claim regarding sexually violent predator activity. If you have any questions, please contact Josh Candelaria, Director of Governmental and Legislative Affairs, at (909) 387-4281.

Sincerely,

Handwritten signature of Janice Rutherford

JANICE RUTHERFORD
Board of Supervisors Chair
Second District Supervisor
County of San Bernardino

The mission of the government of the County of San Bernardino is to satisfy its customers by providing service that promotes the health, safety, well being, and quality of life of its residents according to the County Charter, general laws, and the will of the people it serves.



OFFICE OF THE
DISTRICT ATTORNEY
SACRAMENTO COUNTY

CYNTHIA G. BESEMER
Chief Deputy

JAN SCULLY
District Attorney

ALBERT C. LOCHER
Assistant District Attorney

March 26, 2013

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

RE: Opposition to 12-4509-MR-01 Sexually Violent Predators (CSM 4509)

Dear Commission Members:

This letter is to express the strong opposition of the Sacramento District Attorney's Office and the County of Sacramento to the request from California Department of Finance (DOF) to conduct a new test claim to eliminate the mandate reimbursement for the activities required in Welfare and Institutions Codes §§ 6601 to 6608 regarding the civil commitment of Sexually Violent Predators (SVP).

A person can only be designated a sexually violent predator when he/she is a current inmate housed at the Department of Corrections and Rehabilitation, who is then found by initial screening to meet the definition of sexually violent predator by the CDCR Board of Prison Terms. Then, after fully reviewing the matter, the Director of the Department of Hospitals must state that the person has a mental illness and is a danger to the safety of the people of the state without the treatment provided by the Department of State Hospitals. Only when the Director makes this finding and recommendation can a civil commitment be processed at the local level.

The designation of a SVP thus begins with two California state agencies; it cannot begin in any other manner. No one on the local level can initiate the process to certify an inmate as a SVP mental patient. This was the law when passed by the legislature in 1996, and when amended by SB 1128 on September 20, 2006. This legislative scheme remained unchanged when certain sections of Welfare and Institutions Code §§ 6600 et seq. were part of the ballot language of Proposition 83, commonly known as Jessica's Law, passed by the voters in November 2006. The state has the duty and obligation to provide for the patients in its care, and to provide legal representation to those patients and to its own agencies. When that duty is voluntarily shifted to local government, California Constitution Article XIII B, § 6 provides that the state

must reimburse the local government for the cost of providing services for the State of California. The Commission on State Mandates agreed to the application of these principles to the SVP legislative scheme in their Statement of Decision No. CSM-4509 effective June 25, 1998.

The Department of Finance now requests the Commission adopt a new test claim by applying the provisions of Government Code § 17570(a)(2) and (b), which require there to have been a change in the law before a new test claim may be adopted. DOF's request is flawed in two respects. First, Government Code § 17570 requires an actual change in the law before the procedure to adopt a new test claim can be utilized by the Commission on Mandates. The fact that pre-existing law has simply been recited again, either in a statute re-enacted by the legislature, or as part of a new ballot measure, which make other substantive changes in the law, without having made any material change in the mandated activities, does not amount to a change in the law for § 17570 purposes.

Government Code § 17556(f) does provide that the state need not reimburse local government for activities mandated by a state initiative. In this situation, Proposition 83, or Jessica's Law, passed by the voters in November 2006, did include in its provisions some of the mandated activity provisions at issue. However, the mandated activities at issue here were in place before the initiative was enacted. The mandated activities have been in place since 1996, through at least three versions of the law: the sections that were adopted in 1996, and were the subject of CSM-4509; the provisions that remained in place when the legislature passed SB 1128, chaptered as urgency legislation on September 20, 2006; and the sections that were readopted in Proposition 83, by the voters, in November 2006. These three versions of the law are consistent as to the mandated activities in Welfare and Institutions Code §§ 6601, 6602, 6603, 6604, 6605, and 6608. Government Code § 17570 (a) (2) is clear that the definition of "Subsequent Change in the Law" is a change in the law that requires a finding that an incurred cost... is not a cost mandated by the state pursuant to § 17556. Thus, before Govt. Code § 17556 can be invoked there must be a change in the law. Here, there has been no change in the applicable law.

Second, the legislature still retains a true choice in whether to have the duties imposed on local government in the statute remain with local governments, or change the statutes so that the mandated duties are performed at the state level, rather than requiring the local government to bear the financial burden of housing and representing California mental patients, and representing the interests of California state agencies. Proposition 83, § 33 provides that the legislature has the authority to amend, by a statute passed by a roll call vote of two-thirds of each house. The State of California does not need the local District Attorney or Public Defender to represent its agencies and its patients in civil proceedings to implement the civil commitment proceedings currently in place. The State's Attorney General often represents the interests of individual State Agencies, and the State Public Defender often represents the interests of State inmates or patients in civil proceedings. The legislature chose to have these civil proceedings handled by the local entities. It can remove that requirement from the local entities if it so

Commission on State Mandates
March 26, 2013
Page Three

chooses, and still fully implement the intent of the voters in Prop. 83 to contain sexual offenders and protect the public. The fact that the legislature has always had the ability (both before and after passage of Jessica's Law) to use state attorneys to prosecute and defend SVP litigation concerning inmates that the state have designated to be SVPs, rather than to have attorneys employed by the individual counties handle these cases, means the Constitution still requires those activities to be reimbursable. The subvention requirement is intended to prevent the state from transferring the costs of government from itself to local agencies. (Citation omitted) Reimbursement is required when the state "freely chooses to impose on local agencies *any* peculiarly 'governmental' cost which they were not previously required to absorb." *Hayes v. Commission on State Mandates* (1992) 11 Cal. App. 4th 1564, 1578 (emphasis in original).

The financial burden placed on the local government to perform these services for the state without reimbursement will create a hardship both now and in the future. The Department of Finance current request would provide a windfall of over \$20 million for the State of California that was never intended by the voters. Nor was such a financial effect anticipated by the Department of Finance and the Legislative Analyst's Office when they advised the Attorney General on the fiscal impact of Proposition 83. Clear evidence on this point can be found in the September 2, 2005 letter previously submitted to the Commission by others in opposition to the DOF application. The September 2, 2005 Department of Finance letter states with certainty that counties would be fully reimbursed for all of these costs after they had filed and processed claims with the state. The Attorney General did not inform the voters in the official fiscal summary in Proposition 83 that local costs would increase over 20 million dollars as costs for civil commitments of SVPs would no longer be reimbursed by the state. The voters relied on the fiscal summary presented to them in passing this measure.

There has been no change in the law. Proposition 83 did not affect any change in the mandated activities, and the fiscal analysis presented to voters at the time it was considered did not suggest there would be a \$20 million impact on local governments. I strongly urge that the Commission reject the application for a new test claim for CSM-4509.

Sincerely,



JAN SCULLY
DISTRICT ATTORNEY

JS:gf

March 26, 2013

Commission on
State Mandates

JACKIE LACEY
LOS ANGELES COUNTY DISTRICT ATTORNEY

18000 CLARA SHORTRIDGE FOLTZ CRIMINAL JUSTICE CENTER
210 WEST TEMPLE STREET LOS ANGELES, CA 90012-3210 (213) 974-3501

March 26, 2013

Ms. Heather Halsey, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

RE: Mandate Redetermination Request, 12-MR-01
Sexually Violent Predators (CSM-4509)
Welfare and Institutions Code Sections 6601 through 6608
Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1006, Chapter 4
California Department of Finance, Requester

On behalf of the Los Angeles County District Attorney's Office, I am writing to express my strenuous opposition to the above-referenced request for a new test claim decision.

In 1998, consistent with the mandate set forth in article XIII B, section 6, of the California Constitution,¹ the Commission on State Mandates (Commission) issued a Statement of Decision in support of this county's test claim for reimbursement regarding Sexually Violent Predator (SVP) legislation.² The activities for which the county is being reimbursed, the basis for the Commission's Statement of Decision, and the need for reimbursement from the State in order to comply with SVP laws have not changed since the Statement of Decision was adopted.

The Department of Finance's Request to Adopt a New Test Claim Decision (Request) argues that the passage of Proposition 83 (Prop 83) resulted in a "subsequent change in the law," a precondition to the filing of a request for a new test claim decision pursuant to Government Code section 17570 (Section 17570). However, the Request mischaracterizes the substantive content of Prop 83 and its effect on then-existing Ms.

¹ Cal Const, art. XIII B § 6. ("Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service...")

² Statement of Decision Pursuant to Government Code Section 17500 et seq. (adopted on June 25, 1998) (Statement of Decision).

legislation. Prop 83 amended SVP laws in areas wholly unrelated to the enumerated activities for which the Commission approved the county's test claim for reimbursement, rendering Section 17570 inapplicable. As such, the state has a continuing obligation to reimburse the county for services related to the SVP laws that the state created. Additionally, on both equitable and constitutional grounds, the state is precluded from seeking a new test claim decision for the SVP mandate. The state is equitably estopped from terminating subvention in that it explicitly advised the electorate that the state, not the counties, would be responsible for the fiscal costs associated with the SVP-related provisions of Prop 83 were it to pass. Finally, the state's application of Section 17570 to the presently-existing SVP mandate is patently unconstitutional.

No Subsequent Change in the Law

In 2006, the legislature passed Senate Bill 1128 (SB 1128), urgency legislation that went into effect on September 20, 2006. Among other provisions, many of which redefined and increased the consequences for various sex offenses, SB 1128 broadened existing SVP laws. Specifically, SB 1128: added specified juvenile offenses and other crimes to the definition of a "sexually violent offense"; provided that finding a person is an SVP would toll his or her period of parole; and changed terms of commitment for SVPs from renewable two year periods to indeterminate terms.³

Less than two months later, the electorate passed Prop 83, commonly known as "Jessica's Law." Prop 83 simply reaffirmed many of the changes already effectuated by SB 1128, redefining and increasing the consequences for enumerated sex offenses and expanding existing SVP laws. Mirroring the changes already codified by SB 1128, Prop 83 added various juvenile offenses to the definition of a "sexually violent offense" and changed terms of commitment for SVPs from renewable two year periods to indeterminate terms.⁴ The only two significant changes Prop 83 made to post- SB 1128 SVP laws concern standards for the release of SVPs from state mental hospitals⁵ and the number of prior victims of SVP offenses necessary to qualify an offender for a SVP commitment.⁶ Importantly, the added requirement that the Department of Health consider the interests of an SVP and the community at the time of release, and an expansion of the category of

³ http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_1101-1150/sb_1128_bill_20060920_chaptered.pdf.

⁴ <http://voterguide.sos.ca.gov/past/2006/general/pdf/English.pdf>.

⁵ Welf. & Inst. Code, § 6605, subd. (b). The Department of Mental Health is now required, as part of its annual review, to examine whether a person being held in a state hospital as an SVP still meets the definition of an SVP, whether release is in the best interest of the person, and whether conditions could be imposed at the time of release that would adequately affect the community.

⁶ Welf. & Inst. Code, § 6600, subd. (a)(I). The number of victims required to qualify an offender for an SVP commitment was reduced from two to one.

Ms. Heather Halsey, Executive Director
Page Three
March 26, 2013

those who would be eligible for an SVP commitment, did not affect the foundational operation of SVP laws. The procedures in place at the county level for the evaluation, prosecution, and processing of sexually violent offenders – and, importantly, the specified activities for which the state has acknowledged its obligation to reimburse Los Angeles County – did not change.

The Request submitted by the Department of Finance sweepingly argues that “[t]he enactment of Prop 83 constituted a ‘subsequent change in law’ . . . because all of the Welfare and Institutions Code sections of the SVP mandate are either expressly included in Prop 83 or are necessary to implement Prop 83.”⁷ It further suggests that “[b]ecause voters approved all of the text in Prop 83, including divisions not amended, the sections that formed the SVP mandate are no longer reimbursable”⁸

This argument is profoundly misleading. The changes actually proposed by Prop 83 were few and narrow, particularly in light of revisions to SVP laws that had recently been codified by SB 1128. The Secretary of State’s practice of giving textual context to a ballot proposal by including unaffected statutory provisions is a benign protocol intended to fully inform the electorate. Affirmation of existing law most certainly does not give rise to the change in law contemplated by Section 17570.⁹

The Department of Finance’s secondary argument that the fundamental SVP-related services recognized by the Commission serve to facilitate the implementation of the statutory revisions effected by Prop 83 grossly mischaracterizes the body of statutes that govern SVP commitment procedures. As the only SVP-related changes made by Prop 83 concern the two provisions discussed above, the SVP laws unaffected by Prop 83 cannot fairly or accurately be described as existing for purposes of implementation.

Statement of Decision by Commission on State Mandates

On June 25, 1998, the Commission adopted the Statement of Decision for the SVP mandate and approved reimbursement to Los Angeles County for specified activities.

⁷ Request, at p. 2. In making this argument, the Department of Finance is relying on a statute that provides that the state is not obligated to reimburse a local government for duties that are “necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election.” Govt. Code, § 17556, subd. (f). See *California School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183, 1207 (observing that the California Constitution requires reimbursement for mandates imposed by the legislature, but not by ballot measures).

⁸ *Id.*

⁹ <http://voterguide.sos.ca.gov/past/2006/general/pdf/English.pdf>, at p. 127-138.

Ms. Heather Halsey, Executive Director
Page Four
March 26, 2013

The Commission found that “the test claim legislation imposes a new program upon counties since the procedures to commit the sexually violent predator are civil, rather than criminal, and is not within the county’s preexisting duty to prosecute crime If the state had not created this program, inmates would be released following completion of their prison term, counties would not be compelled to initiate these proceedings and services from defense counsel and experts would not have to be provided to indigent inmates.”¹⁰

In its Statement of Decision, the Commission approved the test claim for reimbursement for the following activities, each of which is substantively and procedurally identical to SVP services that continue to be provided through the present day. As will be explained, the Department of Finance’s analysis of each of the mandated activities, and the alleged effect Prop 83 had on the respective activities, is simply untenable.

Activity 1: Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601, subd. (i).)

The Request concedes that Prop 83 did not affect this activity, but argues that the pertinent code section was “reenacted” by the voters and, therefore, this is no longer a reimbursable activity.

The inclusion, within the text of an initiative, of language that is unaffected by proposed revisions to the law does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 2: Initial review of reports by the county’s designated counsel to determine if the county concurs with the state’s recommendation. (Welf. & Inst. Code, § 6601, subd. (i).)

The Request concedes that Prop 83 did not affect this activity, but argues that the pertinent code section was “reenacted” by the voters and, therefore, this is no longer a reimbursable activity.

¹⁰ Statement of Decision, at p. 1.

Ms. Heather Halsey, Executive Director
Page Five
March 26, 2013

The inclusion, within the text of an initiative, of language that is unaffected by proposed revisions to the law does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 3: Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601, subd. (j).)

The Request concedes that Prop 83 did not affect this activity, but argues that the pertinent code section was “reenacted” by the voters and, therefore, this is no longer a reimbursable activity.

The inclusion, within the text of an initiative, of language that is unaffected by proposed revisions to the law does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 4: Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602, subd. (i).)

The Request argues that this activity, which pertains exclusively to the need for counsel at probable cause hearings (Welf. & Inst. Code, § 6602), is no longer reimbursable because Prop 83 amended a code section (Welf. & Inst. Code, § 6604) that changed commitment terms from renewable two year periods to indeterminate terms. The Request contends that preparation and attendance by a prosecutor and a defense attorney at a probable cause hearing was thus converted from being a reimbursable activity to an activity “necessary to implement” lengthier commitment terms.

An activity may not fairly be recharacterized as “necessary to implement” another activity simply because an antecedent activity may have been affected by a change in the law. This argument also fails in that there was no change in the law. The statutory revision proposed in Prop 83 involving the length of an SVP's commitment (Welf. & Ms. Inst. Code, § 6604) had already been made by SB 1128 when Prop 83 passed. Prop 83's mere reaffirmation of legislative action does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test

claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 5: Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, § 6603, 6604.)

The Request argues that providing constitutional rights to SVPs is a necessary component to the implementation of Prop 83 and therefore not reimbursable. Alternatively, the Request notes that portions of the cited section (Welf. & Inst. Code, § 6604) were reaffirmed by Prop 83.

This activity concerns the need for prepared counsel to participate in an SVP's trial and is analogous to the Commission's recognition of the mandate to reimburse services provided at probable cause hearings, identified in Activity 4. A reimbursable activity does not cease to be a reimbursable activity because it happens to have constitutional implications. Indeed, the Commission recognized in its Statement of Decision that "what sets the 6th and 14th Amendments in motion and causes the public defender to safeguard the rights of the indigent defendant, is the state's enactment of the sexually violent predator legislation."¹¹

Also, Prop 83 did not result in any pertinent changes in the law. The amendment proposed in Prop 83 involving the length of an SVP's commitment (Welf. & Inst. Code, § 6604) had already been made by SB 1128 when Prop 83 passed. Prop 83's mere reaffirmation of legislative action does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 6: Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, § 6605, subds. (b) through (d) and Welf. & Inst. Code, § 6608, subds. (a) through (d).)

The Request argues that the rights of a committed SVP were affected by Prop 83's restatement of an existing code section (Welf. & Inst. Code, § 6605(d)) that involved constitutional protections. The Request also notes that another section (Welf. & Inst.

¹¹ Statement of Decision, at p. 1.

Code, § 6608) was similarly “amended and reenacted” by Prop 83. For each reason, the Request maintains, the activity is no longer reimbursable.

Prop 83 did not affect the need for the prosecution and appointed defense counsel to prepare for and attend hearings regarding the condition of an SVP. And again, a reimbursable activity does not cease to be a reimbursable activity because it happens to have constitutional implications. Finally, the inclusion, within the text of an initiative, of language that is unaffected by proposed revisions to the law does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 7: Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, § 6603, 6604.)

The Request argues that providing constitutional rights to SVPs is inherently a necessary component to the implementation of Prop 83 and is thus not reimbursable. The Request also insists that this activity, which pertains exclusively to trials and subsequent hearings (Welf. & Inst. Code, § 6602), is no longer reimbursable because Prop 83 amended a code section (Welf. & Inst. Code, § 6604) that changed commitment terms from renewable two year periods to indeterminate terms.

The need for the county to provide constitutional protections was the basis of the Commission’s 1998 finding that state reimbursement was necessary and appropriate. As noted by the Commission, “case law is clear that where there is a right to representation by counsel, necessary ancillary services, such as experts and investigative services, are within the scope of that right.”¹² The Commission continued: “[L]ocal agencies would *not* be compelled to provide defense and ancillary services to indigent persons accused of being a sexually violent offender following completion of their prison term if the new program had not been created by the state.”¹³

¹² Statement of Decision, at p. 11 (citing *Mason v. State of Arizona* (9th Cir. 1974) 504 F.2d 1345; *People v. Worthy* (1980) 109 Cal.App.3d 514).

¹³ *Id.* (emphasis in original).

Also, a mandated service may not fairly be recharacterized as “necessary to implement” another activity simply because an antecedent activity may have been affected by a change in the law. And, as previously stated, the amendment proposed in Prop 83 involving the length of an SVP’s commitment (Welf. & Inst. Code, § 6604) had already been made by SB 1128 when Prop 83 passed. Prop 83’s mere reaffirmation of legislative action does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 8: Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

The Department of Finance did not submit an argument challenging the appropriateness of continued subvention with respect to this SVP-related activity.

Equitable Estoppel

On September 2, 2005, the Legislative Analyst’s Office (LAO), in association with the Department of Finance, sent California Attorney General Bill Lockyer a fiscal analysis of the initiative eventually known as Prop 83.¹⁴ Attorney General Lockyer relied on the contents of that statement in composing and generating a title and summary analysis that was required to be prominently featured on each page of every petition on which signatories in support of the initiative signed their names.¹⁵ Presumably, the LAO’s fiscal analysis of the initiative informed those whose signatures were necessary to place Prop 83 on the 2006 statewide ballot that counties would be reimbursed in full for all of these costs after they had filed and processed claims with the state.¹⁶ The portion of the

¹⁴ <http://ccoso.org/LAOjessica.doc> (Sept. 2, 2005). At the time, the initiative was entitled, “Sexual Predator Punishment and Control Act: Jessica’s Law.”

¹⁵ Each section of the petition must contain the Attorney General’s title and summary and the full text of the initiative measure. (Elec. Code, § 9012.) The Attorney General’s title and summary must be in at least 12-point Roman boldface type and the full text of the initiative measure shall be in at least 8-point type. Each page on which signatures are to appear must contain a copy of the Attorney General’s title and summary and the unique numeric identifier provided by the Attorney General. (Elec. Code, §§ 9008, 9009, 9012.)

¹⁶ <http://ccoso.org/LAOjessica.doc> at pp. 4-6. In pertinent part, and with emphasis added, the analysis read as follows:

letter that advised the Attorney General of the measure's net fiscal effects expressly indicated: "The portion of costs related to changes in the Sexual Violent Predators program would be reimbursed by the state."¹⁷

When Prop 83 qualified for the November 2006 general election ballot, the state again assured the electorate that the state would absorb any additional fiscal costs associated with the SVP laws were the initiative to pass. The Secretary of State¹⁸ and the Legislative Analyst, each of whom was credited with the preparation of the widely-disseminated 2006 Voter Information Guide, advised potential voters that increasing the number of sex offenders eligible for SVP commitments would result in substantially increased costs *to the state*.¹⁹

State SVP Program Net Costs. This measure is likely to result in an increase in state operating costs in the tens of million dollars annually to (1) conduct preliminary screenings of additional sex offenders referred to DMH by CDCR for an SVP commitment, (2) complete full evaluations by psychiatrists or psychologists to ascertain the mental condition of criminal offenders being further considered for an SVP commitment, (3) provide court testimony in SVP commitment proceedings, and (4) reimburse counties for their costs for participation in the SVP commitment process.

....

SVP Program. The provisions of this measure related to the SVP program could increase county costs. The additional SVP commitment petitions that are likely to result from this measure would increase costs for district attorneys and public defenders to handle these civil cases. Also, county jail operating costs would increase to the extent that offenders who have court decisions pending on their SVP cases were held in local jail facilities instead of state mental hospitals. Counties would be reimbursed in full for all of these costs after they had filed and processed claims with the state.

Finally, the provisions in this measure allowing for the indeterminate commitment of SVPs instead of the current two-year recommitment process could reduce county costs for SVP commitment proceedings and the claims that counties would file with the state for reimbursement of such costs. . . .

(continued)

This measure would have the following net fiscal effects:

Unknown net costs *to the state*, within a few years, potentially in the low hundreds of millions of dollars annually due primarily to increased state prison, parole supervision, and mental health program costs. These costs would grow significantly in the long term.

Unknown but potentially significant net operating costs or savings to counties for jail, probation supervision, district attorneys, and public defenders. *The portion of costs related to changes in the Sexual Violent Predators program would be reimbursed by the state.*

¹⁷ *Id.* at 6.

¹⁸ On the cover of the Voter Information Guide, Secretary of State Bruce McPherson signed a Certificate of Correctness, affirming that "this guide has been correctly prepared in accordance with the law."
<http://voterguide.sos.ca.gov/past/2006/general/pdf/English.pdf>, at p. 1.

¹⁹ In pertinent part, the Legislative Analyst wrote:

Ms. Heather Halsey, Executive Director
Page Ten
March 26, 2013

California courts have long held that voters are presumed to carefully review published materials that concern the initiatives on which they vote, including measures that are more complex. In 1990, the California Supreme Court found:

In order to further the fundamental right of the electorate to enact legislation through the initiative process, this court must on occasion indulge in a presumption that the voters thoroughly study and understand the content of complex initiative measures. . . . Relying on this presumption we attempt to ascertain and implement the purposes of the measure.²⁰

Quoting the California Supreme Court, another appellate court more recently intimated that Voter Information Guides are to be regarded as persuasive when a ballot measure is not clear as to a particular issue: “Where there is ambiguity in the language of the measure, ‘[b]allot summaries and arguments may be considered when determining the voters’ intent and understanding of a ballot measure.’”²¹

As the electorate is presumed to have relied upon the state’s broadly publicized assurances regarding the state’s assumption of the fiscal costs associated with Prop 83 were it to pass, the state is foreclosed from using Prop 83 as the basis of its invocation of Section 17570 and request for a new test claim decision.

Section 17570 is Unconstitutional

Section 17570 is unconstitutional as a violation of the separation of powers doctrine. In 2009, the case of *California School Boards Association v. State of California* determined

State SVP Program Costs. By making more sex offenders eligible for SVP commitments, this measure would result in increased *state* costs generally in the following categories:

Referral and Commitment Costs. These costs are mainly associated with screening sex offenders referred by CDCR to DMH to determine if they merit a full evaluation, performing such evaluations, and providing expert testimony at court commitment hearings. This measure would increase these *state* costs probably by the low tens of millions of dollars annually. These costs would begin to occur in the initial year of implementation.

State Hospital Costs. *State* costs to staff, maintain, and operate the mental hospitals could reach \$100 million annually within a decade and would continue to grow significantly thereafter.

<http://voterguide.sos.ca.gov/past/2006/general/pdf/English.pdf>, at p. 45 (emphasis added).

²⁰ *Taxpayers to Limit Campaign Spending v. Fair Pol. Practices Commission* (1990) 51 Cal.3d 744, 768.

²¹ *Sutter's Place Inc. v. Superior Court* (2008) 161 Cal.App.4th 1370, 1381-1382, quoting *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1037.

that the legislature could neither direct nor request that the Commission reconsider a previous test claim decision.²² The Commission was a quasi-judicial decision-maker, the court found, working independently of the legislature; for the legislature to direct or request the Commission to reconsider its prior ruling was a violation of the separation of powers doctrine.²³

In an apparent attempt to circumvent this holding, the next year, the legislature passed Section 17570, which codified that which remains constitutionally impermissible. Section 17570 provides that a request that the Commission adopt a new test claim decision may be filed by any of various enumerated government entities, including those within the executive branch of government: the Department of Finance, the Controller, or “any other affected state agency.”²⁴ Yet, if the separation of powers doctrine precludes the legislature from petitioning the Commission to reconsider an earlier decision, as was established in the *California School Boards Association* case, the prohibition applies also to the executive branch.

Additionally, Section 17570 is unconstitutional as an infringement of article XIII B, section 6, of the California Constitution, which was designed “to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”²⁵ Section 17570 provides a procedure for a new test claim where there is a “subsequent change in the law,” which is all-inclusively defined to require a “finding that an incurred cost is a cost mandated by the state . . . or is not a cost mandated by the state”²⁶

²² *California School Boards Assn. v. State of California*, *supra*, 171 Cal.App.4th at p. 1199. The legislature's direction to the Commission to reconsider or set aside its final decisions is an unlawful collateral attack on those decisions. Once a decision of the Commission becomes final and has not been set aside by a court pursuant to a petition for writ of administrative mandamus (Code Civ. Proc., § 1094.5), it is not subject to collateral attack. As a collateral attack, the legislature's direction to the Commission to set aside or reconsider Commission decisions went beyond the power of the legislature. *Id.* at p. 1200.

²³ *Id.* at pp. 1199-1200. *See id.* at p. 1198, quoting *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1102 (“From its inception, the California Constitution has contained an explicit provision embodying the separation of powers doctrine.”). The Court of Appeal noted that over time a prior claims decision might be rendered obsolete by changes in the law and material circumstances. The opinion did not decide whether the Commission had the inherent power to reconsider its own earlier ruling or if the legislature could provide a process for obtaining reconsideration. *Id.* at pp. 1202-1203.

²⁴ Govt. Code, § 17570, subd. (c).

²⁵ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 79.

²⁶ Govt. Code, § 17570, subd. (a)(2).

Ms. Heather Halsey, Executive Director
Page Twelve
March 26, 2013

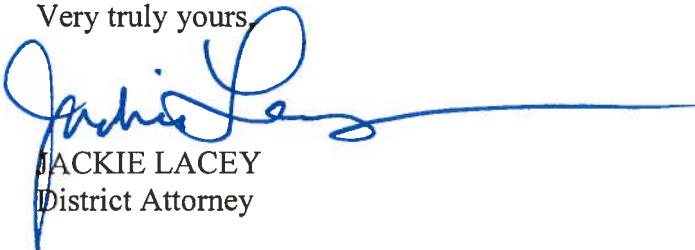
While ostensibly clarifying a constitutional mandate, Section 17570 quietly eviscerated it. Under the provisions of Section 17570, the legislature can avoid paying for a program by making minor changes in that program, then calling for a new test claim decision based on the “subsequent change in the law.” This opportunity allows the state to attempt to shift the costs of an entire legislatively-enacted program to local governments, undermining the very purpose this section of the California Constitution.

Conclusion

Contrary to the assertions of the Department of Finance, Prop 83 did not affect the SVP laws that pertain to the subvention mandate adopted by the Commission on State Mandates in 1998. Prop 83 changed SVP laws in two very limited areas, neither of which substantively altered any of the eight activities identified by the Commission in its Statement of Decision. Each of the services for which reimbursement was found to be necessary and appropriate continues to be performed, is an integral component of the county’s handling and prosecution of SVP cases, and remains in need of state funding. The Department of Finance’s activity-by-activity analysis of Prop 83’s effect on SVP laws is based largely on two highly dubious arguments: (1) that extraneous text included in the body of Prop 83 constituted a change in the law; and (2) that Prop 83 converted services identified in the Commission’s 1998 Statement of Decision from being reimbursable activities, many of which are constitutionally mandated, to being mere instruments of implementation. Neither position is supportable. Absent a “subsequent change in law,” Section 17570 is not available to the state in support of its request for a new, superseding test claim decision. Additionally, the state is collaterally estopped from seeking a new test claim decision on constitutional grounds and in that it assured the electorate that the state would reimburse the counties, in full, for costs related to the SVP provisions in Prop 83.

I respectfully request that you decline the Department of Finance’s Request to Adopt a New Test Claim Decision with respect to the SVP-related services for which this and other counties throughout California receive critical reimbursement from the state.

Very truly yours,



JACKIE LACEY
District Attorney

lm

March 27, 2013
Commission on
State Mandates**COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER**KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427WENDY L. WATANABE
AUDITOR-CONTROLLER

March 26, 2013

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

**LOS ANGELES COUNTY'S COMMENTS ON
SEXUALLY VIOLENT PREDATORS (SVP) REDETERMINATION**

The County of Los Angeles respectfully submits its comments on the Commission on State Mandates' (CSM) Redetermination of the Sexually Violent Predators Program.

We are e-filing our comments pursuant to Section 1181.2, subd. (c)(1)(E) of the California Code of Regulations, "Documents e-filed with the Commission need not be otherwise served on the persons that have provided an e-mail address for the mailing list."

If you have any questions, please contact Hasmik Yaghobyan at (213) 893-0792 or hyaghobyan@auditor.lacounty.gov.

Very truly yours,

A handwritten signature in blue ink that reads "Wendy L. Watanabe".

Wendy L. Watanabe
Auditor-ControllerWLW:JN:CY:ED:hy
H:\SB90\CSM's Extensions\SVP Redetermination 3-25-13.doc

Attachment

LOS ANGELES COUNTY'S COMMENTS ON SEXUALLY VIOLENT PREDATORS REDETERMINATION

On June 25, 1998, the Commission on State Mandates (CSM) adopted the Statement of Decision (SOD) for the Sexually Violent Predators (SVP) Program (CSM-450) and approved reimbursement for the activities mandated under Welfare and Institutions Code sections 6601-6608 pursuant to California Constitution Article XIII B, Section 6.

On January 24, 2013, CSM issued a notice requesting comments for the State Department of Finance's (DOF) January 15, 2013, Mandate Redetermination Request, (12-MR-01), to adopt a new test claim. DOF's request to adopt a new test claim argues that the passage of Proposition 83 (Prop 83) resulted in a "subsequent change in law," a precondition to the filing of a request for a new test claim pursuant to Government Code Section 17570 (Section 17570). However, the request is without merit and mischaracterizes the substantive content of Prop 83 and its effect on the existing legislation.

The County opposes the DOF's request to adopt a new test claim on the basis that :1) the extraneous text included in the body of Prop 83 did not constitute a change in the law; 2) Prop 83 did not convert activities identified in the Commission's 1998 Statement of Decision to activities necessary to implement Prop 83, therefore, no longer reimbursable; and 3) Government Code Section 17570 is unconstitutional.

Proposition 83 did not effectuate a "Subsequent change in law" as contemplated by Government Code Section 17570.

In 2006, the legislature passed Senate Bill 1128 (SB 1128), urgency legislation that went into effect on September 20, 2006. Among other provisions, many of which redefined and increased the consequences for various sex offenses, SB 1128 broadened existing SVP laws. Specifically, **SB 1128: 1) added specified juvenile offenses and other crimes to the definition of a "sexually violent offense"; 2) provided that a finding that a person is an SVP would toll his or her period of parole; and 3) changed terms of commitment for SVPs from renewable two year periods to indeterminate terms.**

Two months later, the voters passed Proposition 83 (Prop 83), commonly known as "Jessica's Law." Prop 83 simply reaffirmed many of the changes already effectuated by SB 1128, redefining and increasing the consequences for enumerated sex offenses and expanding existing SVP laws. Mirroring the changes already codified by SB 1128, **Prop 83 added various juvenile offenses to the definition of a "sexually violent offense" and restated terms of commitment for SVPs from renewable two year periods to indeterminate terms.**

The only two significant changes Prop 83 made to post- SB 1128 SVP laws concern standards for the release of SVPs from State mental hospitals and the number of prior victims of SVP offenses necessary to qualify an offender for an SVP commitment. Importantly, the added requirement that the Department of Mental Health consider the interests of an SVP and the community at the time of release, and an expansion of the category of those who would be eligible for an SVP commitment, did not affect the foundational operation of SVP laws. The procedures in place at the county level for the evaluation, prosecution, and processing of sexually violent offenders – and, importantly, the specified activities for which the State has acknowledged its obligation to reimburse Los Angeles County – did not change.

The Request submitted by the Department of Finance argues that, first, "[t]he enactment of Prop 83 constituted a 'subsequent change in law' . . . because all of the Welfare and Institutions Code

sections of the SVP mandate are either expressly included in Prop 83 or are necessary to implement Prop 83.” It further suggests that “[b]ecause voters approved all of the text in Prop 83, including divisions not amended, the sections that formed the SVP mandate are no longer reimbursable”

This argument is misleading. The changes actually proposed by Prop 83 were few and narrow, particularly in light of revisions to SVP laws that had recently been codified by SB 1128. The Secretary of State’s practice of giving textual context to a ballot proposal by including unaffected statutory provisions is a benign protocol intended to fully inform the voters. Affirmation of existing law most certainly does not give rise to the change in law contemplated by Section 17570.

The Department of Finance’s secondary argument that the fundamental SVP-related services recognized by the Commission serve to facilitate the implementation of the statutory revisions effected by Prop 83 grossly mischaracterizes the body of statutes that govern SVP commitment procedures. As the only SVP-related changes made by Prop 83 concern the two provisions discussed above, the SVP laws unaffected by Prop 83 cannot fairly or accurately be described as existing for purposes of implementation.

Statement of Decision by Commission on State Mandates (SOD)

On June 25, 1998, the Commission adopted the SOD for the SVP mandate and approved reimbursement to Los Angeles County for specified activities. The Commission found that the test claim legislation imposed a new program or higher level of service pursuant to California Constitution article XIII B, Section 6.

The Commission approved reimbursement for the following activities, each of which is substantively and procedurally identical to SVP services that continue to be provided through the present day. As will be explained, the Department of Finance’s analysis of each of the mandated activities, and the alleged effect Prop 83 had on the respective activities, is simply untenable:

Activity 1: Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601, subd. (i).)

DOF concedes that Prop 83 did not affect this activity, but argues that the pertinent code section was “reenacted” by the voters and, therefore, this is no longer a reimbursable activity.

The inclusion, within the text of an initiative, of language that is unaffected by proposed revisions to the law does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 2: Initial review of reports by the county’s designated counsel to determine if the county concurs with the State’s recommendation. (Welf. & Inst. Code, § 6601, subd. (i).)

DOF concedes that Prop 83 did not affect this activity, but argues that the pertinent code section was “reenacted” by the voters and, therefore, this is no longer a reimbursable activity.

The inclusion, within the text of an initiative, of language that is unaffected by proposed revisions to the law does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 3: Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601, subd. (j).)

DOF concedes that Prop 83 did not affect this activity, but argues that the pertinent code section was "reenacted" by the voters and, therefore, this is no longer a reimbursable activity.

The inclusion, within the text of an initiative, of language that is unaffected by proposed revisions to the law does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 4: Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602, subd. (a).)

DOF argues that this activity, which pertains exclusively to the need for counsel at probable cause hearings (Welf. & Inst. Code, § 6602), is no longer reimbursable because Prop 83 amended a code section (Welf. & Inst. Code, § 6604) that changed commitment terms from renewable two year periods to indeterminate terms. DOF contends that preparation and attendance by a prosecutor and a defense attorney at a probable cause hearing was thus converted from being a reimbursable activity to an activity "necessary to implement" lengthier commitment terms.

An activity may not fairly be recharacterized as "necessary to implement" another activity simply because an antecedent activity may have been affected by a change in the law. This argument also fails in that there was no change in the law. The statutory revision proposed in Prop 83 involving the length of an SVP's commitment (Welf. & Inst. Code, § 6604) had already been made by SB 1128 when Prop 83 passed. Prop 83's mere reaffirmation of legislative action does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 5: Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, § 6603 and 6604.)

DOF argues that providing constitutional rights to SVPs is a necessary component to the implementation of Prop 83 and therefore not reimbursable. (Welf. & Inst. Code, § 6603).

This activity concerns the need for prepared counsel to participate in an SVP's trial and is analogous to the Commission's recognition of the mandate to reimburse services provided at probable cause hearings, identified in Activity 4. A reimbursable activity does not cease to be a reimbursable activity because it happens to have constitutional implications. Indeed, the Commission recognized in its SOD that "what sets the 6th and 14th Amendments in motion and causes the public defender to safeguard the rights of the indigent defendant, is the State's enactment of the sexually violent predator legislation."

Also, Prop 83 did not result in any pertinent changes in the law. The amendment proposed in Prop 83 involving the length of an SVP's commitment (Welf. & Inst. Code, § 6604) had already been made by SB 1128 when Prop 83 passed. Prop 83's mere reaffirmation of legislative action does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 6: Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, § 6605, subds. (b) through (d) and Welf. & Inst. Code, § 6608, subds. (a) through (d).)

DOF argues that the rights of a committed SVP were affected by Prop 83's restatement of an existing code section (Welf. & Inst. Code, § 6605(d)) that involved constitutional protections. DOF also notes that another section (Welf. & Inst. Code, § 6608) was similarly "amended and reenacted" by Prop 83. For each reason, the DOF maintains, the activity is no longer reimbursable.

Prop 83 did not affect the need for the prosecution and appointed defense counsel to prepare for and attend hearings regarding the condition of an SVP. Again, a reimbursable activity does not cease to be a reimbursable activity because it happens to have constitutional implications.

Finally, the inclusion, within the text of an initiative, of language that is unaffected by proposed revisions to the law does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 7: Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, § 6603, 6604.)

DOF argues that providing constitutional rights to SVPs is inherently a necessary component to the implementation of Prop 83 and is thus not reimbursable. DOF also insists that this activity, which pertains exclusively to trials and subsequent hearings (Welf. & Inst. Code, § 6602), is no longer reimbursable because Prop 83 amended a code section (Welf. & Inst. Code, § 6604) that changed commitment terms from renewable two year periods to indeterminate terms.

The need for the county to provide constitutional protections was the basis of the Commission's 1998 finding that State reimbursement was necessary and appropriate. As noted by the Commission, "case law is clear that where there is a right to representation by counsel, necessary ancillary services, such as experts and investigative services, are within the scope of that right." (Statement of Decision, at p.11, Citing *Mason v. State of Arizona* (9th Cir.1974) 504 F.2d 1345; *People v. Worthy* (1980) 109 Cal.app.3d 514), The Commission continued: "[L]ocal agencies would *not* be compelled to provide defense and ancillary services to indigent persons accused of being a sexually violent offender following completion of their prison term if the new program had not been created by the state."

Also, a mandated service may not fairly be recharacterized as "necessary to implement" another activity simply because an antecedent activity may have been affected by a change in the law. As previously stated, the amendment proposed in Prop 83 involving the length of an SVP's commitment (Welf. & Inst. Code, § 6604) had already been made by SB 1128 when Prop 83 passed. Prop 83's mere reaffirmation of legislative action does not constitute a change in the law. As Section 17570 is inapplicable, this mandated activity may not be the subject of a new test claim decision. Under article XIII B, § 6, of the California Constitution, this activity remains reimbursable.

Activity 8: Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

DOF did not submit an argument challenging the appropriateness of continued subvention with respect to this SVP -related activity.

Section 17570 is Unconstitutional

Section 17570 is unconstitutional as a violation of the separation of powers doctrine. In *California School Board Association v. State* (2009)171Cal.App.1183 (SCBA) , the court struck down legislation (Chapter 72, Statutes of 2005 (AB 138) and determined that the legislature could neither direct nor request that the Commission reconsider a previous test claim decision. The Commission was a quasi-judicial decision-maker, the court found, working independently of the legislature; for the legislature to direct or request the Commission to reconsider its prior ruling was a violation of the separation of powers doctrine.

In an apparent attempt to circumvent this holding, the next year, the legislature passed Section 17570, which codified that which remains constitutionally impermissible. Section 17570 provides that a request that the Commission adopt a new test claim decision may be filed by any of various enumerated government entities, including those within the executive branch of government: the Department of Finance, the Controller, or “any other affected state agency.” Yet, if the separation of powers doctrine precludes the legislature from petitioning the Commission to reconsider an earlier decision, as was established in the *CSBA’s* case, the prohibition applies also to the executive branch.

Additionally, Section 17570 is unconstitutional as an infringement of article XIII B, section 6, of the California Constitution, which was designed “to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.” (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 79) Section 17570 provides a procedure for a new test claim where there is a “subsequent change in the law,” which is all-inclusively defined to require a “finding that an incurred cost is a cost mandated by the state . . . or is not a cost mandated by the state”

While ostensibly clarifying a constitutional mandate, Section 17570 quietly eviscerated it. Under the provisions of Section 17570, the legislature can avoid paying for a program by making minor changes in that program, then calling for a new test claim decision based on the “subsequent change in the law.” This opportunity allows the State to attempt to shift the costs of an entire legislatively-enacted program to local governments, undermining the very purpose of California Constitution article XIII B, section 6. The State has every incentive to attempt to reduce its financial obligation to local government and can always find a use for extra money.

Conclusion

Contrary to the assertions of the DOF, Prop 83 did not affect the SVP laws that pertain to the subvention mandate adopted by the Commission on State Mandates in 1998. Prop 83 changed SVP laws in two very limited areas, neither of which substantively altered any of the eight activities identified by the Commission in its Statement of Decision. Each of the services for which reimbursement was found to be necessary and appropriate continues to be performed, is

an integral component of the county's handling and prosecution of SVP cases, and remains in need of State funding.

DOF's activity-by-activity analysis of Prop 83's effect on SVP laws is based largely on two highly dubious arguments: (1) that extraneous text included in the body of Prop 83 constituted a change in the law; and (2) that Prop 83 converted services identified in the Commission's 1998 Statement of Decision from being reimbursable activities, many of which are constitutionally mandated, to being mere instruments of implementation. Neither position is supportable. Absent a "subsequent change in law," Section 17570 is not available to the State in support of its request for a new, superseding test claim decision, therefore, DOF's request to adopt a new test claim should be denied.

March 27, 2013
Commission on
State Mandates

Alameda County Public Defender

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Brendon D. Woods
Public Defender
Robert C. Shipway
Chief Assistant Public Defender

March 25, 2013

Ms. Heather Halsey
Executive Director
California Commission on State Mandates
900 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Mandate Determination Request 12-MR-01,
Sexually Violent Predator (CSM-4509)

Dear Ms. Halsey:

In Alameda County there are approximately 50 cases pending in which the District Attorney has filed a petition to have an individual committed for an indefinite period for treatment as a sexually violent predator. This office represents almost all of those individuals. I am writing in response to the notice from the Commission dated January 24, 2013, soliciting responses to the California Department of Finance's Mandate Redetermination Request, 12-MR-01, Sexually Violent Predators CSM-4509, dated January 15, 2013.

This office strongly opposes the Department of Finance's request to redetermine the Sexually Violent Predator Mandate (CSM-4509) on the following grounds: (1) The 2012 legislative amendment and re-enactment of the Sexually Violent Predator Act either confirmed the viability of the Sexually Violent Predator Mandate (CSM-4509), or, *arguendo*, suspended any impact that Proposition 83 may have affected on the mandate; (2) Misrepresentation and the doctrines of estoppel and unclean hands bar the Department of Finance's redetermination request; (3) Proposition 83 did not effectuate a "subsequent change in the law" as contemplated by Government Code section 17570; and (4) Government Code section 17570 is unconstitutional.

Those grounds of opposition are thoroughly explained in the letter to you from the California Public Defenders Association dated March 18, 2013. A copy of that letter is attached. For all the reasons stated there, this office requests the Commission to deny the Department of Finance's request for a redetermination.

Sincerely,

A handwritten signature in black ink, appearing to read "Brendon D. Woods", written over a horizontal line.

BRENDON D. WOODS
ALAMEDA COUNTY PUBLIC DEFENDER



CPDA

California Public Defenders Association

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March 18, 2013

Ms. Heather Halsey
Executive Director
California Commission on State Mandates
900 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Mandate Redetermination Request 12-MR-01
Sexually Violent Predator (CSM-4509)

Dear Ms. Halsey:

The California Public Defenders Association (CPDA) is the largest association of criminal defense attorneys and public defenders in the State of California with a membership consisting of over 3,700 public defenders and attorneys in private practice. An integral component of CPDA is the California Council of Chief Public Defenders (CCCD). The CCCD is comprised of the county public defender department heads who represent over 90 percent of all criminal cases processed through the California judicial system and are responsible for supervising the work performed by over 2,600 defense attorneys. These department heads meet regularly to discuss management, legislative, and policy issues.

On June 25, 1988, the California Commission on State Mandates (CSM) adopted the Statement of Decisions for the Sexually Violent Predator mandate (CSM-4509) and approved reimbursement for specified activities mandated under Welfare and Institutions Code sections 6601-6608.

On January 24, 2013, the California Commission on State Mandates (CSM) issued a notice soliciting responses to the California Department of Finance's (DOF) January 15, 2013, Mandate Redetermination Request, 12-MR-01, Sexually Violent Predators CSM-4509. This letter is written in response to that notice.

CPDA opposes the DOF's request to redetermine the Sexually Violent Predator Mandate (CSM-4509). The basis for CPDA's objections are: (1) The 2012 legislative amendment and re-enactment of the Sexually Violent Predator Act (SVPA) either confirmed the viability of the Sexually Violent Predator Mandate (CSM-4509), or, *arguendo*, superseded any impact that Proposition 83 may have affected on the mandate; (2) Misrepresentation and the doctrines of estoppel and unclean hands bar the DOF's redetermination request; (3) Proposition 83 did not effectuate a "subsequent change in the law"

Ms. Heather Halsey
March 18, 2013
Page 2

as contemplated by Government Code section 17570; and (4) Government Code section 17570 is unconstitutional.

(1) The 2012 Legislative Amendment and Re-Enactment of the SVPA Either Confirmed the Viability of the Sexually Violent Predator Mandate (CSM-4509), or, Arguendo, Superseded Any Impact That Proposition 83 May Have Affected on the Mandate.

Subsequent to the passage of Proposition 83 in 2006, the California Legislature in 2012 amended the SVPA in three separate pieces of legislation. Welfare and Institutions Code section 6603, the operative section providing for the defense of an accused at trial, provides: "A person subject to this article, shall be entitled to a trial by jury, to the assistance of counsel, to the right to retain experts or professional persons to perform an examination on his or her behalf, and to have access to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall appoint counsel to assist him or her, and, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf." (§ 6603, subd. (a).)

Significantly, subsequent to the passage of Proposition 83 in 2006, Welfare and Institutions Code section 6603 was amended twice by the Legislature in 2012. (Stats.2012, ch. 440 (A.B. 1488) § 66, eff. Sept. 22, 2012; Stats.2012, ch. 790 (S.B. 760) § 1, eff. Sept. 29, 2012.) Additionally, Welfare and Institutions Code section 6602, which provides for the assistance of counsel for the accused at the probable cause hearing, was also amended by the Legislature in 2012. (Stats.2012, ch. 24 (A.B. 1470) § 141, eff. June 27, 2012.) Finally, in 2012 the Legislature amended ten additional Welfare and Institutions Code sections pertaining to the SVPA – i.e., sections 6600, 6600.5, 6601, 6601.3, 6602, 6602.5, 6604, 6605, 6606, and 6608. (Stats.2012, ch. 24 (A.B. 1470) eff. June 27, 2012.)

The enactment of A.B. 1488, A.B. 1470, and S.B. 760 in 2012 pertaining to the SVPA result in a cost mandated by the state as defined by Government Code section 17514. The entire text of the sections amended by legislation in 2012, including the portions not amended, was reenacted by the Legislature pursuant to Article IV, section 9, of the California Constitution. The remainder of the SVPA sections that were not expressly included in the 2012 legislation are, nevertheless, necessary to implement the 2012 legislation under Government Code section 17556, subdivision (f), and therefore are mandated by statute and thus reimbursable under California Constitution Article XIII B, section 6. Therefore, Proposition 83 is no longer the statutory authority supporting the SVPA; consequently the cost incurred by local agencies to comply with the 2012 legislatively enacted SVPA is a cost mandated by the state.

Ms. Heather Halsey
March 18, 2013
Page 3

(2) Misrepresentation, Unclean Hands, and Estoppel Bar the DOF's Redetermination Request

In a letter dated September 2, 2005, addressed to the Honorable Bill Lockyer, California Attorney General, issued pursuant to Elections Code section 9005, authored by Elizabeth G. Hill, Director of the Legislative Analyst's Office (LAO) and Tom Campbell, Director of the DOF, the authors stated no less than four times Proposition 83 would not affect state reimbursement to counties:

"State SVP Program Net Costs. This measure is likely to result in an increase in state operating costs in the tens of millions of dollars annually to (1) conduct preliminary screenings of additional sex offenders referred to DMH by CDCR for an SVP commitment, (2) complete full evaluations by psychiatrists or psychologists to ascertain the mental condition of criminal offenders being further considered for an SVP commitment, (3) provide court testimony in SVP commitment proceedings, and (4) **reimburse counties for their costs for participation in the SVP commitment process.**" (*Id.*, at p. 4, Emphasis added.)

"Fiscal Impact on Local Governments. This measure would also likely have a significant, though unknown, net fiscal impact on county governments. Specifically, the provisions of this measure related to increased criminal penalties and GPS monitoring of sex offenders could result in additional savings and costs for counties. The provisions related to the SVP program could also result in county savings and costs, **with these costs subsequently being reimbursed by the state.**" (*Id.*, at p. 5, Emphasis added.)

"SVP Program. The provisions of this measure related to the SVP program could increase county costs. The additional SVP commitment petitions that are likely to result from this measure would increase costs for district attorneys and public defenders to handle these civil cases. Also, county jail operating costs would increase to the extent that offenders who have court decisions pending on their SVP cases were held in local jail facilities instead of state mental hospitals. **Counties would be reimbursed in full for all of these costs after they had filed and processed claims with the state.**" (*Id.*, at pp. 5-6, Emphasis added.)

"SUMMARY OF FISCAL EFFECT. . . [¶] Unknown but potentially significant net operating costs or savings to counties for jail, probation supervision, district attorneys, and public defenders. **The portion of costs related to changes in the Sexual Violent Predators program would be reimbursed by the state.**" (*Id.*, at p. 6, Emphasis added.)

Given the DOF's stated position that the passage of Proposition 83 would not affect state reimbursement to counties, the DOF has "unclean hands" and should be estopped from currently asserting the Sexually Violent Predator mandate (CSM-4509) is no longer a cost mandated by the state.

Ms. Heather Halsey
March 18, 2013
Page 4

The resulting financial analysis of Proposition 83 included in the voter materials for Proposition 83 was misleading. The LAO financial analysis failed to discuss any potential financial impact on mandates and resulting added costs to the counties. Specifically, the Analysis stated that the “fiscal effects” on “State and Local Governments” were only that “[t]here could be other savings to the extent that offenders imprisoned for longer periods require fewer government services, or commit fewer crimes that result in victim related government costs. Alternatively, there could be an offsetting loss of revenue to the extent that offenders serving longer prison terms would have become taxpaying citizens under current law. The extent and magnitude of these impacts is unknown.” (Voter Information Guide, Gen. Elect. (Nov. 7, 2006).)

Not only was the electorate misled by the foregoing analysis and the September 2, 2005, letter, so were local government officials. Had local government officials not been lulled into a false sense of security, it is reasonably probable they would have publically opposed Proposition 83 given the financial ramifications due to the loss of mandate monies now proposed by the DOF. It is also reasonably probable that the electorate would have rejected Proposition 83 due to the same concerns. Furthermore, the probability of defeat would have increased had the electorate been accurately apprised of what law they were voting to replace – i.e., S.B. 1128 and not the language included in the ballot proposition, as discussed in the next section.

(3) Proposition 83 did not effectuate a “Subsequent Change in the Law” as Contemplated by Government Code Section 17570

The DOF’s obscuration of Proposition 83 continues in its January 15, 2013 request for a redetermination of the SVP Mandate (CSM-4509). The request is misleading because the statutory language quoted from the SVPA by the DOF’s January 15, 2013, request, as well as that include in the actual proposition, was not the statutory language in effect at the time Proposition 83 was passed on November 7, 2006.

On August 31, 2006, the Legislature amended the SVPA in anticipation of Proposition 83. (Stats.2006, ch. 337 (S.B. 1128) § 62, eff. Sept. 20, 2006.) S.B. 1128 contained many of the same or substantially similar amendments to the SVPA as did Proposition 83, for example, providing for indeterminate commitments and expansion of the list of qualifying offenses. Therefore, Proposition 83 does not constitute a “subsequent change in the law” as contemplated by Government Code section 17570.

Had the electorate been informed of the true state of the law it is reasonably probably that Proposition 83 would have failed especially given the potential loss of mandate monies that would have to be absorbed on the local level. The only component relating to the SVPA that Proposition 83 promoted to the electorate was the imposition of indeterminate commitments, which was already the law under S.B. 1128.

Ms. Heather Halsey
March 18, 2013
Page 5

The “Findings and Declarations” in Section 2 of Proposition 83, subdivision (k), contains the only statement specifically pertaining to the SVPA, states “[t]he People find and declare each of the following:... (k) California is the only state, of the number of states that have enacted laws allowing involuntary civil commitments for persons identified as sexually violent predators, which does not provide for indeterminate commitments. California automatically allows for a jury trial every two years irrespective of whether there is any evidence to suggest or prove that the committed person is no longer a sexually violent predator. As such, this act allows California to protect the civil rights of those persons committed as a sexually violent predator while at the same time protect society and the system from unnecessary or frivolous jury trial actions where there is no competent evidence to suggest a change in the committed person.” (Voter Information Guide, Gen. Elect. (Nov. 7, 2006).)

Apart from the conversion of commitments under the SVPA from two years to indeterminate, Proposition 83’s Findings and Declarations readily demonstrate by its silence that the remaining changes to the Act were merely considered to be secondary, technical, and *de minimis*.

Significantly, Proposition 83 does not constitute a “subsequent change in the law” because the intent, purpose, and focus of the SVPA – i.e., protection of society from individuals convicted of sex offense and treatment – under the SVPA as originally enacted, S.B. 1128, and Proposition 83 are consistent. (Cf. *Hubbart v. Superior Court* (1999) 19 Cal.4th 1138 and *In re Lucas* (2012) 53 Cal.4th 839.)

Additionally, Proposition 83 also does not constitute a “subsequent change in the law” because in 2006 the SVPA contained 22 sections. Of those 22 sections, Proposition 83 only amended 7 of those sections. Thus, Proposition 83 left 15 sections intact, including Welfare and Institutions Code sections 6602 and 6603 pertaining to the right to counsel and right to obtain experts at the probable cause hearing and at trial. Of the 7 sections Proposition 83 amended, 5 sections were either identical or substantially similar to those enacted by S.B. 1128 – i.e., Welfare and Institutions Code sections 6601, 6604, 6604.1, 6605, and 6608. The remaining 2 section Proposition 83 amended contained relatively insignificant or technical changes.

Finally, Government Code 17570, subdivision (b), provides “[t]he commission may adopt a new test claim decision to supersede a previously adopted test claim decision only upon a showing that the state’s liability for that test claim decision. . . has been modified based on a subsequent change in the law.” In fact, the “state’s liability” for local costs associated with prosecuting cases filed under the SVPA has decreased. In its January 2010 Recommendations Report, the California Sex Offender Management Board found that while

Ms. Heather Halsey
March 18, 2013
Page 6

costs regarding the pre-filing intake process had significantly increased, the actual number of cases prosecuted under the SVPA decreased, “[t]wo years and eight months into the implementation of Proposition 83, the number of persons committed on average dropped from approximately 4 per month, to 3 per month.” (Id., at p. 61.)

(4) Government Code section 17570 Is Unconstitutional

In *California School Boards Ass’n v. State* (2009) 171 Cal.App.4th 1183 (*California School Boards*), the court struck down legislation (Stats.2005, ch. 72 (A.B. 138) §17b) directing the CSM to redetermine cases that were already final. It held “such direction exceeds the Legislature’s power” and violates the California Constitution’s separation of powers doctrine (Cal. Const., art. III, § 3). (Id., at p. 1189.) However, in dicta the court left open the question whether or not “[o]ver time, any particular decision of the Commission may be rendered obsolete by changes in the law and material circumstances that originally justified the Commission’s decision. While decisions of the Commission are not subject to collateral attack, logic may dictate that they must be subject to some procedure for modification after changes in the law or material circumstances. . . . We conclude that we need not decide this question.” (Id., at p. 1202.)

Subsequent to the decision in *California School Boards*, Government Code Section 17570 was enacted which permits “The commission may adopt a new test claim decision to supersede a previously adopted test claim decision only upon a showing that the state’s liability for that test claim decision pursuant to subdivision (a) of Section 6 of Article XIII B of the California Constitution has been modified based on a subsequent change in law.” (Stats.2010, ch. 719 (S.B. 856) § 33, eff. Oct. 19, 2010.)

The DOF under the apparent authority of the 2010 amendment to Government Code Section 17570, has requested the CSM to redetermine the Sexually Violent Predator mandate (CSM-4509). CPDA submits that the judicially untested Government Code Section 17570, violates the California Constitution’s separation of power doctrine and the decision in *California School Boards*. (Cal. Const., art. III, § 3; *California School Boards Ass’n v. State*, *supra*, 171 Cal.App.4th 1183.)

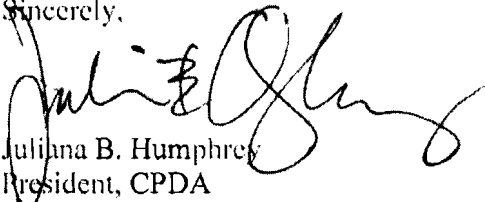
Lastly, the term “subsequent change in the law” as used in Government Code section 17570 is undefined. As a result, it is unconstitutionally vague and will result in arbitrary and capricious application. For example, does “subsequent change in the law” merely contemplate a change in punctuation, a changing of the law’s intent, or something in between in order to trigger the redetermination of an existing mandate?

Ms. Heather Halsey
March 18, 2013
Page 7

Conclusion

Based on the forgoing analysis, CPDA respectfully requests the CSM to deny the DOF's January 15, 2013, request for a redetermination of the June 25, 1988, the CSM's Statement of Decisions for the Sexually Violent Predator mandate (CSM-4509).

Sincerely,



Juliana B. Humphrey
President, CPDA

September 2, 2005

Hon. Bill Lockyer
 Attorney General
 1300 I Street, 17th Floor
 Sacramento, California 95814

Attention: Ms. Tricia Knight
 Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative cited as the "Sexual Predator Punishment and Control Act: Jessica's Law" (File No. SA2005RF0092).

PROPOSAL

The proposed initiative amends current law related to sex offenses. The measure would (1) increase penalties for some sex offenses, (2) require certain sex offenders to wear global positioning system (GPS) devices for life after release from prison, (3) limit where registered sex offenders can live, and (4) make more offenders subject to commitment to state mental hospitals as Sexually Violent Predators (SVPs). Each of these changes is described in more detail below.

Increase Penalties for Sex Offenses. Current law defines sex-related crimes and specifies the penalties for such offenses. This measure increases the penalties for specified sex offenses. It does this in several ways. In some cases, it broadens the definition of what constitutes certain sex offenses. In other cases, it increases existing penalties for specified sex offenses. In addition, the measure prohibits probation in lieu of prison for some sex offenses, eliminates the ability of some inmates convicted of certain sex offenses to earn early release credits, and extends parole for specified sex offenders. Each of these changes would result in longer prison and parole terms for the affected offenders. This measure would also impose additional fees (through an increase in an existing court-imposed fee and a new fee for parolees) for offenders who are required to register as sex offenders.

Require GPS Devices. Current law requires certain convicted sex offenders to register with local law enforcement officials. Under this measure, all individuals who

have been convicted and sent to prison for the commission of, or an attempt to commit, a felony sex offense that requires registration would be monitored by GPS devices for life. The Department of Corrections and Rehabilitation (CDCR) would be authorized to collect fees from affected sex offenders for the costs of GPS monitoring.

Limit Where Registered Sex Offenders May Live. Current law bars anyone convicted of specified sex offenses against a child from residing within one-quarter mile of an elementary or middle school while on parole. This measure would broaden this prohibition to bar any person required to register as a sex offender from living within 2,000 feet (about four-tenths of a mile) of any school or park. In addition, the measure authorizes local governments to further limit these residency restrictions.

Changes in SVP Laws. Under current law, an SVP is defined as “a person who has been convicted of a sexually violent offense against two or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent behavior.” Certain inmates who are completing their prison sentences are referred by CDCR to the Department of Mental Health (DMH) for screening and psychiatric evaluation to determine whether they meet the criteria for an SVP. Those offenders who meet the criteria are referred to district attorneys, who determine whether to pursue their commitment by the courts in a civil proceeding as an SVP. Offenders subject to SVP proceedings are often represented by public defenders. While these court proceedings are pending, an offender may be in prison. However, if his prison sentence has been completed, he may be housed either in a county jail or in a state mental hospital. Offenders designated as an SVP by the courts are committed to a state mental hospital for up to two years. An offender can be recommitted by the courts in subsequent court proceedings.

This measure would generally make more sex offenders eligible for an SVP commitment by (1) reducing from two to one the number of prior victims of sexually violent crimes needed to qualify as an offender for an SVP commitment, and (2) making additional prior offenses, such as certain crimes committed by a person while a juvenile, “countable” for purposes of an SVP commitment. Also, SVPs would receive an indeterminate commitment to a state mental hospital from a court rather than the renewable two-year commitment allowed for under existing law. In addition, the measure would change the standard that courts would consider for release of SVPs from a state mental hospital.

FISCAL EFFECT

This measure would have a number of significant fiscal effects on both state and county governments. The major fiscal effects are discussed below.

Fiscal Impact on the State

Net Prison Operating and Capital Outlay Costs. Several of this measure's provisions would likely result in a significant, though unknown, increase in prison operating costs due to increased prison population. In particular, the measure's provisions that increase sentences for sex offenders would result in some sex offenders being sentenced to and remaining in prison for longer periods, resulting in a greater prison population over time. In addition, the provisions requiring some parolees and other registered sex offenders to wear GPS devices could result in an increase in the number of offenders who are identified as (1) violating the conditions of their parole and therefore are returned to prison or (2) committing new crimes. An increase in parolee revocations would also result in an increase in revocation hearing workload. In addition, it is possible that in the longer term this measure could result in unknown, but potentially significant, additional capital outlay costs to accommodate the increase in the inmate population.

There could be some unknown, but potentially significant, offsetting savings in prison and revocation hearing costs to the extent that the GPS requirement reduces the likelihood that sex offenders commit new crimes or violations of parole that return offenders to prison.

As noted above, this measure would likely result in significant costs and some unknown, but potentially significant, savings. These savings are not likely to offset the costs.

Net Parole and Monitoring Costs. The initiative's provisions requiring GPS devices for some registered sex offenders for life—including additional parole staff to track offenders in the community—would likely result in an increase in state parole operating costs in the several tens of millions of dollars annually within a few years. These costs would grow to about \$100 million annually after ten years, with costs continuing to increase significantly in subsequent years. Because the measure does not specify whether the state or local governments would be responsible for monitoring sex offenders who have been discharged from state parole supervision, it is unclear the degree to which local governments would bear some of these long-term costs.

Also, the state may incur initial unknown costs to relocate parolees who currently would be in violation of the 2,000 foot restriction around schools and parks. The initiative could also result in significant, though unknown, parole supervision costs for increases in the parole population. These costs would occur to the extent that the potential deterrent effect of GPS monitoring keeps more parolees under parole supervision instead of being returned to prison for new crimes or violations of parole.

Taking both the costs and savings identified above into consideration, we believe that the SVP-related provisions of this measure could result in a net increase in state operating costs of at least \$100 million after a few years. It is also likely to result in net capital outlay costs within a few years in the low hundreds of millions of dollars.

Fiscal Impact on Court Operations. An increase in the number of DMH referrals to county district attorneys would result in increased court costs related to the commitment process. However, the measure would potentially result in court savings by eliminating recommitment hearings, since it allows for indeterminate commitments instead of the two-year recommitment process currently in place.

In addition, various provisions of this measure could increase or decrease court workload to the extent that they affect the number of sex offenders who are tried for new crimes. For example, the GPS requirements could result in more offenders being caught and tried for new offenses, thereby increasing court workload. On the other hand, to the extent that sex offenders are serving longer terms in prison and mental hospitals because of this measure, those individuals would not be in the community able to commit and be prosecuted for new crimes. Given the potential for these factors to offset each other, the net fiscal impact of this measure on state court costs is indeterminable.

Fiscal Impact on Local Governments

This measure would also likely have a significant, though unknown, net fiscal impact on county governments. Specifically, the provisions of this measure related to increased criminal penalties and GPS monitoring of sex offenders could result in additional savings and costs for counties. The provisions related to the SVP program could also result in county savings and costs, with these costs subsequently being reimbursed by the state.

Changes to Criminal Penalties and Supervision. The provisions of this measure that increase criminal penalties and require GPS monitoring of sex offenders could affect county jail, probation, district attorney, and public defender costs. Several provisions of this measure require stricter penalties for certain sex offenses, making it more likely that some offenders will be housed in state prisons and mental hospitals who would otherwise be in local jails or on probation under current law. To the extent that this occurs, local governments would likely experience some criminal justice system savings. The provisions regarding GPS tracking could affect local government expenditures due primarily to more offenders being prosecuted for crimes, thereby increasing costs.

SVP Program. The provisions of this measure related to the SVP program could increase county costs. The additional SVP commitment petitions that are likely to result

from this measure would increase costs for district attorneys and public defenders to handle these civil cases. Also, county jail operating costs would increase to the extent that offenders who have court decisions pending on their SVP cases were held in local jail facilities instead of state mental hospitals. Counties would be reimbursed in full for all of these costs after they had filed and processed claims with the state.

Finally, the provisions in this measure allowing for the indeterminate commitment of SVPs instead of the current two-year recommitment process could reduce county costs for SVP commitment proceedings and the claims that counties would file with the state for reimbursement of such costs.

SUMMARY OF FISCAL EFFECT

This measure would have the following net fiscal effects:

- Unknown net costs to the state, within a few years, potentially in the low hundreds of millions of dollars annually due primarily to increased state prison, parole supervision, and mental health program costs. These costs would grow significantly in the long term.
- Potential one-time state capital outlay costs, within a few years, in the low hundreds of millions of dollars for construction of additional state mental hospital and prison beds.
- Unknown but potentially significant net operating costs or savings to counties for jail, probation supervision, district attorneys, and public defenders. The portion of costs related to changes in the Sexual Violent Predators program would be reimbursed by the state.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Tom Campbell
Director of Finance

On the other hand, the measure could result in reductions in the parole population—and, therefore, parole supervision savings—to the extent that (1) the longer prison sentences and changes to the SVP law result in fewer releases of sex offenders to parole, and (2) the GPS requirement results in more parolees being returned to prison for new crimes or violations of parole.

The measure would result in additional fee revenues that would partially offset the monitoring costs. Specifically, the measure's provisions that (1) allow the department to collect fees from affected parolees and (2) require some of the increased court penalty fees to go to the department could provide as much as a few million dollars annually, depending in large part on offenders' ability to pay these costs.

The net fiscal impact on parole operations is likely to be increased costs of several tens of millions of dollars annually for the first few years, probably reaching at least \$100 million in about ten years, and increasing significantly thereafter.

State SVP Program Net Costs. This measure is likely to result in an increase in state operating costs in the tens of millions of dollars annually to (1) conduct preliminary screenings of additional sex offenders referred to DMH by CDCR for an SVP commitment, (2) complete full evaluations by psychiatrists or psychologists to ascertain the mental condition of criminal offenders being further considered for an SVP commitment, (3) provide court testimony in SVP commitment proceedings, and (4) reimburse counties for their costs for participation in the SVP commitment process.

This measure would result in increased commitments of SVPs to state mental hospitals. Also, some additional offenders who had completed their prison sentences would be held in state mental hospitals while the courts considered whether they should receive an SVP commitment. The resulting net costs to the state for operating these additional state mental hospital beds could eventually reach \$100 million annually after a few years and would continue to grow significantly thereafter. In addition, this measure could result in one-time net capital outlay costs amounting to the low hundreds of millions of dollars for the construction of additional state hospital beds for SVPs.

All of these operating and capital outlay costs would be partly offset in the long term, to the extent that the longer prison sentences required by this measure for certain crimes eventually resulted in fewer SVP referrals and commitments to state mental hospitals. These offsetting savings are unknown but are likely to be significant in the long term. In addition, the state is likely to save on the costs of evaluations and court testimony related to recommitments because of the provisions in this measure that would impose indeterminate commitments for persons found to be SVPs. These state savings would probably be more than \$1 million annually.

March 27, 2013
Commission on
State Mandates



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March 27, 2013

Ms. Heather Halsey
Executive Director
California Commission on State Mandates
900 Ninth Street, Suite 300
Sacramento, CA 95814

Re: County of San Diego's Comments to Request to Adopt a New Test Claim
Mandate Redetermination Request 12-MR-01
Sexually Violent Predators, (CSM 4509)
Welfare and Institutions Code Sections 6601 through 6608
Statutes 1995, Chapter 762; Statutes 1995, Chapter 763;
Statutes 1996, Chapter 4
Requestor: California Department of Finance

Dear Ms. Halsey:

The County of San Diego, on behalf of the San Diego County Office of the Public Defender, the San Diego District Attorney's Office and the San Diego County Sheriff (collectively referred to as the "County"), hereby submits the following comments in opposition to the Department of Finance's Request to Adopt a New Test Claim filed with the commission on January 15, 2013.

Introduction

In 1998, the commission found that the California Constitution requires the state to reimburse local entities for performing certain activities set forth in Welfare & Institutions Code ("W&I"). ("SVP Mandate"; Statement of Decision ("SOD"), Case No. CSM – 4509, June 25, 1998.) The Department of Finance ("DOF") now asks the commission to set aside its prior test claim decision because the adoption of Proposition 83 in 2006 ("Jessica's Law") constituted a subsequent change in the law, as defined in

Government Code¹ section 17570(a)(2), that eliminated the state's constitutional obligation to reimburse local entities pursuant to Section 17556(f).

The DOF's Request to Adopt a New Test Claim Decision ("DOF's Request") should be denied for any one of the following reasons:

1. The DOF's Request ignores the fact that Jessica's Law did not make any changes material to the relevant statutes as they existed immediately before the adoption of Jessica's Law and in fact did not even reenact substantial portions of the operative legislation that created the mandate.
2. The DOF's Request ignores the fact that in 2012 the Legislature reenacted all of the relevant W&I Code provisions that contain the mandated activities with only minor immaterial changes and that this legislation supersedes any effects that Jessica's Law may have had on the state's obligation to reimburse local entities for the mandated activities.
3. The DOF's Request is based on the unconstitutionally broad language in Section 17556(f) that impermissibly directs the commission to apply the ballot measure exception to previously enacted legislation that the commission previously found to contain constitutionally mandated activities.
4. The DOF's Request relies on the unconstitutionally broad definition of what constitutes a "subsequent change in the law" set forth in Section 17570 that would convert all legislation previously found to contain reimbursable activities to non-reimbursable activities simply by reason of the inclusion of such legislation in a ballot measure, regardless of whether the ballot measure actually "modifies" existing law.

Statement of Applicable Law

In *California School Boards Assn. v. State*, 171 Cal. App. 4th 1183 (2009), the Court found provisions in Legislation enacted in 2005 directing the commission to set aside and reconsider previously approved test claim decisions to be unconstitutional in violation of the separation of powers clause contained in the California Constitution. *Id.* at 1199. In response to this decision, the Legislature enacted Section 17570 (Stats. 2010, c. 719 (SB 856), § 33, eff. Oct. 19, 2010) that gave the commission the authority, under

¹ Unless otherwise noted all references are to the Government Code.

certain circumstances, to “adopt a new test claim decision to supersede a previously adopted test claim decision.” Section 17570(b).

Pursuant to Section 17570(b), the commission can only adopt a new test claim decision upon a showing that the state’s liability for that test claim under the Constitution “has been modified based on a subsequent change in the law.” The DOF has the burden to identify “... a subsequent change in law ... *material to the prior test claim decision* that may modify the state’s liability pursuant to Article XIII B, section 6, subdivision (a) of the California Constitution.” Cal. Code Regs. tit. 2, § 1190.05(a)(1), emphasis added.

The Legislature has further defined a “subsequent change in the law” to include “a change in law that requires a finding that an incurred cost ... is not a cost mandated by the state pursuant to Section 17556....” Section 17570(a)(2). As originally enacted, Section 17556 provided that costs incurred by local entities are not reimbursable if, among other things, a statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election. Stats. 1984, ch. 1459, § 1, pp. 5118, 5119; former Gov’t Code § 17556, subs. (a)(3) & (a)(6). In 2005, the Legislature amended Section 17556(f) with respect to ballot measure mandates to provide that costs are not reimbursable if “[t]he statute or executive order imposes duties that *are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election.*” Stats. 2005, ch. 72, § 7; Emphasis added for new statutory language. At that time, the Legislature also added a last sentence to Section 17556(f) that provides: “*This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.*” *Id.*; Emphasis added. In *California School Boards Assn. v. State*, 171 Cal. App. 4th 1183, the Court found the language “... reasonably within the scope of ...” to be unconstitutional because it was inconsistent with article XIII B, section 6 of the California Constitution (*Id.* at 1215-1216) but declined to determine the validity of the last sentence of Section 17556(f). *Id.* at 1217, fn. 11.

Jessica’s Law did not Change the Statutes Material to the Prior Test Claim

The DOF’s Request identifies the provisions in the W&I Code sections that contain the mandated activities the commission found to be reimbursable. When the changes to the relevant W&I Code sections imposed by Jessica’s Law are compared to the statutory law as it existed immediately before the adoption of Jessica’s Law², it

² The Legislature enacted SB 1128 as urgency legislation effective September 20, 2006, before the adoption of Jessica’s Law, which was effective November 8, 2006. The

becomes evident that Jessica's Law did not make any material changes to the provisions of the W&I Code sections that were previously found to contain mandated reimbursable activities. (See Attachment "A".) In fact, Jessica's Law did not even reenact W&I Code section 6602 or section 6603, which contain most of the activities that were found to be reimbursable mandated activities. A summary of the comparison between the statutory provisions containing the mandated activities as it existed immediately before Jessica's Law and the changes enacted by Jessica's Law is as follows:

W&I Code section 6601(i) – No change³.

W&I Code section 6601(j)⁴ – No change.

W&I Code section 6602 – Not included in and not reenacted by either SB 1128 or Jessica's Law.

W&I Code section 6603 – Not included in and not reenacted by either SB 1128 or Jessica's Law.

W&I Code section 6604 – No material change. The change in the commitment

DOF's Request ignores the changes made to existing law by reason of the enactment of SB 1128, and instead chooses to compare the law as it existed before SB 1128 to the law after the adoption of Jessica's Law. This comparison is misleading. As with Jessica's Law, nearly all of the changes in the law enacted by SB 1128 related to changes in the Penal Code that expanded the scope and number of crimes that would fall under the category of a sexually violent offense. As detailed in Attachment "A" to these comments, SB 1128 and Jessica's Law only made minor changes to a few of the code sections containing the mandated activities.

³ California Constitution article IV, section 9 provides that a statute cannot be amended unless the entire section is reenacted as amended. Jessica's Law did make minor changes to other subdivisions of W&I section 6601, as well as to other non-relevant subdivisions contained in W&I section 6605 and section 6608, which necessitated the reenactment of the entire sections. This can explain why W&I sections 6601(i), 6605(c), 6605(d), 6608(b), 6608(c) and 6608(d) were included in Jessica's Law even though no changes were made in existing law.

⁴ As noted by the DOF in its Request to Adopt a New Test Claim Decision at page 1, reference to subdivision (j) in the SOD and Ps&Gs is likely a typographical error. The reference should most likely be to subdivision (i).

period from two-years to “an indeterminate term” was made by SB 1128 that was enacted as urgency legislation effective September 20, 2006, prior to the adoption of Jessica’s Law. The other changes deleted extraneous language made irrelevant by the change in the commitment period to an indeterminate term.

W&I Code section 6605(b) – Changes only relate to the findings that the State Department of Mental Health must make before its Director will authorize SVP’s “to petition the court for conditional release to a less restrictive alternative or for an unconditional release.”

W&I Code section 6605(c) – No change.

W&I Code section 6605(d) – No change.

W&I Code section 6608(a) – Made one simple change in the first sentence. That sentence previously read: “Nothing in this article shall prohibit the [SVP] from petitioning the court for conditional release *and subsequent* unconditional discharge” (Emphasis added.) That sentence was amended to read ... “from petitioning the court for conditional release *or* unconditional discharge” (Emphasis added.)

W&I Code section 6608(b) – No change.

W&I Code section 6608(c) – No change.

W&I Code section 6608(d) – No change.

As noted above, Jessica’s Law did not reenact W&I Code section 6602 or section 6603. Those sections contain the bulk of the activities for which local entities are entitled to reimbursement. These activities include:

Activity 4 – Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. W&I Code § 6602.

Activity 5 – Preparation and attendance by the county’s designated counsel and indigent defense counsel at trial. W&I Code § 6603 and § 6604.

Activity 7 – Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. W& I Code § 6603 and § 6605(d).

Activity 8 – Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. W&I Code § 6602.

The DOF argues that these activities are no longer reimbursable because they were “necessary to implement” Jessica’s Law and therefore fall under the exception contained in Section 17556(f). This argument fails for two reasons. First, as noted, Jessica’s Law did not make any changes in the mandated activities. Therefore there was nothing new that needed to be implemented. Second, W&I sections 6602 and 6603 were enacted as part of the original SVP legislation and were already in effect. The reenactment of these code sections was not necessary to implement the provisions of Jessica’s Law because they already existed.

The commission can only set aside a prior test claim decision and adopt a new one upon a showing that the state’s liability “has been modified based on a subsequent change in the law.” Section 17570(b). The regulations require a showing of a “substantial possibility of prevailing” on the merits. As set forth above, because there has been no subsequent change in the law since the commission made its original findings, the DOF cannot demonstrate that the state’s liability has been modified. The DOF has not demonstrated a “substantial possibility of prevailing” on the merits and its request should be denied.

Reenactment of the Relevant W&I Code Sections Containing the Mandated Activities by the Legislature in 2012 Supersedes any Possible Adverse Consequences by the Inclusion of these Provisions in Jessica’s Law

In 2012, the Legislature amended the relevant W&I Code sections containing the mandated activities. (Stats. 2012, ch. 24; Stats 2012, ch. 440; and Stats 2012, ch. 790.) Notwithstanding that the changes were primarily administrative and in no way changed the mandated activities (just as was the case with Jessica’s Law), as required by Article IV, section 9 of the California Constitution, the entire text of the relevant sections was reenacted by the Legislature.

Even if one were to accept the DOF’s argument that the adoption of Jessica’s Law relieved the state of its obligation to reimburse local entities for the mandated activities pursuant to Section 17556(f), the 2012 legislation is now the operative legislation and supersedes any adverse consequences of the inclusion of these provisions in Jessica’s Law. As, such, the mandated activities continue to be “mandated by the state” and continue to be reimbursable.

The Application of the Ballot Measure Exception Contained in Section 17556(f) to Statutes Previously Found to Contain Activities for Which the Constitution Requires Reimbursement is Unconstitutional

The purpose of section 6 of Article XIII B “is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.” *County of San Diego v. State of California*, 15 Cal.4th 68, 81 (1997); *County of Fresno v. State*, 53 Cal.3d 482, 487 (1991). Section 6 “was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues.” *Id*; *Redevelopment Agency v. Commission on State Mandates*, 55 Cal. App. 4th 976, 984-85 (1997).

When the commission adopted its original test claim decision, it properly concluded that the provisions of W&I Code sections 6601 – 6608 imposed a new program or higher level of service upon local entities and that the state was constitutionally required to provide a subvention of funds to reimburse local entities for the costs incurred in providing those services. (SOD, CSM – 4509, page 12; Article XIII B, section 6.) That decision has been final for nearly 15 years and as noted by the DOF, reimbursements to local entities for fiscal year 2010-2011 exceeded \$20.75 million and are budgeted to exceed \$21.75 million for fiscal year 2013-2014. (DOF’s Request, page 6.)

When the Legislature amended Section 17556(f) in 2005, it expressly made the ballot measure exception applicable “regardless of whether the statute ... was enacted ... before or after the date on which the ballot measure was approved by the voters.” In so doing, the Legislature was attempting to subvert the purpose of Article XIII B, section 6, by allowing the state to shift the financial responsibility for carrying out mandated activities that the commission had previously found to be the obligation of the state, to local entities.

The County agrees that legislation enacted pursuant to a ballot measure that imposes new obligations or modifies existing obligations on local entities are not reimbursable mandates imposed by the state to the extent of such new obligations or the modifications increase existing obligations. The County also agrees that legislation enacted subsequent to the adoption of a ballot measure by the voters that is necessary to implement the provisions of the ballot measure, should also not be reimbursable.

The County does not agree with the state's unconstitutional attempt to destroy local entities' constitutional right to reimbursement by legislative fiat. Because Section 17556(f) purports to apply to activities that were found by the commission to be reimbursable mandates pursuant to Article XIII B, Section 6, before the adoption of the ballot measure, the application of Section 17556(f) to the facts of this case, would violate the purpose of section 6 and is therefore unconstitutional.

The Legislature's Definition of "Subsequent Change in the Law" Violates Article XIII B, Section 6 of the California Constitution

Similarly, the definition of what constitutes a "subsequent change in the law" as set forth in Section 17570 is overbroad and, as applied in this case, violates the purpose of Article XIII B, Section 6.

Section 17570 requires a showing that the state's constitutionally mandated obligation to reimburse local entities "has been modified based on a subsequent change in the law." The definition of what constitutes a subsequent change requires a finding that an incurred cost "is not a cost mandated by the state pursuant to Section 17556." As discussed above, the exception relied upon by the DOF is the ballot measure exception contained in Section 17556(f).

Not only would the application of the exception contained in Section 17556(f) to previously existing mandates violate Article XIII, Section 6, so would its application to statutory provisions contained in ballot measures that make no substantive changes to existing law, but are merely included in the ballot measure in order to comply with Article IV, Section 9. The consequences of such an interpretation would render the provisions in Section 17570 requiring an actual change in the law superfluous and usurp the commission's ability to exercise its judicial discretion in making the factual finding that there has been a subsequent change in the law.

The inclusion of statutory provisions, the language of which have not been changed, within the definition of what constitutes a subsequent change in the law simply because the statutory provisions are included in a ballot measure in compliance with Article IV, Section 9, violates the purpose of Article XIII, Section 6, by allowing the state to shift to local entities what were previously found by the commission to be reimbursable costs.

Conclusion

The commission can only adopt a new test claim decision upon a showing that the state's liability for that test claim under the Constitution "has been modified based on a subsequent change in the law." The DOF has failed to meet its burden of proof by demonstrating the existence of "... a subsequent change in law ... *material to the prior test claim decision* that" modified the state's liability pursuant to Article XIII B, Section 6. In addition, the referenced language in Sections 17556(f) and 17570, as applied in this case, violate the purpose of Article XIII B, Section 6, and are therefore unconstitutional. For the foregoing reasons, the DOF's Request should be denied.

Declaration

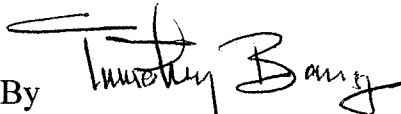
I, Timothy Barry declare that I am employed as a Senior Deputy County Counsel for the County of San Diego; that I am familiar with the facts and issues presented in this matter; and that I am authorized to make this declaration on behalf of the County of San Diego.

I further certify under penalty of perjury that the facts set forth in the foregoing comments and the attachment hereto are true and correct to the best of my own knowledge except as to matters stated on information and belief and as to those matters, I believe them to be true.

Executed this 27th day of March, in San Diego, California.

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By 

TIMOTHY BARRY, Senior Deputy

TMB:nb

13-90066

cc: Ms. Laura Arnold, Deputy Public Defender (C277)
Mr. John Rice, Deputy District Attorney (D447)
Mr. Ronald Lane, Deputy CAO, Public Safety Group (A65)
Ms. Tracy Sandoval, Deputy CAO, Auditor & Controller (A6)

Welfare and Institutions Code Sections Containing Mandated Activities as they existed before SB 1128 and Jessica's Law	Welfare and Institutions Code Sections Containing Mandated Activities as amended by SB 1128	Welfare and Institutions Code Sections Containing Mandated Activities as amended by Jessica's Law:
<p>6601. (a) ...</p> <p>(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections. The petition shall be filed, and the proceedings shall be handled, by either the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.</p> <p>(j) The time limits set forth in this section shall not apply during the first year that this article is operative.</p> <p>6602. (a) A judge of the superior court shall review the petition and shall determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. The person named in the petition shall be entitled to assistance of counsel at the probable cause hearing. Upon the commencement of the probable cause hearing, the person shall remain in custody pending the completion of the probable cause hearing. If the judge determines there is not probable cause, he or she shall dismiss the petition and any person subject to parole shall report to parole. If the judge determines that there is probable cause, the judge shall order that the person remain in custody in a secure facility until a trial is completed and shall order that a trial be conducted to determine whether the person is, by reason of a diagnosed mental disorder, a danger to the health and safety of others in that the person is likely to engage in acts of sexual violence upon his or her release from the jurisdiction of the Department of Corrections or other secure facility.</p> <p>(b) The probable cause hearing shall not be continued except upon a showing of good cause by the party requesting the continuance.</p> <p>(c) The court shall notify the State Department of Mental Health of the outcome of the probable cause hearing by forwarding to the department a copy of the minute order of the court within 15 days of the decision.</p> <p>6603. (a) A person subject to this article shall be entitled to a trial by jury, to the assistance of counsel, to the right to retain experts or</p>	<p>6601. (a) ...</p> <p>(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections and Rehabilitation. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.</p> <p>(j) No Change</p> <p>6602. Not Included - No Change</p>	<p>6601. (a) ...</p> <p>(i) No Change</p> <p>(j) No Change</p> <p>6602. Not Included - No Change</p> <p>6603. Not Included - No Change</p>

Welfare and Institutions Code Sections Containing Mandated Activities as they existed before SB 1128 and Jessica's Law	Welfare and Institutions Code Sections Containing Mandated Activities as amended by SB 1128	Welfare and Institutions Code Sections Containing Mandated Activities as amended by Jessica's Law:
<p>professional persons to perform an examination on his or her behalf, and to have access to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall appoint counsel to assist him or her, and, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf. Any right that may exist under this section to request DNA testing on prior cases shall be made in conformity with Section 1405 of the Penal Code.</p> <p>(b) The attorney petitioning for commitment under this article shall have the right to demand that the trial be before a jury.</p> <p>(c) (1) If the attorney petitioning for commitment under this article determines that updated evaluations are necessary in order to properly present the case for commitment, the attorney may request the State Department of Mental Health to perform updated evaluations. If one or more of the original evaluators is no longer available to testify for the petitioner in court proceedings, the attorney petitioning for commitment under this article may request the State Department of Mental Health to perform replacement evaluations. When a request is made for updated or replacement evaluations, the State Department of Mental Health shall perform the requested evaluations and forward them to the petitioning attorney and to the counsel for the person subject to this article. However, updated or replacement evaluations shall not be performed except as necessary to update one or more of the original evaluations or to replace the evaluation of an evaluator who is no longer available to testify for the petitioner in court proceedings. These updated or replacement evaluations shall include review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated, either voluntarily or by court order. If an updated or replacement evaluation results in a split opinion as to whether the person subject to this article meets the criteria for commitment, the State Department of Mental Health shall conduct two additional evaluations in accordance with subdivision (f) of Section 6601.</p> <p>(2) For purposes of this subdivision, "no longer available to testify for the petitioner in court proceedings" means that the evaluator is no longer authorized by the Director of Mental Health to perform evaluations regarding sexually violent predators as a result of any of the following:</p> <p>(A) The evaluator has failed to adhere to the protocol of the State Department of Mental Health.</p> <p>(B) The evaluator's license has been suspended or revoked.</p> <p>(C) The evaluator is unavailable pursuant to Section 240 of the Evidence Code.</p> <p>(d) Nothing in this section shall prevent the defense from</p>		

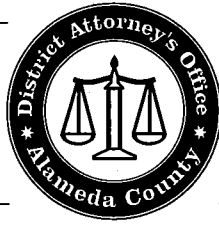
<p>Welfare and Institutions Code Sections Containing Mandated Activities as they existed before SB 1128 and Jessica's Law</p> <p>presenting otherwise relevant and admissible evidence.</p> <p>(e) If the person subject to this article or the petitioning attorney does not demand a jury trial, the trial shall be before the court without a jury.</p> <p>(f) A unanimous verdict shall be required in any jury trial.</p> <p>(g) The court shall notify the State Department of Mental Health of the outcome of the trial by forwarding to the department a copy of the minute order of the court within 72 hours of the decision.</p> <p>(h) Nothing in this section shall limit any legal or equitable right that a person may have to request DNA testing.</p>	<p>Welfare and Institutions Code Sections Containing Mandated Activities as amended by SB 1128</p>	<p>Welfare and Institutions Code Sections Containing Mandated Activities as amended by Jessica's Law:</p>
<p>6604.</p> <p>The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for a two-year term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health and the person shall not be kept in custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a petition for extended commitment under this article or unless the term of commitment changes pursuant to subdivision (c) of Section 6605. Time spent on conditional release shall not count toward the term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the term of commitment. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.</p>	<p>6604.</p> <p>The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for a two-year <i>indefinite</i> term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health and the person shall not be kept in actual custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a petition for extended commitment under this article or unless the term of commitment changes pursuant to subdivision (c) of Section 6605. Time spent on conditional release shall not count toward the term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the term of commitment. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections and Rehabilitation.</p>	<p>6604.</p> <p>The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for a two-year <i>indefinite</i> term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health, and the person shall not be kept in actual custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a petition for extended commitment under this article or unless the term of commitment changes pursuant to subdivision (c) of Section 6605. Time spent on conditional release shall not count toward the term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the term of commitment. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.</p>
<p>6605.</p> <p>(a) ...</p> <p>(b) The director shall provide the committed person with an annual written notice of his or her right to petition the court for conditional release under Section 6608. The notice shall contain a waiver of rights. The director shall forward the notice and waiver to the court with the annual report. If the person does not affirmatively waive his or her right to petition the court for</p>	<p>6605.</p> <p>(a) ...</p> <p>(b) No Change</p>	<p>6605.</p> <p>(a) ...</p> <p>(b) The director shall provide the committed person with an annual written notice of his or her right to petition the court for conditional release under Section 6608. The notice shall contain a waiver of rights. The director shall forward the notice and waiver to the court with the annual report. If the person does not affirmatively waive his or her right to petition the court for</p>

Welfare and Institutions Code Sections Containing Mandated Activities as they existed before SB 1128 and Jessica's Law	Welfare and Institutions Code Sections Containing Mandated Activities as amended by SB 1128	Welfare and Institutions Code Sections Containing Mandated Activities as amended by Jessica's Law:
<p>conditional release, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she would not be a danger to the health and safety of others if discharged. The committed person shall have the right to be present and to have an attorney represent him or her at the show cause hearing.</p> <p>(c) If the court at the show cause hearing determines that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, then the court shall set a hearing on the issue.</p> <p>(d) At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (1) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged. The committed person's failure to engage in treatment shall be considered evidence that his or her condition has not changed, for purposes of any court instructed. Completion of treatment programs shall be a condition of release.</p>	<p>(c) No Change</p> <p>(d) No Change</p>	<p>court for conditional release, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she would not be a danger to the health and safety of others if discharged. The committed person shall have the right to be present and to have an attorney represent him or her at the show cause hearing. If the Department of Mental Health determines that either: (1) the person's condition has so changed that the person no longer meets the definition of a sexually violent predator, or (2) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the director shall authorize the person to petition the court for conditional release to a less restrictive alternative or for an unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall order a show cause hearing at which the court can consider the petition and any accompanying documentation provided by the medical director, the prosecuting attorney or the committed person.</p> <p>(c) No Change</p> <p>(d) No Change</p>

Welfare and Institutions Code Sections Containing Mandated Activities as they existed before SB 1128 and Jessica's Law	Welfare and Institutions Code Sections Containing Mandated Activities as amended by SB 1128	Welfare and Institutions Code Sections Containing Mandated Activities as amended by Jessica's Law:
<p>6608.</p> <p>(a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release and subsequent unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel.</p> <p>(b) The court shall give notice of the hearing date to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed person and the Director of Mental Health at least 15 court days before the hearing date.</p> <p>(c) No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.</p> <p>(d) The court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from</p>	<p>6608. Not Included - No Change</p>	<p>6608.</p> <p>(a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release and subsequent or an unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel.</p> <p>(b) No Change</p> <p>(c) No Change</p> <p>(d) No Change</p>

Welfare and Institutions Code Sections Containing Mandated Activities as they existed before SB 1128 and Jessica's Law	Welfare and Institutions Code Sections Containing Mandated Activities as amended by SB 1128	Welfare and Institutions Code Sections Containing Mandated Activities as amended by Jessica's Law:
<p>commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.</p> <p>(c)</p>		<p>(e)</p>

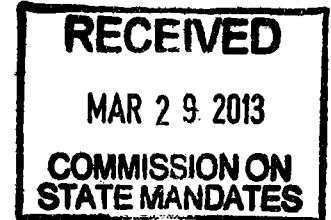
Office of the District Attorney
Alameda County
Nancy E. O'Malley, District Attorney



Rene C. Davidson Courthouse
1225 Fallon Street, Suite 900
Oakland, CA 94612

March 26, 2013

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



Re: 12-MR-01 - Sexually Violent Predators (CSM-4509)

Dear Commissioners:

As District Attorney of Alameda County, I am writing to express my objection to the Department of Finance's request to adopt a new test claim effectively ending state-mandated reimbursement for county services under the Sexually Violent Predators Act (Welfare and Institutions Code sections 6600, et seq.).

The Mandate

The Sexually Violent Predators Act ("SVPA") established a framework for the civil commitment of persons adjudged to be sexually violent predators under the law. The SVPA was created by the Legislature in 1995 and became law on January 25, 1996. Because the SVPA was a mandated program enacted on or after January 1, 1975 that increased costs to local government, the State was, and is, required to reimburse local government for those services pursuant to section 6 of Article XIII B of the California Constitution and California Government Code sections 17510 et seq.

The SVPA places clear duties on county prosecutors. Specifically, Welfare and Institutions Code sections 6601(h) and (i) provide:

- (h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.
- (i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court for the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections and Rehabilitation. *The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. (Emphasis added).*

The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

My office performs this state-mandated function for Alameda County. Pursuant to long-established California law, my office submits annual claims for reimbursement to the State for these services and has received reimbursement.

The Department of Finance contends that Proposition 83 – a ballot initiative passed by the voters in November 2006 that made very limited enhancements to the SVPA – removed the SVPA in its entirety from the mandatory reimbursement requirements of State Constitution. I disagree.

Proposition 83 –Jessica’s Law

What did Proposition 83 do? At the time Proposition 83 was passed, the SVPA consisted of twenty-one sections, all part of the Welfare and Institutions Code. Of those twenty-one sections, fourteen were completely untouched by Proposition 83. Most notably, Welfare and Institution Code sections 6601(h) and (i) – the very sections that created the mandate in the first place – were not changed in any way. The following list summarizes the changes to the SVPA as a direct result of Proposition 83:

Section 6600:

- * Changed the definition of a “Sexually Violent Predator” to include persons with as little as one “sexually violent offense” qualifying conviction;
- * Changed the definition of “conviction of a sexually violent offense” to include juvenile proceedings that resulted in commitments to the California Youth Authority and convictions resulting in an indeterminate prison term;
- * Changed the definition of “sexually violent offense” to include offenses inexplicably omitted in the SVPA, including the aggravated sexual assault of a child; continuous sexual abuse of a child; kidnapping with intent to commit a sexual offense and sexual offenses committed in the course of a residential burglary.
- * Expanded the force/fear elements necessary for a “sexually violent offense” to include threats to retaliate against the victim or another in the future.

Section 6600.1:

- * Eliminated the requirement that a “sexually violent offense” involving a victim under the age of 14 involve “substantial sexual contact” in addition to force or fear.

Section 6601:

* Provided that a civil placement pursuant to the SVPA would toll the term of parole of a person otherwise subject to parole.

6601.3: Unchanged.

6601.5: Unchanged.

6602: Unchanged.

6602.5: Unchanged.

6603: Unchanged.

6604:

* Changed the previous two-year term of commitment under the SVPA to an indeterminate term of commitment – *thereby potentially saving the State millions of dollars in court expenses.*

6604.1:

* Eliminated wording related to prior two-year commitments and substituted wording related to indeterminate term of commitment.

6605:

* Made changes to the yearly evaluation of SVPs by the Department of Mental Health -based on the new indeterminate commitments - and changed procedures to petition for release or discharge of a previously committed SVP.

6606: Unchanged.

6607: Unchanged.

6608:

* Changed “petitions for conditional release and subsequent unconditional discharge” to “petitions for conditional release or an unconditional discharge”.

6608.5: Unchanged.

6608.7: Unchanged.

6609: Unchanged.

6609.1: Unchanged.

6609.2: Unchanged.

6609.3: Unchanged.

Those are the very limited changes to the SVPA as a result of Proposition 83. No where in that list is any change to the fundamental duty that the Legislature placed on the counties in its original SVPA to receive the requests for commitment from the State's Director of Mental Health, to review them and to pursue them in the superior courts. That obligation remains unchanged by Proposition 83.

I also think it important to understand what Proposition 83 did not do.

What Proposition 83 did NOT do

- * SVPA established procedures for screening and evaluation of potential SVPs.
Prop. 83 did not change this.
- * SVPA established a procedure whereby the State Director of Mental Health could refer requests for civil commitments of SVPs to the counties and where the District Attorney or County Counsel for those counties would file petitions in the superior courts and conduct proceedings to obtain the civil commitments.
Prop. 83 did not change this.
- * SVPA established the procedures for the judicial adjudication of petitions to commit SVPs.
Prop. 83 did not change this.

Government Code Section 17556(f)

The Department of Finance relies on Government Code section 17556(f) in support of its request for a new test claim. That section provides, in pertinent part:

The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds any one of the following:

- (f) The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

The Department of Finance observes that Proposition 83 was a ballot measure approved by the voters that "expressly included" portions of the SVPA. Accordingly, the Department interprets section 17556(f) to now require removal of the SVPA from the reimbursement requirement of Article XIII B, section 6. This cannot be the correct interpretation of section 17556(f).

As noted above, Proposition 83 did not change the original intent or purpose of the SVPA. Neither did it change the obligations and duties imposed upon the counties, and county prosecutors in particular. The specific changes to the SVPA were minor. In the end, the electorate gave us a clearer, more efficient, and ultimately more cost-effective way of handling the civil commitments of SVPs. To now penalize the counties and strip them of reimbursement is contrary to public policy and common sense.

If the Commission accepts the Department's interpretation of section 17556(f), then any time the voters of this State act to clarify a law with mandated reimbursement, regardless of the voters' intent or the scope of the proposed change, all local reimbursement would automatically terminate. That is an absurd result. It would chill good government and create a conflict for counties between supporting an appropriate ballot initiative or forfeiting reimbursement.

Laches and Estoppel

The Department of Finance request for a new test claim, filed some six and one-half years after the passage of Proposition 83, is untimely and should be rejected on common law principles of laches and estoppel.

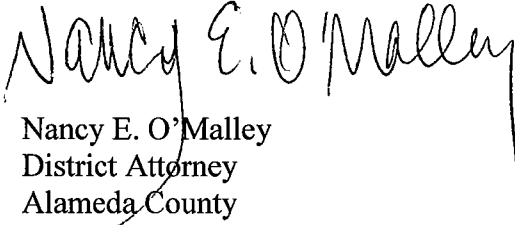
The State has continued to treat the SVPA as a reimbursable mandate for the six and one-half years since Proposition 83 was passed. During that time, my office has performed its obligations under the SVPA without exception. We have allocated personnel and resources to these proceedings, invested in the training and expertise of our prosecutors and incurred expenses to provide for their continuing education. We have done so in good faith and in detrimental reliance on the earlier decisions of this Commission and the promise of eventual reimbursement by the State.

That expectation of reimbursement was bolstered by the actions of the Commission, the Legislature and Governors Schwarzenegger and Brown over the last six and one-half years. Although many mandates were suspended, set aside or even cancelled during that time, reimbursement to county prosecutors for their efforts in furtherance of the SVPA has not faltered. The counties have continued to perform these mandates and the State has reimbursed us. Even the State's current budget includes appropriations for these expenses. All of these factors directly contradict the Department of Finance's position that Proposition 83 created a change in the state mandate and act as an estoppel against a new test claim.

Finally, I note that this Commission's January 24, 2013 hearing notice indicates reimbursement or loss of reimbursement would be decided for fiscal year 2011-2012. I object to that. As noted above, my office continues to incur expenses to meet our mandated obligations under the SVPA. We have done so in reliance on the previous decisions of this Commission and with expectation of eventual reimbursement from the State. If this Commission does ultimately decide a new test claim that terminates reimbursement for these same expenses, such a decision should be prospective only.

In conclusion, and for the reasons stated above, I urge the Commission to determine that there is no legal basis to adopt the application for a new test claim.

Respectfully submitted,



Nancy E. O'Malley
District Attorney
Alameda County

Hearing Date: July 26, 2013

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ITEM __
MANDATE REDETERMINATION
FIRST HEARING: ADEQUATE SHOWING
DRAFT STAFF ANALYSIS AND
PROPOSED STATEMENT OF DECISION

Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608

Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888);
 Statutes 1996, Chapter 4 (AB 1496)

Sexually Violent Predators, (CSM-4509)

As Alleged to be Modified by:

Proposition 83, General Election, November 7, 2006

12-MR-01

Department of Finance, Requester

Attached is the draft proposed statement of decision for this matter. This Executive Summary and the draft proposed statement of decision also function as the draft staff analysis, as required by section 1190.05 of the Commission's regulations.

EXECUTIVE SUMMARY

Overview

On June 25, 1998, the Commission adopted a statement of decision approving reimbursement for the *Sexually Violent Predators* (SVP) program, CSM-4509, which established civil commitment procedures for the civil detention and treatment of sexually violent predators following completion of the individual's criminal sentence for certain sex-related offenses. Before civil detention and treatment are imposed, the county attorney is required to file a petition for civil commitment. A trial is then conducted to determine beyond a reasonable doubt if the person is a sexually violent predator. If the person alleged to be a sexually violent predator is indigent, the counties are required to provide the indigent person with the assistance of counsel and experts necessary to prepare the defense.

In the CSM-4509 test claim decision, the Commission determined that Welfare and Institutions Code sections 6601(i), 6602, 6603, 6604, 6605(b)-(d), and 6608(a)-(d) as enacted or amended by the 1995 and 1996 test claim statutes, imposed the following reimbursable state-mandated on counties:

- Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601(i).)

- Initial review of reports and records by the county’s designated counsel to determine if the county concurs with the state’s recommendation. (Welf. & Inst. Code, § 6601(i).)
- Preparation and filing of the petition for commitment by the county’s designated counsel. (Welf. & Inst. Code, § 6601(i).)¹
- Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)
- Preparation and attendance by the county’s designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604.)
- Preparation and attendance by the county’s designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6605(b-d), and 6608(a-d).)
- Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6603 and 6605(d).)
- Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)²

On September 24, 1998, the Commission adopted parameters and guidelines for the approved activities. On October 30, 2009 the parameters and guidelines were amended.

On November 7, 2006 the voters approved Proposition 83, also known as Jessica’s law, which, among other changes, amended and reenacted several sections of the Welfare and Institutions Code, including sections approved for reimbursement in the CSM-4509 test claim.

On January 15, 2013, the Department of Finance (DOF) filed a request for redetermination of the CSM-4509 decision pursuant to Government Code section 17570.³ DOF asserts that Proposition 83 constitutes a subsequent change in the law, as defined in section 17570, which, pursuant to section 17556(f), results in the state’s liability under the test claim statutes being modified.⁴ Specifically, DOF argues that because sections 6601, 6604, 6605, and 6608 were included in their entirety in Proposition 83, the voters reenacted the entirety of those sections, “including the

¹ The Test Claim Statement of Decision cites subdivision (j), but subdivision (j) addresses time limits, not a petition for commitment. The Commission therefore assumes that this is a typographical error, and that subdivision (i) was the intended citation for this activity.

² The title of the parameters and guidelines for the *Sexually Violent Predators* program refers to Welfare and Institutions Code sections 6250 and 6600 through 6608. However, the Commission approved reimbursement for only the activities required by sections 6601, 6602, 6603, 6604, 6605, and 6608.

³ Based on the January 15, 2013 filing date, the potential period of reimbursement affected by this redetermination begins July 1, 2011.

⁴ Exhibit A, Request for Redetermination, at p. 2.

portions not amended.” DOF also argues that “[t]he remainder of the mandate’s Welfare and Institutions Code sections that were not expressly included in the ballot measure [i.e., sections 6602 and 6603] are, nevertheless, necessary to implement the ballot measure.” DOF concludes that “all activities found to be reimbursable by the Commission in the *Sexually Violent Predator* mandate are no longer reimbursable pursuant to Government Code section 17556, subdivision f, as they are either: (1) expressly included in Prop 83 or, (2) necessary for the implementation of Prop 83.”⁵

Section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission, based on a subsequent change in law. The redetermination process provides for a two-step hearing. The Commission’s regulations state that “the first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6, subdivision (a) of the California Constitution.” The regulations state that the Commission “shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written responses and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.” The regulations further state that “[i]f the commission proceeds to the second hearing, it shall consider whether the state’s liability...has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.”⁶

Therefore, the sole issue before the Commission at this first hearing is whether DOF, as the requester, has made an adequate showing that the state’s liability has been modified pursuant to a subsequent change in law, as defined in section 17570.

Because the determination of this matter will have significant budgetary impacts on the state and eligible local agency claimants beginning in the 2011-2012 fiscal year, requests have been made by DOF and some of the eligible local agency claimants to expedite this matter. Those requests were granted and, as a result, this matter has been scheduled for hearing ahead of other matters which were filed before it.

Staff Analysis

Government Code section 17556(f) provides that the Commission *shall not find* costs mandated by the state, within the meaning of article XIII B, section 6, if a test claim statute or executive order “imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election.” Section 17556(f) also states that this rule “applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.”⁷

Staff finds that Proposition 83, which amended and reenacted Welfare and Institutions Code sections 6601, 6604, 6605, and 6608, constitutes a subsequent change in law, as defined in section 17570. The duties imposed by sections 6601, 6604, 6605, and 6608 are now expressly

⁵ *Ibid.*

⁶ Code of Regulations, Title 2, section 1190.05 (Register 2010, No. 48).

⁷ Government Code section 17556 (As amended by Stats. 2010, ch. 719 (SB 856)).

included in a ballot measure approved by the voters in a statewide election and, pursuant to section 17556(f), the Commission shall not find costs mandated by the state for the activities required by those statutes. Therefore, DOF has made an adequate showing that the state's liability under the CSM-4509 test claim decision has been modified, and that DOF has a substantial possibility of prevailing at the second hearing.

Staff Recommendation

Staff recommends that the Commission adopt this statement of decision and, pursuant to Government Code section 17570(b)(d)(4), direct staff to notice the request for a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision. If the Commission adopts the attached proposed statement of decision, the second hearing for this matter will be set for September 27, 2013.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed statement of decision following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:
FIRST HEARING: ADEQUATE SHOWING
ON:

Welfare and Institutions Code sections 6601,
6602, 6603, 6604, 6605, and 6608;

As added or amended by Statutes 1995,
Chapter 762 (SB 1143); Statutes 1995, Chapter
763 (AB 888); Statutes 1996, Chapter 4 (AB
1496).

Sexually Violent Predators (CSM-4509)

As Alleged to be Modified by:

Proposition 83, General Election,
November 7, 2006

Filed on January 15, 2013

By the Department of Finance, Requester.

Case No.: 12-MR-01

Sexually Violent Predators (CSM-4509)

STATEMENT OF DECISION
PURSUANT TO GOVERNMENT
CODE SECTION 17500, ET SEQ.;
CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION
2, CHAPTER 2.5, ARTICLE 7.

(Adopted July 26, 2013)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on July 26, 2013. [Witness list will be included in the final statement of decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., title 2, California Code of Regulations 1189 et seq., and related case law.

The Commission [adopted/modified] the staff analysis at the hearing by a vote of [vote count will be included in the final statement of decision], and [directed/did not direct] staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision.

Summary of the Findings

The Commission finds that the Department of Finance (DOF) has made an adequate showing that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the CSM-4509 mandate has been modified based on a subsequent change in law. Specifically, Proposition 83, adopted by the voters on November 7, 2006 expressly included Welfare and

Institutions Code sections 6601, 6604, 6605, and 6608 and Government Code section 17556(f) excludes duties that are expressly included in a ballot measure approved by the voters from a finding of costs mandated by the state. Pursuant to Government Code section 17570(b)(d)(4), the Commission will hold a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.

COMMISSION FINDINGS

Chronology

- 06/25/1998 The Commission adopted the test claim statement of decision for *Sexually Violent Predators*, (CSM-4509), approving reimbursement for certain activities under Welfare and Institutions Code sections 6601, 6602, 6603, 6604, 6605, and 6608.⁸
- 09/24/1998 The Commission adopted parameters and guidelines.⁹
- 11/08/2006 California voters approved Proposition 83, which amended and reenacted several sections of the Welfare and Institutions Code.¹⁰
- 10/30/2009 The Commission adopted amended parameters and guidelines.¹¹
- 1/15/2013 DOF filed a request for redetermination of CSM-4509.¹²
- 1/24/2013 Commission staff deemed the filing complete.
- 2/13/2013 The State Controller's Office (SCO) submitted comments.¹³
- 2/13/2013 The County of Los Angeles requested an extension of time to file comments.
- 2/13/2013 The California State Association of Counties (CSAC) requested an extension of time to file comments.
- 2/14/2013 The County of San Diego requested an extension of time to file comments.
- 2/15/2013 The Executive Director granted an extension of time for the submittal of all comments until March 27, 2013, and set the matter for the first hearing on July 26, 2013.
- 3/19/2013 California District Attorneys' Association (CDAA) submitted comments on the request for redetermination.¹⁴
- 3/22/2013 CSAC submitted comments on the request for redetermination.¹⁵

⁸ Exhibit B, Test Claim Statement of Decision.

⁹ Exhibit C, Test Claim Parameters and Guidelines.

¹⁰ See Exhibit A, Request for Redetermination.

¹¹ Exhibit D, Test Claim Amended Parameters and Guidelines.

¹² Exhibit A, Request for Redetermination.

¹³ Exhibit E, SCO Comments on Request for Redetermination.

¹⁴ Exhibit F, CDAA Comments on Request for Redetermination.

- 3/25/2013 California Public Defenders' Association (CPDA) submitted comments on the request for redetermination.¹⁶
- 3/25/2013 District Attorney of San Bernardino County submitted comments on the request for redetermination.¹⁷
- 3/25/2013 County of San Bernardino submitted comments on the request for redetermination.¹⁸
- 3/26/2013 District Attorney of Sacramento County submitted comments on the request for redetermination.¹⁹
- 3/26/2013 District Attorney of Los Angeles County submitted comments on the request for redetermination.²⁰
- 3/27/2013 County of Los Angeles submitted comments on the request for redetermination.²¹
- 3/27/2013 Alameda County Public Defender submitted comments on the request for redetermination.²²
- 3/27/2013 County Counsel of San Diego County submitted comments on the request for redetermination.²³
- 3/29/2013 Alameda County District Attorney submitted comments on the request for redetermination.²⁴

I. Background

The Sexually Violent Predator Program and Alleged Subsequent Change in Law

The *Sexually Violent Predators (SVP)* program established civil commitment procedures for the civil detention and treatment of sexually violent predators following the completion of an individual's criminal sentence imposed for certain sex-related offenses. Before civil detention and treatment are imposed, the county counsel or district attorney is required to file a petition for

¹⁵ Exhibit G, CSAC Comments on Request for Redetermination.

¹⁶ Exhibit H, CPDA Comments on Request for Redetermination.

¹⁷ Exhibit I, County of San Bernardino District Attorney Comments on Request for Redetermination.

¹⁸ Exhibit J, County of San Bernardino Comments on Request for Redetermination.

¹⁹ Exhibit K, County of Sacramento District Attorney Comments on Request for Redetermination.

²⁰ Exhibit L, Los Angeles County District Attorney Comments on Request for Redetermination.

²¹ Exhibit M, County of Los Angeles Comments on Request for Redetermination.

²² Exhibit N, Alameda County Public Defender Comments on Request for Redetermination.

²³ Exhibit O, County Counsel of San Diego Comments on Request for Redetermination.

²⁴ Exhibit P, Alameda County District Attorney Comments on Request for Redetermination.

civil commitment. A trial is then conducted to determine beyond a reasonable doubt if the person is a sexually violent predator. If the person alleged to be a sexually violent predator is indigent, the county is required to provide the indigent person with the assistance of counsel and experts necessary to prepare the defense.

The Commission concluded, in the CSM-4509 test claim statement of decision, that Welfare and Institutions Code sections 6601(i), 6602, 6603, 6604, 6605(b)-(d), and 6608(a)-(d) as enacted or amended by the 1995 and 1996 test claim statutes, imposed a reimbursable state-mandated program, on counties within the meaning of article XIII B, section 6, of the California Constitution.²⁵

On November 7, 2006, the voters approved Proposition 83, also known as “Jessica’s Law.” Proposition 83 effected a number of amendments to the Penal Code, including, among other changes, strengthening penalties for kidnapping and sexual offenses perpetrated upon children, and expanding the definitions of certain sexual offenses, especially by removing the requirement of “force, violence, duress, menace, or fear of immediate and unlawful bodily injury” from the definitions of several crimes.²⁶ Proposition 83 also mandated consecutive sentences for a number of sexual offenses,²⁷ mandated a minimum 25 year sentence for a “habitual sexual offender,” as defined,²⁸ and required persons released on parole from a “registerable sex offense” to be monitored for the duration of their parole by a global positioning system device, for which the parolee is responsible to pay, unless granted a waiver by the Department of Corrections.²⁹

As directly relevant here, Proposition 83 also amended and reenacted provisions of the Welfare and Institutions Code, including sections 6601, 6604, 6605, and 6608 which were among the test claim statutes approved by the Commission in CSM-4509.

Section 6601(k) was amended by Proposition 83 to provide that a civil commitment under article 4 *shall toll the term of an existing parole*, where applicable. This means that if a person were granted parole but subsequently civilly committed, that individual’s parole would not run concurrently, but would be “tolled,” and the remaining parole would be served after the civil commitment ends. The test claim statute, as approved in CSM-4509, provided that a civil commitment “*shall not toll, discharge or otherwise affect the term of parole,*” meaning that a term of parole *could* run concurrently with a civil commitment, but that release from civil commitment would not discharge any remaining term of parole. The remainder of section 6601 was reenacted by Proposition 83 without amendment.

Section 6604 was amended by Proposition 83 to provide that if a court or jury determined that a person is a sexually violent predator, the person “shall be committed for an indeterminate term.” The test claim statute, as approved in CSM-4509 had provided for a two year civil commitment, with an option for an extended commitment order from the court.

²⁵ Exhibit B, Test Claim Statement of Decision, at p. 12.

²⁶ See, e.g., Penal Code sections 209, 220, 269, as amended by Proposition 83 (adopted November 7, 2006).

²⁷ See Penal Code section 667.6, as amended by Proposition 83.

²⁸ Penal Code section 667.71, as amended by Proposition 83.

²⁹ Penal Code section 3000.07, as added by Proposition 83.

Section 6605 was amended by Proposition 83 to provide that if the Department of Mental Health deems that the person’s condition has changed, and that unconditional release or a conditional release to a less restrictive environment is appropriate and in the best interests of the person and conditions can be imposed to adequately protect the community, the Director “*shall authorize the person to petition the court*” for conditional release or unconditional discharge. The test claim statute, as approved by the Commission, required an annual notice to the person of his or her right to petition the court for release, and provided for an annual examination of his or her mental condition, but not, as the more recently amended section requires: “consideration of whether the committed person currently meets the definition of a sexually violent predator” and whether conditional release is appropriate in a particular case.” Based on the plain language, the prior section 6605 was focused on the right of the individual to be annually evaluated for release, and to petition for release. As the section reads after Proposition 83, the focus is on the Department of State Hospitals making a determination that a person’s condition has changed, and “authorizing” that person to petition for release.

And finally, Proposition 83 amended section 6608 to provide that, notwithstanding the provisions of section 6605, a person may petition the court for “*conditional release or an unconditional discharge*” without approval from the director of the Department of Mental Health. The test claim statute stated “conditional release *and subsequent* unconditional discharge.”³⁰

Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state’s liability for reimbursement. The redetermination process calls for a two stage hearing; at the first stage, the requester must make “an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior the claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6, subdivision (a) of the California Constitution.”³¹

A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.³²

³⁰ Compare Penal Code sections 6601, 6604, 6605, and 6608 (as added or amended by Stats. 1995, ch. 762; Stats. 1995, ch. 763; Stats. 1996, ch. 4) with Penal Code sections 6601, 6604, 6605, and 6608, as amended by Proposition 83.

³¹ Code of Regulations, Title 2, section 1190.05(a)(1).

³² Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

If the Commission finds, at the first hearing, that the requester has made an adequate showing, “when considered in light of all of the written responses, rebuttals and supporting documentation in the record and testimony at the hearing, the commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on the request to adopt a new test claim decision to supersede the previously adopted test claim decision.”³³

II. Positions of the Requester, Test Claimant, and Interested Parties and Persons

A. Department of Finance, Requester

DOF submitted a request to adopt a new test claim decision regarding Welfare and Institutions Code sections 6601, 6602, 6603, 6604, 6605, and 6608, pursuant to Government Code section 17570. DOF asserts that Proposition 83 constitutes a subsequent change in the law, as defined in section 17570, which, when analyzed in light of section 17556, results in the state’s liability under the test claim statutes being modified. DOF argues that “the state’s obligation to reimburse affected local agencies has ceased.”³⁴ Specifically, DOF argues that because sections 6601, 6604, 6605, and 6608 were included in their entirety in Proposition 83, the voters reenacted the entirety of those sections, “including the portions not amended,” and therefore the test claim statutes impose duties expressly included in the voter-enacted ballot measure. DOF also argues that “[t]he remainder of the mandate’s Welfare and Institutions Code sections that were not expressly included in the ballot measure are, nevertheless, necessary to implement the ballot measure.” DOF concludes that “all activities found to be reimbursable by the Commission in the *Sexually Violent Predator* mandate are no longer reimbursable pursuant to Government Code section 17556, subdivision f, as they are either: (1) expressly included in Prop 83 or, (2) necessary for the implementation of Prop 83.”³⁵

B. County of Los Angeles, Claimant for CSM-4509

LA County filed comments on the redetermination request, summarized as follows:

The County opposes the DOF's request to adopt a new test claim on the basis that: 1) the extraneous text included in the body of Prop 83 did not constitute a change in the law; 2) Prop 83 did not convert activities identified in the Commission's 1998 Statement of Decision to activities necessary to implement Prop 83, therefore, no longer reimbursable; and 3) Government Code Section 17570 is unconstitutional.³⁶

LA County’s position relies on its reasoning that Statutes 2006, chapter 337 (SB 1128), enacted as urgency legislation September 20, 2006 made most of the same substantive amendments to the code that would be enacted by Proposition 83 less than two months later. LA County reasons that because the law in effect immediately prior to the passage of Proposition 83 was substantially the same, Proposition 83 cannot constitute a subsequent change in law. LA County argues:

³³ California Code of Regulations, Title 2, section 1190.05(a)(5)(B).

³⁴ Exhibit A, Request for Redetermination, at p. 2.

³⁵ *Ibid.*

³⁶ Exhibit M, County of Los Angeles Comments, at p. 1.

The changes actually proposed by Prop 83 were few and narrow, particularly in light of revisions to SVP laws that had recently been codified by S8 1128. The Secretary of State's practice of giving textual context to a ballot proposal by including unaffected statutory provisions is a benign protocol intended to fully inform the voters. Affirmation of existing law most certainly does not give rise to the change in law contemplated by Section 17570.³⁷

Thus, LA County also implies, in the excerpt above, that sections 6601, 6604, 6605, and 6608 were reproduced in the ballot measure in their entirety as a matter of "protocol," not because the ballot measure was intended to effect substantive or pervasive changes. Finally, LA County argues that section 17570 is unconstitutional on separation of powers grounds, and because it is "an infringement of article XIII 8, section 6, of the California Constitution."³⁸

C. State Controller's Office

The SCO agrees with DOF "that the eight activities previously determined to be reimbursable in the Statement of Decision adopted on June 25, 1998 cease to be reimbursable."³⁹

D. Other Interested Parties and Persons

1. California District Attorneys' Association; San Bernardino County District Attorney's Office

The CDAA and the San Bernardino County DA argue that "[t]he application of Government Code § 17556(f) to Proposition 83 in order to terminate state subvention of mandated sexually violent predators is legally incorrect." CDAA continued:

The Department of Finance contention that the mere recitation of any portion of a statute contained in a proposition, brings it within the "expressly included in" language of Government Code § 17556(f) regardless of whether the sections mandating local activity were amended or not, and whether or not the intent of the initiative and purpose of the initiative was to eliminate the subvention requirements of Article XIII B §6 by operation of Government Code § 17566(f), is not warranted. Such an interpretation would make the application of the statute so over broad and vague that no voter, local official, or legal analyst could accurately predict whether state mandated subvention would cease to exist as they voted to pass any ballot initiative that referenced existing law.⁴⁰

They also argue that there is no evidence, including in the ballot materials, that the voters intended Proposition 83 to terminate the state's liability under Article XIII B, section 6, to reimburse the test claim statutes. To support this argument they cite a letter from the Legislative Analyst's Office (LAO) and DOF to then-Attorney General Lockyer, in which "[t]he unequivocal conclusion of both officials is that the costs of the SVP program would remain a

³⁷ Exhibit M, County of Los Angeles Comments, at pp. 1-2.

³⁸ Exhibit M, County of Los Angeles Comments, at p 5.

³⁹ Exhibit E, SCO Comments, at p. 1.

⁴⁰ Exhibit F, CDAA Comments, at p. 1; Exhibit I, San Bernardino County DA Comments, at p. 1.

reimbursable by the state.” They assert that this conclusion should be given great weight, “despite the Department of Finance’s now changed opinion.”⁴¹

2. California State Association of Counties

CSAC submitted comments in response to DOF’s request to adopt a new test claim decision, in which CSAC argues that the state’s liability has not been affected by Proposition 83. CSAC argues that the California Constitution mandates reimbursement for new programs or higher levels of service, subject to “four exceptions, but none of them are relevant in this case.” CSAC argues that “[i]n particular, there is no exception for a ballot measure that voters pass years later that does not substantively amend any of the language that established the mandate in the first place.”⁴² CSAC further argues that the SVP program was unaffected by the passage of Proposition 83: “[b]ecause the ballot measure made no substantive changes to the reimbursable aspects of the program, the SVP program established by the Legislature would have remained in place whether voters approved or disapproved Proposition 83.” CSAC also notes that “SB 1128, by Senator Alquist, amended Sections 6600, 6601, 6604, 6604.1, and 6605 of the Welfare and Institutions Code, among many others,” less than two months prior to the election in which Proposition 83 was adopted, and that therefore Proposition 83 made no substantive changes to the law in effect at that time. Finally, CSAC argues that the request should be rejected because the Director of DOF “told the voters that counties would be reimbursed.” CSAC cites the ballot materials and the analysis published leading up to the election:

At the time Proposition 83 went to the ballot, the chief analysts representing both the Administration and the Legislature- the Director of Finance and the Legislative Analyst- agreed that all county costs related to the SVP commitment process would be reimbursed by the state. They stated the fact that counties would be reimbursed four times in their official fiscal analysis provided to the Attorney General, and voters decided the outcome of Proposition 83 based in part on that assurance.

In their official fiscal analysis of the ballot measure required by law, the Legislative Analyst and Director of Finance state unequivocally that Proposition 83 would increase state costs to, among other things, "reimburse counties for their costs for participation in the SVP commitment process."⁴³

CSAC implies that these analyses constitute evidence of voter intent, which in turn should be given substantial weight in evaluating whether a subsequent change in law has occurred.

3. California Public Defenders’ Association and Alameda County Public Defender’s Office

CPDA and Alameda County Public Defender’s Office submitted substantially identical comments opposing the request for redetermination, in which they argue:

⁴¹ Exhibit F, CDAA Comments, at p. 4; Exhibit I, San Bernardino County DA Comments, at p. 4.

⁴² Exhibit G, CSAC Comments, at p. 1.

⁴³ Exhibit G, CSAC Comments, at p. 3.

(1) The 2012 legislative amendment and re-enactment of the Sexually Violent Predator Act (SVP A) either confirmed the viability of the Sexually Violent Predator Mandate (CSM-4509), or, *arguendo*, superseded any impact that Proposition 83 may have affected on the mandate; (2) Misrepresentation and the doctrines of estoppel and unclean hands bar the DOF's redetermination request; (3) Proposition 83 did not effectuate a "subsequent change in the law" as contemplated by Government Code section 17570; and (4) Government Code section 17570 is unconstitutional.⁴⁴

The comments note that in 2012, the Legislature enacted substantive amendments to the SVP program, which, it is argued, "superseded any impact" of Proposition 83. CPDA and the Alameda County Public Defender's Office argue that due to the 2012 amendments to the relevant codes sections "Proposition 83 is no longer the statutory authority supporting the SVPA; consequently the cost incurred by local agencies to comply with the 2012 legislatively enacted SVPA is a cost mandated by the state."⁴⁵ The comments cite the LAO and DOF analysis of Proposition 83, and argue that DOF should now be estopped from seeking redetermination of the SVP mandate because of the position taken prior to the election on Proposition 83.⁴⁶ The comments also focus on the 2006 legislative amendment to the SVP program, arguing that DOF's request for redetermination "is misleading because the statutory language quoted from the SVPA by the DOF's January 15, 2013, request, as well as that include [sic] in the actual proposition, was not the statutory language in effect at the time Proposition 83 was passed on November 7, 2006."⁴⁷ And finally, the comments assert that section 17570 is unconstitutional, because it is unconstitutionally vague, with respect to the term "subsequent change in law," and because it violates separation of powers doctrine.⁴⁸

4. County of San Bernardino

The County of San Bernardino argues that DOF's interpretation of section 17556 is legally incorrect. San Bernardino focuses on the intent of the voters in adopting Proposition 83, stating:

The Department of Finance's flawed interpretation of the "expressly included" language of Government Code Section 17556(f) fails to consider whether the ballot language intended to enact or change the state reimbursement of mandated activities.

⁴⁴ Exhibit H, CPDA Comments, at p. 1; Exhibit N, Alameda County Public Defender's Comments, at p. 2.

⁴⁵ Exhibit H, CPDA Comments, at p. 2; Exhibit N, Alameda County Public Defender's Comments, at p. 3.

⁴⁶ Exhibit H, CPDA Comments, at pp. 3-4; Exhibit N, Alameda County Public Defender's Comments, at pp. 4-5.

⁴⁷ Exhibit H, CPDA Comments, at p. 4; Exhibit N, Alameda County Public Defender's Comments, at p. 5.

⁴⁸ Exhibit H, CPDA Comments, at p. 6; Exhibit N, Alameda County Public Defender's Comments, at p. 7.

San Bernardino also implies that no subsequent change in law has occurred, reasoning that “[t]he statutory changes in the initiative did not relieve counties of their preexisting state mandated activities per Welfare and Institutions Code section 6601 through 6604.”⁴⁹

5. Sacramento County District Attorney’s Office

The Sacramento County DA argues that no subsequent change in law has occurred, and that “the legislature still retains a true choice in whether to have the duties imposed on local government in the statute remain with local governments, or change the statutes so that the mandated duties are performed at the state level.” The Sacramento County DA focuses on the fact that Proposition 83 permits the Legislature “to amend, by a statute passed by a roll call vote of two-thirds of each house,” and implies that the failure to relieve local agencies of the duties imposed by Proposition 83 constitutes a reimbursable state mandate.

The Sacramento County DA argues further that “[t]he fact that pre-existing law has simply been recited again, either in a statute re-enacted by the legislature, or as part of a new ballot measure...does not amount to a change in the law for § 17570 purposes.” The Sacramento County DA focuses on the fact that “the mandated activities at issue here were in place before the initiative was enacted,” and concludes that “there has been no change in the applicable law.”⁵⁰

Finally, the Sacramento County DA argues that DOF’s redetermination request was never intended by the voters, and that a new test claim decision eliminating reimbursement would provide a windfall to the state, and impose a hardship on local governments.⁵¹

6. Los Angeles County District Attorney’s Office

The LA County DA argues that “[t]he activities for which the county is being reimbursed, the basis for the Commission's Statement of Decision, and the need for reimbursement from the State in order to comply with SVP laws have not changed since the Statement of Decision was adopted.”

The LA County DA’s comments argue that Proposition 83 “simply reaffirmed many of the changes already effectuated by SB 1128,” that “the changes actually proposed by Prop 83 were few and narrow,” and that “[a]ffirmation of existing law certainly does not give rise to the change in law contemplated by Section 17570.”⁵² LA County DA’s comments argue that “inclusion, within the text of an initiative, of language that is unaffected by proposed revisions to the law does not constitute a change in the law,”⁵³ LA County DA’s comments further assert that “[a]n activity may not fairly be recharacterized as "necessary to implement" another activity simply because an antecedent activity may have been affected by a change in the law,” and that “a reimbursable activity does not cease to be a reimbursable activity because it happens to have constitutional implications.” And LA County DA’s comments argue that “Prop 83's mere

⁴⁹ Exhibit J, County of San Bernardino Comments.

⁵⁰ Exhibit K, Sacramento County District Attorney’s Office Comments, at pp. 1-2.

⁵¹ Exhibit K, Sacramento County District Attorney’s Office Comments, at p. 3.

⁵² Exhibit L, Los Angeles County District Attorney’s Office Comments, at pp. 2-3.

⁵³ Exhibit L, Los Angeles County District Attorney’s Office Comments, at pp. 4-5.

reaffirmation of legislative action does not constitute a change in the law.”⁵⁴ Additionally, LA County DA’s comments proffer a theory of equitable estoppel, based on the LAO and DOF analysis of Proposition 83 leading up to the election, discussed below, and the conclusion that Proposition 83 would not affect mandates.⁵⁵ And finally, LA County DA’s comments assert that section 17570 is unconstitutional, as a violation of separation of powers doctrine.⁵⁶

7. County Counsel of San Diego

The County Counsel of San Diego argues that “Jessica’s Law [Proposition 83] did not make any changes material to the relevant statutes as they existed immediately before the adoption of Jessica’s Law,” that the 2012 reenactment “supersedes any effects that Jessica’s Law may have had on the state’s obligation,” that “DOF’s Request is based on the unconstitutionally broad language in Section 17556(f) that impermissibly directs the commission to apply the ballot measure exception to previously enacted legislation.” The County Counsel of San Diego further argues that “DOF’s Request relies on the unconstitutionally broad definition of what constitutes a ‘subsequent change in the law’ set forth in Section 17570.”⁵⁷

8. Alameda County District Attorney’s Office

The Alameda County DA argues that Proposition 83 did not make any material changes to the responsibilities of county counsel offices or district attorneys’ offices; that DOF’s interpretation of section 17556(f) “cannot be the correct interpretation;” and that DOF’s request “should be rejected on common law principles of laches and estoppel.”⁵⁸

III. Discussion

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁵⁹ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁶⁰ In making its decisions, the Commission must strictly construe

⁵⁴ Exhibit L, Los Angeles County District Attorney’s Office Comments, at pp. 4-8.

⁵⁵ Exhibit L, Los Angeles County District Attorney’s Office Comments, at pp. 8-10.

⁵⁶ Exhibit L, Los Angeles County District Attorney’s Office Comments, at pp. 11-12.

⁵⁷ Exhibit O, County Counsel of San Diego Comments, at p. 2.

⁵⁸ Exhibit P, Alameda County District Attorney’s Comments, at pp. 2-5.

⁵⁹ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487; Government Code sections 17551; 17552.

⁶⁰ *County of San Diego v. State of California*, (1997) 15 Cal.4th 68, 109.

article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁶¹

Under Government Code section 17570, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the states liability.

The first hearing in the mandate redetermination process is intended, pursuant to the Government Code and the Commission’s regulations, to determine only whether the requester has made an adequate showing that the state’s liability has been modified based on a subsequent change in law, as defined. Therefore, analysis of section 17556(f), as well as consideration of the comments submitted by interested parties, will be limited to whether the request, when considered in light of all of the written responses and supporting documentation in the records of this request, has a substantial possibility of prevailing at the second hearing.”⁶² A thorough mandates analysis to determine whether and to what extent the state’s liability has been modified, considering the applicable law, the arguments put forth by the parties and interested parties, and the facts in the record, will be prepared for the second hearing on this matter.

A. Finance’s Argument for the Adoption of a New Test Claim Decision to Supersede the Prior Decision in Test Claim (CSM-4509).

On May 28, 1998, the Commission heard the CSM-4509 test claim on the *Sexually Violent Predators* program. That test claim alleged that the following Welfare and Institutions Code sections imposed reimbursable state-mandates: 6250, and 6600 through 6608, as amended by Statutes 1995, chapter 762; Statutes 1995, chapter 763; and Statutes 1996, chapter 4.⁶³

The Commission approved reimbursement for activities only under sections 6601, 6602, 6603, 6604, 6605, and 6608:

1. Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601, subd. (i).)

⁶¹ *County of Sonoma v. Commission on State Mandates*, (2000) 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁶² Code of Regulations, Title 2, section 1190.05 (Register 2010, No. 48). This regulation describes the standard for the first hearing as follows:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6, subdivision (a) of the California Constitution. The commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written responses and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.

⁶³ Exhibit B, Test Claim Statement of Decision.

2. Initial review of reports and records by the county's designated counsel to determine if the county concurs with the state's recommendation. (Welf. & Inst. Code, § 6601, subd. (i).)
3. Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601, subd. (i).)⁶⁴
4. Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)
5. Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604.)
6. Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6605, subds. (b) through (d), and 6608, subds. (a) through (d).)
7. Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6603 and 6605, subd. (d).)
8. Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

All remaining provisions of the test claim statutes were denied.⁶⁵

DOF asserts, in its request for a new test claim decision, that activities 1, 2, 3, and 6, approved in the test claim statement of decision, were expressly included in Proposition 83. Activities 1, 2, and 3 involve the county's role in filing and litigating a civil commitment hearing on behalf of the state. These activities are required by section 6601(i), and while DOF concedes that Proposition 83 did not make amendments to subdivision (i), specifically, it amended and reenacted the entirety of section 6601, including the activities approved under subdivision (i). Activity 6 is required by sections 6605 and 6608. The sections encompassing these activities were reenacted and amended also by Proposition 83.⁶⁶ DOF asserts that the reenactment of sections 6601, 6604, 6605, and 6608 is sufficient to implicate the "expressly included in" limitation of section 17556(f), prohibiting the Commission from finding "costs mandated by the state," which supports the adoption of a new test claim decision.

⁶⁴ The Test Claim Statement of Decision cites subdivision (j), but subdivision (j) addresses time limits, not a petition for commitment. The Commission therefore assumes that this is a typographical error, and that the citation intended is to subdivision (i).

⁶⁵ Exhibit B, Test Claim Statement of Decision, at p. 12. The numbers attached to the activities above are assigned by DOF, in its request for redetermination; the same numbering is adopted in this analysis, for purposes of expedience and clarity, rather than utilizing the bulleted list adopted by the Commission in the test claim statement of decision.

⁶⁶ Exhibit A, Redetermination Request, at pp. 1-2.

As discussed above, Proposition 83 reenacted in whole sections 6601, 6604, 6605, and 6608, and required counties to perform the same activities approved in the CSM-4509 test claim.

DOF asserts as well that Activities 4, 5, and 7 are necessary to implement Proposition 83, and therefore these requirements also have been superseded by the ballot initiative.⁶⁷ DOF, relying on section 17556(f), therefore brings this request to adopt a new test claim decision, in accordance with the provisions of section 17570.

DOF's request is silent with respect to activity 8, regarding the transportation and housing of potential sexually violent predators during the civil detention proceedings process, and makes no specific allegation regarding whether that activity continues to impose a reimbursable state mandate. DOF, however, asserts that the entire program is no longer eligible for reimbursement under article XIII B, section 6 of the California Constitution.⁶⁸

B. Section 17556(f) is Not Self-Executing, but Requires Commission Action Pursuant to Section 17570, Where a Commission Decision on the Test Claim Statutes has been Previously Adopted.

Government Code section 17556(f) provides that the Commission "shall not find" costs mandated by the state if:

The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.⁶⁹

California School Boards Association v. State of California makes clear that the statutory exclusion from reimbursement contained in the first sentence is consistent with the subvention requirements of article XIII B, section 6.⁷⁰ The court in *CSBA I* reasoned that the subvention requirement applies to mandates imposed by the Legislature, not by the voters; the voters' powers of initiative and referendum are reserved powers, and not vested in the Legislature, and are therefore not limited by article XIII B, section 6. *CSBA I* holds that the reimbursement requirement applies only to state-mandated costs, not costs incurred by way of "the people acting pursuant to the power of initiative."⁷¹

"Having established that costs imposed on local governments by ballot measure mandates need not be reimbursed by the state," and thus approving the statutory exclusion to the extent of statutes "expressly included in" a ballot measure, the court considered also whether activities embodied in a test claim statute that are "necessary to implement" a voter-enacted ballot measure are subject to reimbursement. In *San Diego Unified School District v. Commission on State*

⁶⁷ Exhibit A, Redetermination Request, at pp. 2-3.

⁶⁸ Exhibit A, Redetermination Request, at p. 2.

⁶⁹ As amended by Statutes 2010, chapter 719 (SB 856).

⁷⁰ *California School Boards Association v. State of California (CSBA I)* (Cal. Ct. App. 3d Dist. 2009) 171 Cal.App.4th 1183, 1206-1207; 1210.

⁷¹ *Ibid.*

Mandates, costs that were incidental to a federal mandate were not reimbursable under section 17556(c), because those costs were imposed under Education Code provisions “adopted to implement a federal due process mandate.” The *CSBA I* court therefore concluded that “[t]he language of [section 17556(f)] relieving the State of the obligation to reimburse a local government for duties ‘necessary to implement’ a ballot measure is *unobjectionable* because it corresponds to the Supreme Court’s holding in *San Diego Unified* that state statutes codifying federal mandates are not reimbursable.”^{72, 73} The court rejected, however, the “reasonably within the scope of” test also provided in subdivision (f) at that time, and the Legislature amended the code section the following year to excise the offending language.⁷⁴

Section 17556(f) also states that the rule “applies regardless of whether the statute or executive order was adopted prior to or after the date on which the statute or executive order was enacted or issued.” This provision, like the “reasonably within the scope of,” and “necessary to implement” tests, first appeared in section 17556 in 2005.⁷⁵ This last provision, stating that the order of enactment is not material to the analysis under section 17556(f), has not yet been determined in the courts.⁷⁶ However, the Commission must presume that the statutes enacted by the Legislature are constitutional,⁷⁷ and therefore if a voter-enacted ballot initiative embracing the same subject matter were to be enacted either before or after a test claim statute, an analysis under section 17556(f) would be in order.

In the context of a ballot measure enacted *after the test claim decision* on the subject matter has been adopted, section 17556(f) cannot be self-executing, consistent with the broader statutory scheme of which it is a part. The Commission’s process is the sole and exclusive venue in which eligible claimants vindicate the reimbursement requirement of article XIII B, section 6, and the Commission’s decision on a test claim is final and binding, absent judicial review.⁷⁸ A later-enacted ballot measure expressly including the same duties imposed by a test claim statute that was previously determined to impose a mandate cannot, of its own force, undermine the Commission’s mandate determination in a prior test claim decision. Nor can there be any

⁷² *San Diego Unified, supra*, (2004) 33 Cal.4th 859.

⁷³ *California School Boards Association v. State (CSBA I)* (Cal. Ct. App. 3d Dist. 2009) 171 Cal.App.4th 1183, at p. 1213 [emphasis added].

⁷⁴ Government Code section 17556(f) (Stats. 2010, ch. 719 (SB 856) [amended to remove “reasonably within the scope of,” as an alternative test to “expressly included in,” or “necessary to implement,” consistent with the court’s decision in *CSBA I, supra*]).

⁷⁵ As discussed above, the “reasonably within the scope of” test has been disapproved by the courts and removed from the code; compare Statutes 2004, chapter 895 (AB 2855) to Statutes 2005, chapter 72 (AB 138).

⁷⁶ The constitutionality of Government Code sections 17570, in conjunction with section 17556, is being challenged in *California School Boards Assoc., et al. v. State of California, Commission on State Mandates, John Chiang, as State Controller, and Ana Matosantos, as Director of the Department of Finance*, Alameda County Superior Court, Case No. RG11554698.

⁷⁷ *California School Boards Association v. State of California, (CSBA II)* (Cal. Ct. App. 4th Dist. 2011) 192 Cal.App.4th 770, 795; *Porter v. City of Riverside* (1968) 261 Cal.App.2d 832, 837.

⁷⁸ *CSBA I, supra*, 171 Cal.App.4th 1183, at pp. 1199-1200.

resolution of the issue of whether other requirements, which are not expressly included in the ballot measure, but may be necessary to implement the ballot measure, continue to be reimbursable, without the matter being heard and determined by the Commission pursuant to Government Code section 17570. Section 17570 thus provides the mechanism for considering section 17556(f) when there is a subsequent change in law, as defined, “material to the prior test claim decision, that may modify the state’s liability” pursuant to article XIII B, section 6.

“Subsequent change in law,” is defined in section 17570(a)(2) as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.⁷⁹

Section 17570 provides, then, an opportunity to redetermine a test claim decision previously decided, but for which the decision might be materially different in accordance with section 17556, if determined on the basis of a subsequent change in law.

C. The Department of Finance has made an Adequate Showing that the State’s Liability has been Modified.

DOF brings this request to adopt a new test claim decision relying on Government Code section 17556(f), and Proposition 83. DOF asserts that because Proposition 83 reenacted in whole sections 6601, 6604, 6605, and 6608 of the Welfare and Institutions Code, which were previously found by the Commission, as amended by Statutes 1995, chapters 762 and 763, and Statutes 1996, chapter 4, to impose a reimbursable state-mandated program, those sections are made non-reimbursable by the “expressly included in” exception provided for in section 17556(f). Furthermore, DOF argues that because the remaining code sections approved (6602 and 6603) are inextricably linked to the provisions reenacted, the entire mandated program is made non-reimbursable by the operation of section 17556(f).

The comments filed on this request challenge DOF’s position, and are addressed below.

1. Subsequent Statutory Changes to the Test Claim Statutes Enacted Before or After Voter Approval of the Ballot Measure are Not Relevant to the Determination Whether Proposition 83 is a Subsequent Change in Law That Modifies the State’s Liability as Determined in CSM-4509.

a. Statutory Changes Prior to the Ballot Measure (SB 1128)

Several comments note that many of the amendments to the Welfare and Institutions Code outlined by Proposition 83 were earlier enacted by SB 1128 (Statutes 2006, chapter 337) and, therefore, Proposition 83 does not constitute a “subsequent change in the law” in accordance

⁷⁹ Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

with section 17570.⁸⁰ CSAC argues that “many of the changes [DOF] claim[s] voters made were in fact made by the Legislature.”⁸¹ And CPDA argues that

S.B. 1128 contained many of the same or substantially similar amendments to the SVPA as did Proposition 83, for example, providing for indeterminate commitments and expansion of the list of qualifying offenses. Therefore, Proposition 83 does not constitute a "subsequent change in the law" as contemplated by Government Code section 17570.⁸²

In addition, LA County District Attorney’s Office comments state that “[i]n 2006, the legislature passed Senate Bill 1128 (SB 1128), urgency legislation that went into effect on September 20, 2006...[l]ess than two months later, the electorate passed Prop 83, commonly known as "Jessica's Law" ...[which] simply reaffirmed many of the changes already effectuated by SB 1128.”

However, it is irrelevant to the analysis of Proposition 83 whether there were substantive changes to the law in effect immediately prior to its enactment, or whether Proposition 83 made any substantive changes to the SVP code sections.

The analysis of whether a subsequent change in law has occurred turns on whether, under 17556(f), there are now any costs mandated by the state, where a ballot measure expressly includes some of the same activities as the test claim statutes that were found to impose a reimbursable mandate in CSM-4509. Here, with respect to the code sections reenacted in Proposition 83, it must be said that the test claim statutes impose duties that are expressly included in a voter-enacted ballot measure.⁸³ Therefore, DOF has made an adequate showing that the state’s liability as determined in CSM-4509 has been modified, and thus DOF has a substantial possibility of prevailing at the second hearing.

b. Statutory Changes After Approval of the Ballot Measure (2012 Legislative Reenactment)

In a similar line of argument, CPDA asserts that the 2012 statutes superseded the ballot proposition, as follows:

The enactment of A.B. 1488, A.B. 1470, and S.B. 760 in 2012 pertaining to the SVPA result in a cost mandated by the state as defined by Government Code section 17514. The entire text of the sections amended by legislation in 2012, including the portions not amended, was reenacted by the Legislature pursuant to Article IV, section 9, of the California Constitution. The remainder of the SVPA sections that were not expressly included in the 2012 legislation are, nevertheless, necessary to implement the 2012 legislation under Government Code section 17556, subdivision (f), and therefore are mandated by statute and thus reimbursable under California Constitution Article XIII B, section 6. Therefore, Proposition 83 is no longer the statutory authority supporting the SVPA;

⁸⁰ See, e.g., Exhibit G, CSAC Comments, at pp. 2-3; Exhibit H, CPDA Comments, at pp. 4-5.

⁸¹ Exhibit G, CSAC Comments, at p. 2.

⁸² Exhibit H, CPDA Comments, at p. 4.

⁸³ See Government Code section 17556(f).

consequently the cost incurred by local agencies to comply with the 2012 legislatively enacted SVPA is a cost mandated by the state.⁸⁴

The CPDA comments demonstrate a misunderstanding of the operation of section 17556. There is no indication from the plain language, or from the broader statutory framework, that section 17556 is meant to operate in this alternative respect; where a ballot measure removes a mandate from the reimbursement requirement, a subsequent statute can only restore a right to reimbursement if it imposes duties *beyond* those which are expressly included in or necessary to implement the ballot measure. Wholesale reenactment of a statute by the voters triggers the exclusionary provisions of section 17556(f), but subsequent amendment and reenactment by the *Legislature* does not defeat the application of section 17556(f) in the same manner. The analysis turns on only whether the test claim *statute* imposes duties expressly included in or necessary to implement the *ballot measure*. If so, those duties are not reimbursable, irrespective of any subsequent reenactment.

If the 2012 statute imposes duties *in excess of* what was required under prior law, and no 17556 exceptions apply, then those activities could be found to impose a new program or higher level of service and costs mandated by the state. However, a new test claim would have to be filed for the Commission to hear and decide the issue on the 2012 statute. The Commission's jurisdiction and findings in this matter only extend to the test claim statutes pled in CSM-4509 (Sections 6601, 6602, 6603, 6604, 6605, and 6608, as amended by Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); and Statutes 1996, Chapter 4 (AB 1496)) as those sections are alleged to be modified by Proposition 83, approved by the voters on November 7, 2006.

2. Some of the Requirements of the Test Claim Statutes Approved in CSM-4509 Impose Duties Expressly Included In a Ballot Measure

Section 17556(f), as discussed above, provides that the Commission shall not find costs mandated by the state, within the meaning of section 17514, if the statute or executive order imposes duties that are expressly included in a ballot measure enacted by the voters in a statewide or local election, and that this exception to the reimbursement requirement applies regardless of whether the statute or the ballot measure was enacted first. DOF, relying on section 17556(f), has alleged that the reenactment of sections 6601, 6604, 6605, and 6608 in Proposition 83 results in those sections, which were found to impose reimbursable mandates in CSM-4509, impose duties that are expressly included in a ballot measure approved by the voters in a statewide election.

CDAAs argue, in its comments, that DOF reads section 17556(f) incorrectly:

The Department of Finance contention that the mere recitation of any portion of a statute contained in a proposition, brings it within the "expressly included in" language of Government Code § 17556(f) regardless of whether the sections mandating local activity were amended or not, and whether or not the intent of the initiative and purpose of the initiative was to eliminate the subvention requirements of Article XIII B §6 by operation of Government Code § 17566(f), is not warranted. Such an interpretation would make the application of the statute so over broad and vague that no voter, local official, or legal analyst could

⁸⁴ Exhibit H, CPDA Comments, at p.2.

accurately predict whether state mandated subvention would cease to exist as they voted to pass any ballot initiative that referenced existing law.

But CDAA overstates the case; the comments imply that “any ballot initiative that referenced existing law” could result in a mandate redetermination request. Proposition 83 goes much further than simply “referenc[ing] existing law;” entire code sections that were approved for reimbursement are reenacted by the voters in Proposition 83. A finding for the DOF in this case does not lead to the unpredictable upending of mandates law that CDAA’s comment implies. Moreover, the plain language of section 17556(f) supports DOF’s interpretation: section 17556(f) *does not require* that a test claim statute be *amended* by a ballot proposition, or that the entire section or program be included in a ballot proposition. Section 17556(f) only prohibits a finding of costs mandated by the state if the statute upon which a test claim finding is to be made “*imposes duties that are...expressly included in*” a ballot measure, whether the ballot measure is enacted before or after the statute. Furthermore, as discussed below, whether eliminating subvention was intended by the voters in Proposition 83, as raised by CDAA, is not dispositive where section 17556 is applicable.

3. Equitable Defenses Raised are not Applicable to this Request for Redetermination.

a. *Misrepresentation, Unclean Hands, Equitable Estoppel*

Several comments have raised equitable defenses against DOF’s request, suggesting that because DOF’s analysis of Proposition 83 leading up to the election on the measure gave no indication that mandate reimbursement would be in peril, DOF’s request for a new decision on the SVP mandate should be rejected.

CPDA argues that “misrepresentation, unclean hands, and estoppel bar the DOF’s redetermination request.” CPDA cites “a letter dated September 2, 2005, addressed to the honorable Bill Lockyer, California Attorney General, issued pursuant to Elections Code section 9005, authored by Elizabeth G. Hill, Director of the Legislative Analyst’s Office (LAO) and Tom Campbell, Director of the DOF,” in which it is stated that Proposition 83 would have no effect on state reimbursement.” CPDA argues that “[g]iven the DOF’s stated position that the passage of Proposition 83 would not affect state reimbursement to counties, the DOF has “unclean hands” and should be estopped from currently asserting the Sexually Violent Predator mandate (CSM-4509) is no longer a cost mandated by the state.” CPDA goes on to argue that the voters were misled by the ballot pamphlet, prepared in reliance on the letter cited:

Not only was the electorate misled by the foregoing analysis and the September 2, 2005, letter, so were local government officials. Had local government officials not been lulled into a false sense of security, it is reasonably probable they would have publically [sic] opposed Proposition 83 given the financial ramifications due to the loss of mandate monies now proposed by the DOF. It is also reasonably probable that the electorate would have rejected Proposition 83 due to the same concerns. Furthermore, the probability of defeat would have increased had the electorate been accurately apprised of what law they were voting to replace- i.e., S.B. 1128 and not the language included in the ballot proposition, as discussed in the next section.⁸⁵

⁸⁵ Exhibit H, CPDA Comments, at pp. 3-4.

The LA County DA argues, for its part, that “the Legislative Analyst's Office (LAO), in association with the Department of Finance, sent California Attorney General Bill Lockyer a fiscal analysis of the initiative eventually known as Prop 83.” The LA County DA argues that “California courts have long held that voters are presumed to carefully review published materials that concern the initiatives on which they vote, including measures that are more complex.” The LA County DA concludes, therefore, that “[a]s the electorate is presumed to have relied upon the state's broadly publicized assurances regarding the state's assumption of the fiscal costs associated with Prop 83 were it to pass, the state is foreclosed from using Prop 83 as the basis of its invocation of Section 17570 and request for a new test claim decision.”⁸⁶

CDAА does not explicitly invoke equitable defenses, but argues that:

The unequivocal conclusion of both officials is that the costs of the SVP program would remain a reimbursable by the state. "The portion of costs related to changes in the Sexual Violent Predators program would be reimbursed by the state." Since official duties are presumed to be correctly performed (Evidence Code § 664), the Director of Finance, the Legislative Analyst and the Attorney General must have been aware of the interaction of Government Code § 17556(f) on Proposition 83 and the state mandate in Article XIII B §6 in drawing their conclusion that the SVP program would remain reimbursable. Strong weight should be given to this conclusion, despite the Department of Finance's now changed opinion.⁸⁷

The defenses of unclean hands and misrepresentation are not neatly applied in this case. Unclean hands, if asserted successfully against DOF, would prohibit DOF from obtaining relief (i.e., prevailing in its request for a new test claim decision) because of some alleged inequitable conduct. A misrepresentation of the facts surrounding a ballot initiative might suffice for such alleged conduct, if that misrepresentation permitted DOF to obtain a benefit. CPDA argues, as cited above, that DOF misrepresented the effect of Proposition 83 on mandates reimbursement, and that the measure might not have been successfully adopted had the effect been known.⁸⁸ LA County, though not expressly implicating misrepresentation or unclean hands, argues that “the electorate is presumed to have relied upon the state's broadly publicized assurances regarding the state's assumption of the fiscal costs associated with Prop 83.”⁸⁹ And CDAА, also not expressly invoking equitable defenses or terms of art, suggests that the conclusion of the LAO and DOF in 2006 should be given considerable weight in considering the present redetermination request.

What all of these comments fail to acknowledge is that in 2006 that conclusion was correct, and was not in fact a misrepresentation of the facts as they existed at that time. As discussed above, section 17556(f) is not self-executing in the respect of a later-enacted ballot measure embracing the same subject matter as a test claim statute. When Proposition 83 was enacted, there was no process or mechanism by which to redetermine a test claim; thus there would have been no effect on mandate reimbursement. Only after the mandate redetermination process embodied in section 17570 was *added to the code in 2010* was there any possibility of utilizing Proposition 83 to

⁸⁶ Exhibit L, LA County DA Comments, at pp. 8-10.

⁸⁷ Exhibit F, CDAА Comments, at p. 4.

⁸⁸ Exhibit H, CPDA Comments, at pp. 3-4.

⁸⁹ Exhibit L, LA County DA Comments, at pp. 8-10

change a prior mandate finding.⁹⁰ Therefore, any representation that might be alleged to have misled the voters was provided in good faith, and cannot now support a defense of ‘unclean hands.’

The related doctrine of estoppel is similarly misplaced in this case. The essence of an estoppel is that the party to be estopped has by false language or conduct led another to do that which he or she would not otherwise have done and as a result has suffered injury.⁹¹ Estoppel is applied where the conduct of one party has induced a behavior or posture in the other party that would result in injury if the first were permitted to repudiate its acts or position.⁹² Estoppel generally binds not only the immediate parties but also those in privity with them (agents of the same government are held to be in privity with one another).⁹³ And, estoppel is available against the government, but “it will not be applied against the government if to do so would effectively nullify a strong rule of policy adopted for the benefit of the public, or would contravene directly any statutory or constitutional limitations.”⁹⁴ As discussed above, whatever representations were made regarding the effect on mandate reimbursement prior to the adoption of Proposition 83, and however local governments might have detrimentally relied on those representations, they were *true when made*, and only later did the circumstances allow for mandate reimbursement to be modified. Moreover, to apply estoppel against DOF in this case would “contravene directly” the statutory and constitutional limitations on reimbursement, and would “effectively nullify” the mandate redetermination process created in the Government Code.

Ultimately, all of the proffered equitable arguments are inapplicable to this case. The Commission is vested, pursuant to the Government Code, with sole and exclusive jurisdiction to determine mandates claims. Whether a statute requires reimbursement is a question of law, to be decided by the Commission, or the courts on review, and “legislative disclaimers, findings, and budget control language are not determinative.”⁹⁵ Thus the question of reimbursement must be evaluated in this test claim by the Commission, exclusively, pursuant to article XIII B, section 6 of the California Constitution, on the basis of the statutes and case law that guide Commission decisions generally, and without regard for the expression of the Legislature, DOF, the LAO, or

⁹⁰ Statutes 2010, chapter 719 (SB 856).

⁹¹ California Jurisprudence 3d, Vol. 30, Estoppel and Waiver, section 1 [internal citations omitted].

⁹² California Jurisprudence 3d, Vol. 30, Estoppel and Waiver, section 3 [internal citations omitted].

⁹³ *Ibid.* See also *Carmel Valley Fire Protection Dist. v. State of California* (Cal. Ct. App. 2d Dist. 1987) 190 Cal.App.3d 521, at p. 535 [citing *Lerner v. Los Angeles City Board of Education* (1963) 59 Cal.2d 382, at p. 398].

⁹⁴ California Jurisprudence 3d, Vol. 30, Estoppel and Waiver, section 5 [internal citations omitted].

⁹⁵ *County of Los Angeles v. Commission on State Mandates*, (Cal. Ct. App. 2d Dist. 2003) 110 Cal.App.4th 1176, 1186; 1194. See also, Government Code section 17552, which states that “This chapter shall provide the sole and exclusive procedure by which a local agency or school district may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution.”

any other executive agency or department.⁹⁶ And furthermore, the intent of the voters, or of the Legislature, is only to be considered when the plain language is ambiguous; here, no such ambiguity is found. Finally, equitable defenses are not appropriate to the mandates process, because the Commission is charged with implementing the California Constitution.

b. Laches, or Unreasonable Delay of Cause of Action

The Alameda County District Attorney's Office argues, in its comments, that "[t]he Department of DOF request for a new test claim, filed some six and one-half years after the passage of Proposition 83, is untimely and should be rejected on common law principles of laches and estoppel." The Alameda County DA continues:

The State has continued to treat the SVP A as a reimbursable mandate for the six and one half years since Proposition 83 was passed. During that time, my office has performed its obligations under the SVPA without exception. We have allocated personnel and resources to these proceedings, invested in the training and expertise of our prosecutors and incurred expenses to provide for their continuing education. We have done so in good faith and in detrimental reliance on the earlier decisions of this Commission and the promise of eventual reimbursement by the State.

That expectation of reimbursement was bolstered by the actions of the Commission, the Legislature and Governors Schwarzenegger and Brown over the last six and one-half years. Although many mandates were suspended, set aside or even cancelled during that time, reimbursement to county prosecutors for their efforts in furtherance of the SVP A has not faltered. The counties have continued to perform these mandates and the State has reimbursed us. Even the State's current budget includes appropriations for these expenses. All of these factors directly contradict the Department of Finance's position that Proposition 83 created a change in the state mandate and act as an estoppel against a new test claim.

Finally, I note that this Commission's January 24, 2013 hearing notice indicates reimbursement or loss of reimbursement would be decided for fiscal year 2011-2012. I object to that. As noted above, my office continues to incur expenses to meet our mandated obligations under the SVP A. We have done so in reliance on the previous decisions of this Commission and with expectation of eventual reimbursement from the State.⁹⁷

Laches is not applicable to this case. As raised by the Alameda County DA, the defense of laches is based on an assertion that the plaintiff unreasonably delayed bringing an action, and that the defendant has been prejudiced by the delay, such that granting relief would be inequitable.⁹⁸ The Alameda County DA asserts that a delay of more than six years after the passage of Proposition 83 is unreasonable. But as discussed above, the mandate redetermination

⁹⁶ *Kinlaw, supra*, 53 Cal.3d 482, 487; Government Code section 17551 and 17552.

⁹⁷ Exhibit P, Alameda County DA Comments, at p. 6.

⁹⁸ See California Jurisprudence 3d., Vol. 30, Equity, section 36.

process was only added to the Government Code in 2010.⁹⁹ Prior to that, even if Proposition 83 were *known*, without any dispute and by all parties, to have undermined the 1998 mandate finding regarding the SVP program, there was no mechanism in place to bring the issue before the Commission. Therefore, any delay that might be attributed to DOF cannot be said to begin until such mechanism was provided, in Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

Moreover, laches requires, in addition to an unreasonable delay in bringing an action, either acquiescence or prejudice to the other resulting from the delay. Here, it is difficult to identify any prejudice that results from DOF's delay. As discussed, DOF would have had no right or ability to bring this matter before the Commission prior to 2010. And while DOF could be said to have "acquiesced" from the effective date of section 17570 to the time of filing this request, in the intervening two years and three months, the claimants (in the shoes of a defendant here) have continued to receive reimbursement. The statute provides that if DOF prevails, reimbursement will be ended beginning in the 2011-2012 fiscal year, based on the filing date of this redetermination request.¹⁰⁰ Had DOF filed this request two years earlier, the potential reimbursement period affected would have begun in the 2009-2010 fiscal year. Therefore, eligible claimants for the CSM-4509 mandate have not been harmed by DOF's delay in filing this request for redetermination, and may have, in fact, benefited from it.

4. Constitutionality of Section 17570

Several comments have raised the constitutionality of section 17570.¹⁰¹ The Commission is not the proper venue for airing constitutional arguments regarding the Commission's governing statutes. The Commission must presume that the Government Code statutes pertaining to the Commission's processes are constitutional, including section 17570, pursuant to article III, section 3.5 of the California Constitution.¹⁰² The Commission therefore declines to address the constitutional concerns of the interested parties and persons.

5. Conclusion

The issue for this first hearing is whether DOF has made an adequate showing that the state's liability has been modified based on a subsequent change in law. A subsequent change in law, as discussed above, is defined as a change in law that requires a finding that an incurred cost is a cost mandated by the state under section 17514, or is not a cost mandated by the state under section 17556. Here, a section 17556 analysis, presuming, as the Commission must, the constitutionality of the Government Code, would indisputably result in a finding that at least some portion of the activities imposed by the test claim statutes are expressly included in or

⁹⁹ Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

¹⁰⁰ Section 17570(f) (Stats. 2010, ch. 719 (SB 856)) ["A request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year."]

¹⁰¹ See Exhibit M, County of LA Comments, at p. 5; Exhibit H, CPDA Comments at p. 6; Exhibit N, Alameda County Public Defender's Comments; Exhibit L, LA County DA Comments, at pp. 11-12; and Exhibit O, County Counsel of San Diego Comments at p. 2.

¹⁰² *CSBA II, supra*, 192 Cal.App.4th 770, 795; *Porter v. City of Riverside* (1968) 261 Cal.App.2d 832, 837.

necessary to implement Proposition 83. It is not necessary in this hearing to consider the extent to which the test claim statutes may be expressly included in or necessary to implement Proposition 83; it is sufficient, at this time, to determine that at least some number of the mandated activities imposed by the test claim statutes have been modified by a subsequent change in law.

IV. CONCLUSION

Based on the foregoing, the Commission finds that DOF has made a sufficient showing at this first hearing to proceed to a second hearing to determine whether to adopt a new test claim decision.¹⁰³ The Commission hereby directs Commission staff to notice the second hearing and to prepare a full mandates analysis on the issue of whether the CSM shall adopt a new test claim decision to supersede the Commission's previously adopted test claim decision in CSM-4509.

¹⁰³ See Government Code section 17570(d) (Stats. 2010, ch. 719 (SB 856)).

May 17, 2013
Commission on
State Mandates



EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

May 17, 2013

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed the Commission on State Mandates' (Commission) draft staff analysis of the mandate redetermination request (12-MR-01), "Sexually Violent Predators," filed by our office. The technical correction detailed below responds to the draft staff analysis's comment regarding Finance being "silent" on Activity 8. This correction is technical and nonsubstantive as it merely adds a title (underlined below), which was inadvertently omitted, to a preexisting paragraph in our filing.

The first paragraph under the heading, "5: Detailed Analysis," on page 5 of our request should read as follows:

"Activity 8 - Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf & Inst. Code, § 6602).

- o Welfare and Institutions Code section 6604 includes specified jury and court procedures that occur subsequent to the probable cause process as set forth in Welfare and Institutions Code section 6602. Prop 83 reenacted subdivision (d) of Section 6605 that establishes the SVP is entitled to the same constitutional rights provided them at the original commitment proceeding and thus section 6602 is an integral component necessary for Prop 83's implementation. The initial probable cause hearing, as defined in section 6602, is necessary to determine if the person is an SVP. Therefore, subsequent hearings, as defined in Welfare and Institutions Code section 6601, subdivisions (h) through (l), and Welfare and Institutions Code section 6604, could only occur following the initial commitment procedures set forth in Welfare and Institutions Code section 6602. During this time, housing and transportation must be provided pursuant to section 6602. Therefore, Welfare and Institutions Code section 6602 is necessary to implement section 6604, which is part of the ballot measure. Activities, including transportation and housing, associated with the initial SVP determination process are necessary statutory components of Prop 83 implementation and are no longer reimbursable under the SVP mandate."

For greater clarity we have enclosed a corrected page 5 under the heading of "5: Detailed Analysis." The preexisting text specifically identifies transportation and housing required by section 6602 as an activity necessary to implement Proposition 83 and no longer reimbursable.

Ms. Heather Halsey
May 17, 2013
Page 2

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations,
“documents that are e-filed with the Commission need not be otherwise served on persons that
have provided an e-mail address for the mailing list.”

If you have any questions regarding this letter, please contact Randall Ward, Principal Program
Budget Analyst at (916) 445-3274.

Sincerely,



TOM DYER
Assistant Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF CARLA SHELTON
DEPARTMENT OF FINANCE
CLAIM NO. 12-MR-01

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

5-17-13

at Sacramento, CA



Carla Shelton

Request to Adopt a New Test Claim Decision
Sexually Violent Predators (CSM – 4509)
5: Detailed Analysis

Activity 8 - Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf & Inst. Code, § 6602).

- Welfare and Institutions Code section 6604 includes specified jury and court procedures that occur subsequent to the probable cause process as set forth in Welfare and Institutions Code section 6602. Prop 83 reenacted subdivision (d) of Section 6605 that establishes the SVP is entitled to the same constitutional rights provided them at the original commitment proceeding and thus section 6602 is an integral component necessary for Prop 83's implementation. The initial probable cause hearing, as defined in section 6602, is necessary to determine if the person is an SVP. Therefore, subsequent hearings, as defined in Welfare and Institutions Code section 6601, subdivisions (h) through (l), and Welfare and Institutions Code section 6604, could only occur following the initial commitment procedures set forth in Welfare and Institutions Code section 6602. During this time, housing and transportation must be provided pursuant to section 6602. Therefore, Welfare and Institutions Code section 6602 is necessary to implement section 6604, which is part of the ballot measure. Activities, including transportation and housing, associated with the initial SVP determination process are necessary statutory components of Prop 83 implementation and are no longer reimbursable under the SVP mandate.

The preceding activities previously determined to be reimbursable in the Statement of Decision for the SVP mandate (CSM-4509) cease to be a reimbursable mandate pursuant to the amended, reenacted or referenced code sections expressly included in, or necessary to implement Prop 83, pursuant to Government Code section 17570, and Government Code section 17556, subdivision (f).



CPDA

California Public Defenders Association
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 e-mail: cpda@cpda.org

A Statewide Association of Public Defenders and Criminal Defense Counsel

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Winston A. Peters
Los Angeles County

1st Vice President
Garrick Byers
Contra Costa County

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Jean Wilkinson
Orange County

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 Gary Mandinach, 2005, Barry Melton, 2006
 Kathleen Cannon, 2007
 Leslie McMillan, 2008, Bart Sheela, 2009
 Jose Varela, 2010, Marco George, 2011
 Juliana Humphrey, 2012

May 24, 2013

Ms. Heather Halsey
 Executive Director
 California Commission on State Mandates
 900 Ninth Street, Suite 300
 Sacramento, CA 95814

Re: Mandate Redetermination Request 12-MR-01
 Sexually Violent Predator (CSM-4509)

Dear Ms. Halsey:

The California Public Defender's Association (CPDA) hereby files the following response to the Draft Staff Analysis and Proposed Statement of Decision issued May 9, 2013, hereinafter "Draft Staff Analysis." Although CPDA disputes all reasoning, authority, and conclusions contained in the Draft Staff Analysis, for the purpose of this response CPDA will only address the issue pertaining to the viability of defenses set forth in CPDA's Opposition dated March 16, 2013.

The Draft Staff Analysis erroneously rejects the equitable defense of unclean hands. Specifically, the Draft Staff Analysis incorrectly states that "[w]hen Proposition 83 was enacted, there was no process or mechanism by which to redetermine a test claim; thus there would have been no effect on mandate reimbursement. Only after the mandate redetermination process embodied in section 17570 was added to the code in 2010 was there any possibility of utilizing Proposition 83 to change a prior mandate finding. Therefore, any representation that might have been alleged to have misled voters was provided in good faith, and cannot now support a defense of 'unclean hands.'" (*Id.*, at pp. 22-23, footnote omitted.) Similar rational was also utilized in the Draft Staff Analysis in its erroneous rejection of the equitable defense of estoppel and the defense of misrepresentation. (*Id.*, at pp. 25-26.)

Received
 May 28, 2013
 Commission on
 State Mandates

Ms. Heather Halsey
May 24, 2013
Page 2

During the relevant periods surrounding the passage of Proposition 83 (2005 through 2006), Government Code sections 17570 and 17556, subdivision (f), expressly provided for the redetermination of test claims.

Government Code section 17570, which permitted redetermination of sustained test claims, was originally enacted in 1986 (Stats. 1986, c. 879, § 13) and amended in 1990 (Stats. 1990, c. 582 (S.B.340), § 6). Specifically, Government Code section 17570 provided “[t]he Legislative Analyst shall review each unfunded statutory or regulatory mandate for which claims have been approved by the Legislature pursuant to a claims bill during the preceding fiscal year. Any recommendations by the Legislative Analyst to eliminate or modify the mandates shall be contained in the annual analysis of the Budget Bill prepared by the Legislative Analyst.” (Emphasis added.)

Significantly, Government Code section 17570 was in full force and effect at least 4 years prior to the Legislative Analyst Office (LAO) Letter dated September 2, 2005, which stated Proposition 83 would not affect state reimbursement to counties, and the November 8, 2006, effective date of Proposition 83. The viability of Government Code section 17570 during the relevant time periods of 2005-2006 is not diminished by the fact that it was subsequently repealed on August 24, 2007 (Stats. 2007, c. 179 (S.B. 86) § 21).

Further evidence of the power of the Commission on State Mandates (CSM) to redetermine test claims in 2005 through 2006 can be found within the California School Boards Ass’n v. State (2009) 171 Cal.App.4th 1183 (California School Boards) decision. The Legislature passed A.B. 138 (Stats. 2005, ch. 72, §§ 11-14), on July 19, 2005, which changed the wording of Government Code section 17556, subdivision (f), to state that costs are not reimbursable if “[t]he statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.” (Emphasis added.) Notably, Government Code section 17556, subdivision (f), was in effect at the time of the September 2, 2005 LAO Letter issued and prior to Proposition 83’s passage on November 8, 2006.

Three distinct redetermination made prior to the effective date of Proposition 83 were addressed by the decision in California School Boards—i.e., the “Open Meeting Act” and the “Brown Reform Act” test claims; the “Mandate Reimbursement Process” test claims; and, the “School Accountability Report Cards” test claim. (California School Boards Ass’n v. State, supra, 171 Cal.App.4th 1183, 1193-1198.) In 1988 and 2001 the CSM upheld the test claims submitted under the “Open Meeting Act” and the “Brown Reform Act.” Pursuant to Legislative directive contained in A.B. 138 the CSM redetermined and set aside the “Open Meetings Act” and “Brown Reform Act” test claims in September, 2005.

Ms. Heather Halsey
May 24, 2013
Page 3

In 1986 the CSM upheld the "Mandate Reimbursement Process" test claim which it subsequently redetermined and set aside in May, 2006. In 1988 the CSM upheld the test claim submitted under the "School Accountability Report Cards" which it subsequently redetermined and set aside in 2005. (Ibid.)

When Proposition 83 took effect on November 8, 2006, the CSM had completed reconsideration of the foregoing three test claim redeterminations. The assertion that there was "no process or mechanism by which to redetermine a test claim" during the time period of 2005 through 2006 is disingenuous. Although the court in California School Boards reversed these redeterminations, the ruling was not handed down until March 9, 2009, nearly three years after the passage of Proposition 83. Therefore, the Draft Staff Analysis erroneously and inaccurately portrayed the state of the law vis-a-vis redetermination of test claims during the relevant period of 2005 through 2006 surrounding the passage of Proposition 83.

Based on the forgoing analysis and CPDA's Letter dated March 16, 2013, CPDA respectfully requests the CSM to deny the DOF's January 15, 2013, request for a redetermination of the CSM's Statement of Decisions for the Sexually Violent Predator mandate (CSM-4509) dated June 25, 1988.

Sincerely,

Winston Peters

Winston Peters
President, California Public Defender's Association



WENDY L. WATANABE
AUDITOR-CONTROLLER

**COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION
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Received
May 31, 2013
Commission on
State Mandates

May 30, 2013

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

**LOS ANGELES COUNTY'S REBUTTAL COMMENTS ON
SEXUALLY VIOLENT PREDATORS ("SVP) REDETERMINATION**

The County of Los Angeles respectfully submits its rebuttal comments on the Commission on State Mandates' (CSM) draft staff analysis of the SVP Program.

We are e-filing our comments pursuant to Section 1181.2, subd. (c)(1)(E) of the California Code of Regulations, "Documents e-filed with the Commission need not be otherwise served on the persons that have provided an e-mail address for the mailing list."

If you have any questions, please contact Hasmik Yaghobyan at (213) 893-0792 or hyaghobyan@auditor.lacounty.gov.

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

WLW:JN:CY:ED:hy
H:\SB90\CSM's Extensions\SVP 5-30-13.doc

Attachment

**LOS ANGELES COUNTY'S REBUTTAL COMMENTS ON
COMMISSION ON STATE MANDATES' ("CSM") DRAFT STAFF ANALYSIS
SEXUALLY VIOLENT PREDATORS ("SVP") REDETERMINATION**

The County of Los Angeles, ("the County") disagrees with the CSM's draft analysis and Statement of Decision on the subject program for concluding that the Department of Finance ("DOF") has made "an adequate showing that the State's liability has been modified pursuant to a subsequent change in law, as defined in section 17570" (CSM Draft Staff Analysis page 3).

Our disagreements are based on: (1) CSM's conclusion that the reason DOF waited six and half years after the passage of Proposition 83 in 2006 ("Prop. 83") to request a new test claim in January 2013 due to the lack of a mechanism and process in place until the enactment of section 17570 in 2010; and (2) Prop. 83's requirement should not apply to pre Prop. 83 SVP offenders.

There was a mechanism and process in place after the passage of Prop. 83 because CSM adopted new SVP Parameters and Guidelines ("P's&G's") in October 2009.

On September 30, 2008, in enacting AB 1389, Section 75, the legislature directed the CSM to review and determine whether a reimbursable State mandate still existed in light of the passage of Prop. 83:

Notwithstanding any other provision of law, the Commission on State Mandates, upon final resolution of any pending litigation challenging the constitutionality of subdivision (f) of Section 17556 of the Government Code, shall reconsider its test claim statement of decision in CSM-4509 on the Sexually Violent Predator Program to determine whether Chapters 762 and 763 of the Statutes of 1995 and Chapter 4 of the Statutes of 1996 constitute a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of ballot measures approved by the state's voters, federal and state statutes enacted, and federal and state court decisions rendered since these statutes were enacted. The commission shall, if necessary, issue a statewide cost estimate and revise its parameters and guidelines in CSM-4509 to be consistent with this reconsideration and shall, if practicable, include a reasonable reimbursement methodology as defined in Section 17518.5 of the Government Code. If the parameters and guidelines are revised, the Controller shall revise the appropriate claiming instructions to be consistent with the revised parameters and guidelines. Any changes by the commission to the original statement of decision in CSM-4509 shall be deemed effective on July 1, 2009.

CSM did not institute a new test claim as a result of Prop. 83. Instead CSM considered and adopted new SVP's P's&G's (05-PGA-43), to define additional reimbursable activities and refined claim preparation and submissions of local agencies in providing SVP reimbursable activities.

In addition, in response to California School Board's Association, 171 Cal.App.4th 1183 decision, the current procedure for challenging previously approved CSM's decision was enacted in SB 856 effective October 19, 2010. There was a procedure in place for DOF to request a new test claim. DOF waited until January 2013, to request a new test claim, nearly six and half years after the passage of Prop. 83.

Prop. 83 made two changes to the then existing SVP law, the new requirements should not be applied to the pre Prop. 83 offenders

The only two significant changes Prop. 83 made to SVP law were (1) standards for the release of SVPs from state mental hospitals, and (2) the number of prior victims of SVP offenses necessary to qualify an offender for an SVP commitment. Therefore, the new requirements of the SVP should not be applied to the pre Prop. 83 offenders until they leave the program.

Retroactive application of the Prop. 83 SVP law (a violation of Ex Post Facto Law) would be unconstitutional. In adopting a new P's&G's for Chapter 641, Statutes of 1995, CSM stated:

Chapter 641/95, eliminated diversion as a domestic violence sentencing for those arrested on or after January 1, 1996, under prior law, (Chapter 221/93, and Chapter 1158/80) was not terminated by Chapter 641/95 and continues until the period of diversion has been completed. Such completion and resultant closeout costs, for the period January 1, 1996 through June 30, 1997, may be claimed as provided... CSM-4447A, page 1.

To eliminate the right of the pre Prop. 83 SVP offenders from the pre Prop. 83 applicable laws would be nullifying the sentencing judges' orders. Our interpretation of statutes declares all laws are to commence in the future and operate prospectively. Therefore, reimbursement should continue on all pre Prop. 83 offenders until jurisdiction is terminated.

Based on the foregoing analysis, the County respectfully requests the CSM to deny the DOF's request for a redetermination of SVP reimbursable program and adopting a new test claim.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:
FIRST HEARING: ADEQUATE SHOWING
ON:

Welfare and Institutions Code sections 6601,
6602, 6603, 6604, 6605, and 6608;

As added or amended by Statutes 1995,
Chapter 762 (SB 1143); Statutes 1995, Chapter
763 (AB 888); Statutes 1996, Chapter 4 (AB
1496).

Sexually Violent Predators (CSM-4509)

As Alleged to be Modified by:

Proposition 83, General Election,
November 7, 2006

Filed on January 15, 2013

By the Department of Finance, Requester.

Case No.: 12-MR-01

Sexually Violent Predators (CSM-4509)

STATEMENT OF DECISION
PURSUANT TO GOVERNMENT
CODE SECTION 17500, ET SEQ.;
CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION
2, CHAPTER 2.5, ARTICLE 7.

(Adopted July 26, 2013)

(Served August 2, 2013)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on July 26, 2013. Hasmik Yaghobyan appeared for the County of Los Angeles, the claimant in the SVP test claim. Craig Osaki appeared for the Los Angeles County Public Defender's Office. Jack Weedon appeared for the California Public Defenders' Association. Timothy Barry appeared for the County Counsel of San Diego. Geoffrey Neill appeared for the California State Association of Counties. Allan Burdick appeared as a member of the public. Michael Byrne and Susan Geanacou appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., title 2, California Code of Regulations 1189 et seq., and related case law.

The Commission adopted the staff analysis at the hearing by a vote of 7 to 0, and directed staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision.

Summary of the Findings

The Commission finds that the Department of Finance (DOF) has made an adequate showing that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the CSM-4509 mandate has been modified based on a subsequent change in law. Specifically, Welfare and Institutions Code sections 6601, 6604, 6605, and 6608 imposed duties expressly included in Proposition 83, adopted by the voters on November 7, 2006. Government Code section 17556(f) proscribes the Commission from finding "costs mandated by the state" for costs incurred as a result of statutes that impose duties that are expressly included in a ballot measure approved by the voters. Pursuant to Government Code section 17570(b)(d)(4), the Commission will hold a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.

COMMISSION FINDINGS

Chronology

06/25/1998	The Commission adopted the test claim statement of decision for <i>Sexually Violent Predators</i> , (CSM-4509), approving reimbursement for certain activities under Welfare and Institutions Code sections 6601, 6602, 6603, 6604, 6605, and 6608. ¹
09/24/1998	The Commission adopted parameters and guidelines. ²
11/08/2006	California voters approved Proposition 83, which amended and reenacted several sections of the Welfare and Institutions Code. ³
10/30/2009	The Commission adopted amended parameters and guidelines. ⁴
01/15/2013	DOF filed a request for redetermination of CSM-4509. ⁵
01/24/2013	Commission staff deemed the filing complete.
02/13/2013	The State Controller's Office (SCO) submitted comments. ⁶
02/13/2013	The County of Los Angeles requested an extension of time to file comments.
02/13/2013	The California State Association of Counties (CSAC) requested an extension of time to file comments.
02/14/2013	The County of San Diego requested an extension of time to file comments.
02/15/2013	The Executive Director granted an extension of time for the submittal of all comments until March 27, 2013, and set the matter for the first hearing on July 26, 2013.

¹ Exhibit B, Test Claim Statement of Decision.

² Exhibit C, Test Claim Parameters and Guidelines.

³ See Exhibit A, Request for Redetermination.

⁴ Exhibit D, Test Claim Amended Parameters and Guidelines.

⁵ Exhibit A, Request for Redetermination.

⁶ Exhibit E, SCO Comments on Request for Redetermination.

03/19/2013 California District Attorneys' Association (CDAA) submitted comments on the request for redetermination.⁷

03/22/2013 CSAC submitted comments on the request for redetermination.⁸

03/25/2013 California Public Defenders' Association (CPDA) submitted comments on the request for redetermination.⁹

03/25/2013 District Attorney of San Bernardino County submitted comments on the request for redetermination.¹⁰

03/25/2013 County of San Bernardino submitted comments on the request for redetermination.¹¹

03/26/2013 District Attorney of Sacramento County submitted comments on the request for redetermination.¹²

03/26/2013 District Attorney of Los Angeles County submitted comments on the request for redetermination.¹³

03/27/2013 County of Los Angeles submitted comments on the request for redetermination.¹⁴

03/27/2013 Alameda County Public Defender submitted comments on the request for redetermination.¹⁵

03/27/2013 County Counsel of San Diego County submitted comments on the request for redetermination.¹⁶

03/29/2013 Alameda County District Attorney submitted comments on the request for redetermination.¹⁷

⁷ Exhibit F, CDAA Comments on Request for Redetermination.

⁸ Exhibit G, CSAC Comments on Request for Redetermination.

⁹ Exhibit H, CPDA Comments on Request for Redetermination.

¹⁰ Exhibit I, County of San Bernardino District Attorney Comments on Request for Redetermination.

¹¹ Exhibit J, County of San Bernardino Comments on Request for Redetermination.

¹² Exhibit K, County of Sacramento District Attorney Comments on Request for Redetermination.

¹³ Exhibit L, County of Los Angeles District Attorney Comments on Request for Redetermination.

¹⁴ Exhibit M, County of Los Angeles Comments on Request for Redetermination.

¹⁵ Exhibit N, Alameda County Public Defender Comments on Request for Redetermination.

¹⁶ Exhibit O, County Counsel of San Diego Comments on Request for Redetermination.

¹⁷ Exhibit P, Alameda County District Attorney Comments on Request for Redetermination.

- 05/09/2013 Commission staff issued the draft staff analysis and proposed statement of decision.¹⁸
- 05/17/2013 DOF submitted comments on the draft staff analysis.¹⁹
- 05/28/2013 CPDA submitted comments on the draft staff analysis.²⁰
- 05/31/2013 County of Los Angeles submitted late comments on the draft staff analysis.²¹

I. Background

The Sexually Violent Predator Program and Alleged Subsequent Change in Law

The *Sexually Violent Predators* (SVP) program established civil commitment procedures for the civil detention and treatment of sexually violent predators following the completion of an individual’s criminal sentence imposed for certain sex-related offenses. Before civil detention and treatment are imposed, the county counsel or district attorney is required to file a petition for civil commitment. A trial is then conducted to determine beyond a reasonable doubt if the person is a sexually violent predator. If the person alleged to be a sexually violent predator is indigent, the county is required to provide the indigent person with the assistance of counsel and experts necessary to prepare the defense.

The Commission concluded, in the CSM-4509 test claim statement of decision, that Welfare and Institutions Code sections 6601(i), 6602, 6603, 6604, 6605(b)-(d), and 6608(a)-(d) as enacted or amended by the 1995 and 1996 test claim statutes, imposed a reimbursable state-mandated program on counties within the meaning of article XIII B, section 6, of the California Constitution.²²

On November 7, 2006, the voters approved Proposition 83, also known as “Jessica’s Law.” Proposition 83 effected a number of amendments to the Penal Code, including strengthening penalties for kidnapping and sexual offenses perpetrated upon children, and expanding the definitions of certain sexual offenses, especially by removing the requirement of “force, violence, duress, menace, or fear of immediate and unlawful bodily injury” from the definitions of several crimes.²³ Proposition 83 also mandated consecutive sentences for a number of sexual offenses,²⁴ mandated a minimum 25 year sentence for a “habitual sexual offender,” as defined,²⁵ and required persons released on parole from a “registerable sex offense” to be monitored for the

¹⁸ Exhibit Q, Draft Staff Analysis and Proposed Statement of Decision.

¹⁹ Exhibit R, DOF Comments on Proposed Statement of Decision.

²⁰ Exhibit S, CPDA Comments on Draft Staff Analysis.

²¹ Exhibit T, County of Los Angeles Comments on Draft Staff Analysis.

²² Exhibit B, Test Claim Statement of Decision, at p. 12.

²³ See, e.g., Penal Code sections 209, 220, 269, as amended by Proposition 83 (adopted November 7, 2006).

²⁴ See Penal Code section 667.6, as amended by Proposition 83.

²⁵ Penal Code section 667.71, as amended by Proposition 83.

duration of their parole by a global positioning system device, for which the parolee is responsible to pay unless granted a waiver by the Department of Corrections.²⁶

As directly relevant here, Proposition 83 also amended and reenacted provisions of the Welfare and Institutions Code, including sections 6601, 6604, 6605, and 6608 which were among the test claim statutes approved by the Commission in CSM-4509.

Section 6601(k) was amended by Proposition 83 to provide that a civil commitment under article 4 *shall toll the term of an existing parole*, where applicable. This means that if a person were granted parole but subsequently civilly committed, that individual's parole would not run concurrently, but would be "tolled," and the remaining parole would be served after the civil commitment ends. The test claim statute, as approved in CSM-4509, provided that a civil commitment "*shall not toll, discharge or otherwise affect the term of parole,*" meaning that a term of parole *could* run concurrently with a civil commitment, but that release from civil commitment would not discharge any remaining term of parole. The remainder of section 6601 was reenacted by Proposition 83 without amendment.

Section 6604 was amended by Proposition 83 to provide that if a court or jury determined that a person is a sexually violent predator, the person "shall be committed for an indeterminate term." The test claim statute, as approved in CSM-4509 had provided for a two year civil commitment, with an option for an extended commitment order from the court.

Section 6605 was amended by Proposition 83 to provide that if the Department of Mental Health deems that the person's condition has changed, and that unconditional release or a conditional release to a less restrictive environment is appropriate and in the best interests of the person and conditions can be imposed to adequately protect the community, the Director "*shall authorize the person to petition the court*" for conditional release or unconditional discharge. The test claim statute, as approved by the Commission, required an annual notice to the person of his or her right to petition the court for release, and provided for an annual examination of his or her mental condition, but not, as the more recently amended section requires: "consideration of whether the committed person currently meets the definition of a sexually violent predator" and whether conditional release is appropriate in a particular case." Based on the plain language, the prior section 6605 was focused on the right of the individual to be annually evaluated for release, and to petition for release. As the section reads after Proposition 83, the focus is on the Department of State Hospitals making a determination that a person's condition has changed, and "authorizing" that person to petition for release.

And finally, Proposition 83 amended section 6608 to provide that, notwithstanding the provisions of section 6605, a person may petition the court for "*conditional release or an unconditional discharge*" without approval from the director of the Department of Mental Health. The test claim statute stated "conditional release *and subsequent unconditional discharge.*"²⁷

²⁶ Penal Code section 3000.07, as added by Proposition 83.

²⁷ Compare Penal Code sections 6601, 6604, 6605, and 6608 (as added or amended by Stats. 1995, ch. 762; Stats. 1995, ch. 763; Stats. 1996, ch. 4) with Penal Code sections 6601, 6604, 6605, and 6608, as amended by Proposition 83.

Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision if a subsequent change in law, as defined, has altered the state's liability for reimbursement. The redetermination process calls for a two stage hearing; at the first stage, the requester must make "an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior the claim decision, that may modify the state's liability pursuant to Article XIII B, section 6, subdivision (a) of the California Constitution."²⁸

A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a "subsequent change in law" does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A "subsequent change in law" also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.²⁹

If the Commission finds, at the first hearing, that the requester has made an adequate showing, "when considered in light of all of the written responses, rebuttals and supporting documentation in the record and testimony at the hearing, the commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on the request to adopt a new test claim decision to supersede the previously adopted test claim decision."³⁰

II. Positions of the Requester, Test Claimant, and Interested Parties and Persons

A. Department of Finance, Requester

DOF submitted a request to adopt a new test claim decision regarding Welfare and Institutions Code sections 6601, 6602, 6603, 6604, 6605, and 6608, pursuant to Government Code section 17570. DOF asserts that Proposition 83 constitutes a subsequent change in the law, as defined in section 17570, which, when analyzed in light of section 17556, results in the state's liability under the test claim statutes being modified. DOF argues that "the state's obligation to reimburse affected local agencies has ceased."³¹ Specifically, DOF argues that because sections 6601, 6604, 6605, and 6608 were included in their entirety in Proposition 83, the voters reenacted the entirety of those sections, "including the portions not amended," and therefore the test claim statutes impose duties expressly included in the voter-enacted ballot measure. DOF also argues that "[t]he remainder of the mandate's Welfare and Institutions Code sections that were not expressly included in the ballot measure are, nevertheless, necessary to implement the ballot measure." DOF concludes that "all activities found to be reimbursable by the Commission in the *Sexually Violent Predator* mandate are no longer reimbursable pursuant to Government

²⁸ Code of Regulations, Title 2, section 1190.05(a)(1).

²⁹ Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

³⁰ California Code of Regulations, Title 2, section 1190.05(a)(5)(B).

³¹ Exhibit A, Request for Redetermination, at p. 2.

Code section 17556, subdivision f, as they are either: (1) expressly included in Prop 83 or, (2) necessary for the implementation of Prop 83.”³²

B. County of Los Angeles, Claimant for CSM-4509

The County of Los Angeles filed comments on the redetermination request, summarized as follows:

The County opposes the DOF's request to adopt a new test claim on the basis that: 1) the extraneous text included in the body of Prop 83 did not constitute a change in the law; 2) Prop 83 did not convert activities identified in the Commission's 1998 Statement of Decision to activities necessary to implement Prop 83, therefore, no longer reimbursable; and 3) Government Code Section 17570 is unconstitutional.³³

The County's position relies on its reasoning that Statutes 2006, chapter 337 (SB 1128), enacted as urgency legislation on September 20, 2006, made most of the same substantive amendments to the code that would be enacted by Proposition 83 less than two months later. The County reasons that because the law in effect immediately prior to the passage of Proposition 83 was substantially the same, Proposition 83 cannot constitute a subsequent change in law. The County argues:

The changes actually proposed by Prop 83 were few and narrow, particularly in light of revisions to SVP laws that had recently been codified by S8 1128. The Secretary of State's practice of giving textual context to a ballot proposal by including unaffected statutory provisions is a benign protocol intended to fully inform the voters. Affirmation of existing law most certainly does not give rise to the change in law contemplated by Section 17570.³⁴

Thus, the County also implies, in the excerpt above, that sections 6601, 6604, 6605, and 6608 were reproduced in the ballot measure in their entirety as a matter of “protocol,” not because the ballot measure was intended to effect substantive or pervasive changes. Finally, the County argues that section 17570 is unconstitutional on separation of powers grounds, and because it is “an infringement of article XIII B, section 6, of the California Constitution.”³⁵

In response to the draft staff analysis and proposed statement of decision, the County argues in late comments that DOF's delay of “nearly six and a half years after the passage of Proposition 83” in bringing this reconsideration request was unreasonable because the Legislature in 2008 directed the Commission to set aside and reconsider the Sexually Violent Predators mandate “upon final resolution of any pending litigation challenging the constitutionality of subdivision (f) of section 17556.” the County also states that the current redetermination process was made effective October 19, 2010, but that DOF “waited until January 2013.” Finally, the County argues that Proposition 83's standards for defining a person as an SVP and for releasing an SVP,

³² *Ibid.*

³³ Exhibit M, County of Los Angeles Comments, at p. 1.

³⁴ Exhibit M, County of Los Angeles Comments, at pp. 1-2.

³⁵ Exhibit M, County of Los Angeles Comments, at p 5.

once adjudicated, should not be applied to “pre Prop 83 offenders.”³⁶ The County argues that to end mandate reimbursement for offenders determined to be sexually violent predators prior to the adoption of Proposition 83 would violate the rights of offenders and “nullify judges’ sentencing orders.”³⁷

C. State Controller’s Office

The SCO agrees with DOF “that the eight activities previously determined to be reimbursable in the Statement of Decision adopted on June 25, 1998 cease to be reimbursable.”³⁸

D. Other Interested Parties and Persons

1. California District Attorneys’ Association; San Bernardino County District Attorney’s Office

The CDAA and the San Bernardino County DA argue that “[t]he application of Government Code § 17556(f) to Proposition 83 in order to terminate state subvention of mandated sexually violent predators is legally incorrect.” CDAA continued:

The Department of Finance contention that the mere recitation of any portion of a statute contained in a proposition, brings it within the "expressly included in" language of Government Code § 17556(f) regardless of whether the sections mandating local activity were amended or not, and whether or not the intent of the initiative and purpose of the initiative was to eliminate the subvention requirements of Article XIII B §6 by operation of Government Code § 17566(f), is not warranted. Such an interpretation would make the application of the statute so over broad and vague that no voter, local official, or legal analyst could accurately predict whether state mandated subvention would cease to exist as they voted to pass any ballot initiative that referenced existing law.³⁹

They also argue that there is no evidence, including in the ballot materials, that the voters intended Proposition 83 to terminate the state’s liability under article XIII B, section 6, to

³⁶ Exhibit T, County of Los Angeles Comments, at pp. 1-2.

³⁷ This assertion is not relevant to the issue at hand: whether this program imposes a reimbursable state mandate when analyzed in the context of Proposition 83. LA County implies that ending reimbursement would affect the rights of persons alleged to be, or adjudicated to be, sexually violent predators, and that those effects constitute an enactment in violation of the United States Constitution’s proscription against ex post facto laws. An ex post facto law is one which alters the legal consequences of an act after the act is committed, and the United State Supreme Court has held that the prohibition only applies to criminal statutes. A change in mandate reimbursement does not violate the prohibition, or affect in any way how an individual alleged to be a sexually violent predator is treated under the law, or what process is due. The redetermination of the test claim does not impact the rights of criminal defendants, rather it resolves who must pay for the costs of implementing the law: the state, if it is a state-mandated program; or the county, if it is not..

³⁸ Exhibit E, SCO Comments, at p. 1.

³⁹ Exhibit F, CDAA Comments, at p. 1; Exhibit I, San Bernardino County DA Comments, at p. 1.

reimburse the test claim statutes. To support this argument they cite a letter from the Legislative Analyst's Office (LAO) and DOF to then-Attorney General Lockyer, in which "[t]he unequivocal conclusion of both officials is that the costs of the SVP program would remain a reimbursable by the state." They assert that this conclusion should be given great weight, "despite the Department of Finance's now changed opinion."⁴⁰

2. California State Association of Counties

CSAC argues, in its comments, that the state's liability has not been affected by Proposition 83. Specifically, CSAC argues that the California Constitution mandates reimbursement for new programs or higher levels of service, subject to "four exceptions, but none of them are relevant in this case." CSAC argues that "[i]n particular, there is no exception for a ballot measure that voters pass years later that does not substantively amend any of the language that established the mandate in the first place."⁴¹ CSAC further argues that the SVP program was unaffected by the passage of Proposition 83: "[b]ecause the ballot measure made no substantive changes to the reimbursable aspects of the program, the SVP program established by the Legislature would have remained in place whether voters approved or disapproved Proposition 83." CSAC also notes that "SB 1128, by Senator Alquist, amended Sections 6600, 6601, 6604, 6604.1, and 6605 of the Welfare and Institutions Code, among many others," less than two months prior to the election in which Proposition 83 was adopted, and that therefore Proposition 83 made no substantive changes to the law in effect at that time. Finally, CSAC argues that the request should be rejected because the Director of DOF "told the voters that counties would be reimbursed." CSAC cites the ballot materials and the analysis published leading up to the election:

At the time Proposition 83 went to the ballot, the chief analysts representing both the Administration and the Legislature- the Director of Finance and the Legislative Analyst- agreed that all county costs related to the SVP commitment process would be reimbursed by the state. They stated the fact that counties would be reimbursed four times in their official fiscal analysis provided to the Attorney General, and voters decided the outcome of Proposition 83 based in part on that assurance.

In their official fiscal analysis of the ballot measure required by law, the Legislative Analyst and Director of Finance state unequivocally that Proposition 83 would increase state costs to, among other things, "reimburse counties for their costs for participation in the SVP commitment process."⁴²

CSAC implies that these analyses constitute evidence of voter intent, which in turn should be given substantial weight in evaluating whether a subsequent change in law has occurred.

⁴⁰ Exhibit F, CDAA Comments, at p. 4; Exhibit I, San Bernardino County DA Comments, at p. 4.

⁴¹ Exhibit G, CSAC Comments, at p. 1.

⁴² Exhibit G, CSAC Comments, at p. 3.

3. California Public Defenders' Association and Alameda County Public Defender's Office

CPDA and Alameda County Public Defender's Office submitted substantially identical comments opposing the request for redetermination, in which they argue:

(1) The 2012 legislative amendment and re-enactment of the Sexually Violent Predator Act (SVP A) either confirmed the viability of the Sexually Violent Predator Mandate (CSM-4509), or, *arguendo*, superseded any impact that Proposition 83 may have affected on the mandate; (2) Misrepresentation and the doctrines of estoppel and unclean hands bar the DOF's redetermination request; (3) Proposition 83 did not effectuate a "subsequent change in the law" as contemplated by Government Code section 17570; and (4) Government Code section 17570 is unconstitutional.⁴³

The comments note that in 2012, the Legislature enacted substantive amendments to the SVP program, which, it is argued, "superseded any impact" of Proposition 83. CPDA and the Alameda County Public Defender's Office argue that due to the 2012 amendments to the relevant codes sections "Proposition 83 is no longer the statutory authority supporting the SVPA; consequently the cost incurred by local agencies to comply with the 2012 legislatively enacted SVPA is a cost mandated by the state."⁴⁴ The comments cite the LAO and DOF analysis of Proposition 83, and argue that DOF should now be estopped from seeking redetermination of the SVP mandate because of the position taken prior to the election on Proposition 83.⁴⁵ The comments also focus on the 2006 legislative amendment to the SVP program, arguing that DOF's request for redetermination "is misleading because the statutory language quoted from the SVPA by the DOF's January 15, 2013, request, as well as that include [sic] in the actual proposition, was not the statutory language in effect at the time Proposition 83 was passed on November 7, 2006."⁴⁶ And finally, the comments assert that section 17570 is unconstitutional, because it is unconstitutionally vague, with respect to the term "subsequent change in law," and because it violates separation of powers doctrine.⁴⁷

In response to the draft staff analysis, CPDA submitted further comments, strenuously reiterating its arguments with respect to the unclean hands and estoppel doctrines. CPDA argues in its comments that prior reconsiderations conducted at the direction of the Legislature with respect to four prior test claims, and ultimately struck down by the court of appeal, demonstrate that a legal process or mechanism for reconsidering a test claim was in effect at the time Proposition 83 was

⁴³ Exhibit H, CPDA Comments, at p. 1; Exhibit N, Alameda County Public Defender's Comments, at p. 2.

⁴⁴ Exhibit H, CPDA Comments, at p. 2; Exhibit N, Alameda County Public Defender's Comments, at p. 3.

⁴⁵ Exhibit H, CPDA Comments, at pp. 3-4; Exhibit N, Alameda County Public Defender's Comments, at pp. 4-5.

⁴⁶ Exhibit H, CPDA Comments, at p. 4; Exhibit N, Alameda County Public Defender's Comments, at p. 5.

⁴⁷ Exhibit H, CPDA Comments, at p. 6; Exhibit N, Alameda County Public Defender's Comments, at p. 7.

adopted, and that therefore the analysis included in the ballot materials was incorrect and misleading to voters, and estoppel principles, or unclean hands doctrine, should be applied to bar DOF from bringing its redetermination request under section 17570.⁴⁸

4. County of San Bernardino

The County of San Bernardino argues that DOF's interpretation of section 17556 is legally incorrect. San Bernardino focuses on the intent of the voters in adopting Proposition 83, stating:

The Department of Finance's flawed interpretation of the "expressly included" language of Government Code Section 17556(f) fails to consider whether the ballot language intended to enact or change the state reimbursement of mandated activities.

San Bernardino also implies that no subsequent change in law has occurred, reasoning that "[t]he statutory changes in the initiative did not relieve counties of their preexisting state mandated activities per Welfare and Institutions Code section 6601 through 6604."⁴⁹

5. Sacramento County District Attorney's Office

The Sacramento County DA argues that no subsequent change in law has occurred, and that "the legislature still retains a true choice in whether to have the duties imposed on local government in the statute remain with local governments, or change the statutes so that the mandated duties are performed at the state level." The Sacramento County DA focuses on the fact that Proposition 83 permits the Legislature "to amend, by a statute passed by a roll call vote of two-thirds of each house," and implies that the failure to relieve local agencies of the duties imposed by Proposition 83 constitutes a reimbursable state mandate.

The Sacramento County DA argues further that "[t]he fact that pre-existing law has simply been recited again, either in a statute re-enacted by the legislature, or as part of a new ballot measure...does not amount to a change in the law for § 17570 purposes." The Sacramento County DA focuses on the fact that "the mandated activities at issue here were in place before the initiative was enacted," and concludes that "there has been no change in the applicable law."⁵⁰

Finally, the Sacramento County DA argues that DOF's redetermination request was never intended by the voters, and that a new test claim decision eliminating reimbursement would provide a windfall to the state, and impose a hardship on local governments.⁵¹

6. Los Angeles County District Attorney's Office

The County of Los Angeles DA argues that "[t]he activities for which the county is being reimbursed, the basis for the Commission's Statement of Decision, and the need for reimbursement from the State in order to comply with SVP laws have not changed since the Statement of Decision was adopted."

⁴⁸ Exhibit S, CPDA Comments on Draft Staff Analysis.

⁴⁹ Exhibit J, County of San Bernardino Comments.

⁵⁰ Exhibit K, Sacramento County District Attorney's Office Comments, at pp. 1-2.

⁵¹ Exhibit K, Sacramento County District Attorney's Office Comments, at p. 3.

The County of Los Angeles DA argues that Proposition 83 “simply reaffirmed many of the changes already effectuated by SB 1128,” that “the changes actually proposed by Prop 83 were few and narrow,” and that “[a]ffirmation of existing law certainly does not give rise to the change in law contemplated by Section 17570.”⁵² The County DA argues that “inclusion, within the text of an initiative, of language that is unaffected by proposed revisions to the law does not constitute a change in the law,”⁵³ The County of Los Angeles DA further asserts that “[a]n activity may not fairly be recharacterized as “necessary to implement” another activity simply because an antecedent activity may have been affected by a change in the law,” and that “a reimbursable activity does not cease to be a reimbursable activity because it happens to have constitutional implications.” And the County of Los Angeles DA argues that “Prop 83’s mere reaffirmation of legislative action does not constitute a change in the law.”⁵⁴ Additionally, the County of Los Angeles DA proffers a theory of equitable estoppel, based on the LAO and DOF analysis of Proposition 83 leading up to the election, discussed below, and the conclusion that Proposition 83 would not affect mandates.⁵⁵ Finally, the County DA asserts that section 17570 is unconstitutional, as a violation of separation of powers doctrine.⁵⁶

7. County Counsel of San Diego

The County Counsel of San Diego argues that “Jessica’s Law [Proposition 83] did not make any changes material to the relevant statutes as they existed immediately before the adoption of Jessica’s Law,” that the 2012 reenactment “supersedes any effects that Jessica’s Law may have had on the state’s obligation,” that “DOF’s Request is based on the unconstitutionally broad language in Section 17556(f) that impermissibly directs the commission to apply the ballot measure exception to previously enacted legislation.” The County Counsel of San Diego further argues that “DOF’s Request relies on the unconstitutionally broad definition of what constitutes a ‘subsequent change in the law’ set forth in Section 17570.”⁵⁷

8. Alameda County District Attorney’s Office

The Alameda County DA argues that Proposition 83 did not make any material changes to the responsibilities of county counsel offices or district attorneys’ offices; that DOF’s interpretation of section 17556(f) “cannot be the correct interpretation;” and that DOF’s request “should be rejected on common law principles of laches and estoppel.”⁵⁸

III. Discussion

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly

⁵² Exhibit L, County of Los Angeles District Attorney’s Office Comments, at pp. 2-3.

⁵³ Exhibit L, County of Los Angeles District Attorney’s Office Comments, at pp. 4-5.

⁵⁴ Exhibit L, County of Los Angeles District Attorney’s Office Comments, at pp. 4-8.

⁵⁵ Exhibit L, County of Los Angeles District Attorney’s Office Comments, at pp. 8-10.

⁵⁶ Exhibit L, County of Los Angeles District Attorney’s Office Comments, at pp. 11-12.

⁵⁷ Exhibit O, County Counsel of San Diego Comments, at p. 2.

⁵⁸ Exhibit P, Alameda County District Attorney’s Comments, at pp. 2-5.

situated local agencies or school districts must file a successful test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁵⁹ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁶⁰ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁶¹

Under Government Code section 17570, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the states liability.

The first hearing in the mandate redetermination process is, pursuant to the Government Code and the Commission’s regulations, to determine only whether the requester has made an adequate showing that the state’s liability has been modified based on a subsequent change in law, as defined. Therefore, analysis of section 17556(f), as well as consideration of the comments submitted by interested parties, will be limited to whether the request, when considered in light of all of the written responses and supporting documentation in the records of this request, has a substantial possibility of prevailing at the second hearing.”⁶² A thorough mandates analysis to determine whether and to what extent the state’s liability has been modified, considering the applicable law, the arguments put forth by the parties and interested parties, and the facts in the record, will be prepared for the second hearing on this matter.

⁵⁹ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487; Government Code sections 17551; 17552.

⁶⁰ *County of San Diego v. State of California*, (1997) 15 Cal.4th 68, 109.

⁶¹ *County of Sonoma v. Commission on State Mandates*, (2000) 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁶² Code of Regulations, Title 2, section 1190.05 (Register 2010, No. 48). This regulation describes the standard for the first hearing as follows:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6, subdivision (a) of the California Constitution. The commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written responses and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.

A. Finance’s Argument for the Adoption of a New Test Claim Decision to Supersede the Prior Decision in Test Claim (CSM-4509).

On May 28, 1998, the Commission heard the CSM-4509 test claim on the *Sexually Violent Predators* program. That test claim alleged that the following Welfare and Institutions Code sections imposed reimbursable state-mandates: 6250, and 6600 through 6608, as amended by Statutes 1995, chapter 762; Statutes 1995, chapter 763; and Statutes 1996, chapter 4.⁶³

The Commission approved reimbursement only for the following activities under sections 6601, 6602, 6603, 6604, 6605, and 6608:

1. Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601, subd. (i).)
2. Initial review of reports and records by the county’s designated counsel to determine if the county concurs with the state’s recommendation. (Welf. & Inst. Code, § 6601, subd. (i).)
3. Preparation and filing of the petition for commitment by the county’s designated counsel. (Welf. & Inst. Code, § 6601, subd. (i).)⁶⁴
4. Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)
5. Preparation and attendance by the county’s designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604.)
6. Preparation and attendance by the county’s designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6605, subds. (b) through (d), and 6608, subds. (a) through (d).)
7. Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6603 and 6605, subd. (d).)
8. Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

All remaining provisions of the test claim statutes were denied.⁶⁵

⁶³ Exhibit B, Test Claim Statement of Decision.

⁶⁴ The Test Claim Statement of Decision cites subdivision (j), but subdivision (j) addresses time limits, not a petition for commitment. The Commission therefore assumes that this is a typographical error, and that the citation intended is to subdivision (i).

⁶⁵ Exhibit B, Test Claim Statement of Decision, at p. 12. The numbers attached to the activities above are assigned by DOF, in its request for redetermination; the same numbering is adopted in this analysis, for purposes of expedience and clarity, rather than utilizing the bulleted list adopted by the Commission in the test claim statement of decision.

DOF asserts, in its request for a new test claim decision, that activities 1, 2, 3, and 6, approved in the test claim statement of decision, were expressly included in Proposition 83. Activities 1, 2, and 3 involve the county's role in filing and litigating a civil commitment hearing on behalf of the state. These activities are required by section 6601(i), and while DOF concedes that Proposition 83 did not make amendments to subdivision (i), specifically, it amended and reenacted the entirety of section 6601, including the activities approved under subdivision (i). Activity 6 is required by sections 6605 and 6608. The sections encompassing these activities were reenacted and amended also by Proposition 83.⁶⁶ DOF asserts that the reenactment of sections 6601, 6604, 6605, and 6608 is sufficient to implicate the "expressly included in" limitation of section 17556(f), prohibiting the Commission from finding "costs mandated by the state," which supports the adoption of a new test claim decision.

As discussed above, Proposition 83 reenacted in whole sections 6601, 6604, 6605, and 6608, and required counties to perform the same activities approved in the CSM-4509 test claim.

DOF asserts as well that Activities 4, 5, and 7 are necessary to implement Proposition 83, and therefore these requirements also have been superseded by the ballot initiative.⁶⁷ DOF, relying on section 17556(f), therefore brings this request to adopt a new test claim decision, in accordance with the provisions of section 17570.

DOF's request does not clearly identify activity 8, regarding the transportation and housing of potential sexually violent predators during the civil detention proceedings process. DOF, however, asserts that the entire program is no longer eligible for reimbursement under article XIII B, section 6 of the California Constitution.⁶⁸ The draft staff analysis for this redetermination stated that DOF's submission was silent on activity 8, and made no specific allegation regarding whether activity 8 remains reimbursable. In response to the draft staff analysis, DOF submitted a corrected page 5 of its narrative and analysis, in which activity 8 is clearly identified, and is asserted to derive from Welfare and Institutions Code section 6602, which, DOF asserts, is necessary to implement section 6604.⁶⁹

B. Section 17556(f) is Not Self-Executing: Commission Action Pursuant to Section 17570 is Required Where a Commission Decision on the Test Claim Statutes has been Previously Adopted.

Government Code section 17556(f) provides that the Commission "shall not find" costs mandated by the state if:

The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or

⁶⁶ Exhibit A, Redetermination Request, at pp. 1-2.

⁶⁷ Exhibit A, Redetermination Request, at pp. 2-3.

⁶⁸ Exhibit A, Redetermination Request, at p. 2.

⁶⁹ Exhibit R, DOF Comments on Draft Staff Analysis, at p. 1. The bulleted paragraph was mislabeled in the original, and the correction to DOF's request is technical in nature.

executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.⁷⁰

California School Boards Association v. State of California makes clear that the statutory exclusion from reimbursement contained in the first sentence is consistent with the subvention requirements of article XIII B, section 6.⁷¹ The court in *CSBA I* reasoned that the subvention requirement applies to mandates imposed by the Legislature, not by the voters; the voters' powers of initiative and referendum are reserved powers, and not vested in the Legislature, and are therefore not limited by article XIII B, section 6. *CSBA I* holds that the reimbursement requirement applies only to state-mandated costs, not costs incurred by way of "the people acting pursuant to the power of initiative."⁷²

"Having established that costs imposed on local governments by ballot measure mandates need not be reimbursed by the state," and thus approving the statutory exclusion to the extent of statutes "expressly included in" a ballot measure, the court considered also whether activities embodied in a test claim statute that are "necessary to implement" a voter-enacted ballot measure are subject to reimbursement. In *San Diego Unified School District v. Commission on State Mandates*, costs that were incidental to a federal mandate were not reimbursable under section 17556(c), because those costs were imposed under Education Code provisions "adopted to implement a federal due process mandate." The *CSBA I* court therefore concluded that "[t]he language of [section 17556(f)] relieving the State of the obligation to reimburse a local government for duties 'necessary to implement' a ballot measure is *unobjectionable* because it corresponds to the Supreme Court's holding in *San Diego Unified* that state statutes codifying federal mandates are not reimbursable."⁷³ The court rejected, however, the "reasonably within the scope of" test also provided in subdivision (f) at that time, and the Legislature amended the code section the following year to excise the offending language.⁷⁴

Section 17556(f) also states that the rule "applies regardless of whether the statute or executive order was adopted prior to or after the date on which the statute or executive order was enacted or issued." This provision, like the "reasonably within the scope of," and "necessary to implement" tests, first appeared in section 17556 in 2005.⁷⁵ This last provision, stating that the order of enactment is not material to the analysis under section 17556(f), has not yet been

⁷⁰ As amended by Statutes 2010, chapter 719 (SB 856).

⁷¹ *California School Boards Association v. State of California (CSBA I)* (Cal. Ct. App. 3d Dist. 2009) 171 Cal.App.4th 1183, 1206-1207; 1210.

⁷² *Ibid.*

⁷³ *California School Boards Association v. State (CSBA I)* (Cal. Ct. App. 3d Dist. 2009) 171 Cal.App.4th 1183, at p. 1213 [emphasis added], citing *San Diego Unified, supra*, (2004) 33 Cal.4th 859.

⁷⁴ Government Code section 17556(f) (Stats. 2010, ch. 719 (SB 856) [amended to remove "reasonably within the scope of," as an alternative test to "expressly included in," or "necessary to implement," consistent with the court's decision in *CSBA I, supra*]).

⁷⁵ As discussed above, the "reasonably within the scope of" test has been disapproved by the courts and removed from the code; compare Statutes 2004, chapter 895 (AB 2855) to Statutes 2005, chapter 72 (AB 138).

determined in the courts.⁷⁶ However, the Commission must presume that the statutes enacted by the Legislature are constitutional.⁷⁷

In the context of a ballot measure enacted *after the test claim decision* on the same program has been adopted, an analysis under section 17556(f) cannot be entertained absent the redetermination process provided in section 17570. The Commission's process is the sole and exclusive venue in which eligible claimants vindicate the reimbursement requirement of article XIII B, section 6, and the Commission's decision on a test claim is final and binding, absent judicial review.⁷⁸ A later-enacted ballot measure expressly including the same duties imposed by a test claim statute that was previously determined to impose a mandate cannot, of its own force, undermine the Commission's mandate determination in a prior test claim decision. Nor can there be any resolution of the issue of whether other requirements, which are not expressly included in the ballot measure, but may be necessary to implement the ballot measure, continue to be reimbursable, without the matter being heard and determined by the Commission pursuant to Government Code section 17570. Section 17570 thus provides the mechanism for considering section 17556(f) when there is a subsequent change in law, as defined, "material to the prior test claim decision, that may modify the state's liability" pursuant to article XIII B, section 6.

"Subsequent change in law," is defined in section 17570(a)(2) as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a "subsequent change in law" does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A "subsequent change in law" also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.⁷⁹

Section 17570 provides, then, an opportunity to redetermine a test claim decision previously decided, but for which the decision might be materially different in accordance with section 17556, if determined on the basis of a subsequent change in law.

C. The Department of Finance has made an Adequate Showing that the State's Liability has been Modified.

DOF brings this request to adopt a new test claim decision relying on Government Code section 17556(f), and Proposition 83. DOF asserts that because Proposition 83 reenacted in whole sections 6601, 6604, 6605, and 6608 of the Welfare and Institutions Code, which were

⁷⁶ The constitutionality of Government Code sections 17570, in conjunction with section 17556, is being challenged in *California School Boards Assoc., et al. v. State of California, Commission on State Mandates, John Chiang, as State Controller, and Ana Matosantos, as Director of the Department of Finance*, Alameda County Superior Court, Case No. RG11554698.

⁷⁷ *California School Boards Association v. State of California, (CSBA II)* (Cal. Ct. App. 4th Dist. 2011) 192 Cal.App.4th 770, 795; *Porter v. City of Riverside* (1968) 261 Cal.App.2d 832, 837.

⁷⁸ *CSBA I, supra*, 171 Cal.App.4th 1183, at pp. 1199-1200.

⁷⁹ Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

previously found by the Commission, as amended by Statutes 1995, chapters 762 and 763, and Statutes 1996, chapter 4, to impose a reimbursable state-mandated program, those sections are made non-reimbursable by the “expressly included in” exception provided for in section 17556(f). Furthermore, DOF argues that because the remaining code sections approved (6602 and 6603) are inextricably linked to the provisions reenacted, the entire mandated program is made non-reimbursable by the operation of section 17556(f).

The comments filed on this request challenge DOF’s position, and are addressed below.

1. Subsequent Statutory Changes to the Test Claim Statutes Enacted Before or After Voter Approval of the Ballot Measure are Not Relevant to the Determination Whether Proposition 83 is a Subsequent Change in Law That Modifies the State’s Liability as Determined in CSM-4509.

a. *Statutory Changes Prior to the Ballot Measure (SB 1128)*

Several comments note that many of the amendments to the Welfare and Institutions Code outlined by Proposition 83 were earlier enacted by SB 1128 (Statutes 2006, chapter 337) and, therefore, Proposition 83 does not constitute a “subsequent change in the law” in accordance with section 17570.⁸⁰ CSAC argues that “many of the changes [DOF] claim[s] voters made were in fact made by the Legislature.”⁸¹ And CPDA argues that

S.B. 1128 contained many of the same or substantially similar amendments to the SVPA as did Proposition 83, for example, providing for indeterminate commitments and expansion of the list of qualifying offenses. Therefore, Proposition 83 does not constitute a “subsequent change in the law” as contemplated by Government Code section 17570.⁸²

In addition, the County of Los Angeles District Attorney’s Office comments state that “[i]n 2006, the legislature passed Senate Bill 1128 (SB 1128), urgency legislation that went into effect on September 20, 2006...[I]ess than two months later, the electorate passed Prop 83, commonly known as “Jessica’s Law”...[which] simply reaffirmed many of the changes already effectuated by SB 1128.”

However, it is irrelevant to the analysis of Proposition 83 whether there were substantive changes to the law in effect immediately prior to its enactment, or whether Proposition 83 made any substantive changes to the SVP code sections.

The analysis of whether a subsequent change in law has occurred turns on whether, under 17556(f), there are now any costs mandated by the state, where a ballot measure expressly includes some of the same activities as the test claim statutes that were found to impose a reimbursable mandate in CSM-4509. Here, with respect to the code sections reenacted in Proposition 83, it must be said that the test claim statutes impose duties that are expressly included in a voter-enacted ballot measure.⁸³ Therefore, DOF has made an adequate showing

⁸⁰ See, e.g., Exhibit G, CSAC Comments, at pp. 2-3; Exhibit H, CPDA Comments, at pp. 4-5.

⁸¹ Exhibit G, CSAC Comments, at p. 2.

⁸² Exhibit H, CPDA Comments, at p. 4.

⁸³ See Government Code section 17556(f).

that the state's liability as determined in CSM-4509 has been modified, and thus DOF has a substantial possibility of prevailing at the second hearing.

b. Statutory Changes After Approval of the Ballot Measure (2012 Legislative Reenactment)

In a similar line of argument, CPDA asserts that the 2012 statutes superseded the ballot proposition, as follows:

The enactment of A.B. 1488, A.B. 1470, and S.B. 760 in 2012 pertaining to the SVPA result in a cost mandated by the state as defined by Government Code section 17514. The entire text of the sections amended by legislation in 2012, including the portions not amended, was reenacted by the Legislature pursuant to Article IV, section 9, of the California Constitution. The remainder of the SVPA sections that were not expressly included in the 2012 legislation are, nevertheless, necessary to implement the 2012 legislation under Government Code section 17556, subdivision (f), and therefore are mandated by statute and thus reimbursable under California Constitution Article XIII B, section 6. Therefore, Proposition 83 is no longer the statutory authority supporting the SVPA; consequently the cost incurred by local agencies to comply with the 2012 legislatively enacted SVPA is a cost mandated by the state.⁸⁴

The CPDA comments demonstrate a misunderstanding of the operation of section 17556. There is no indication from the plain language, or from the broader statutory framework, that section 17556 is meant to operate in this alternative respect; where a ballot measure removes a mandate from the reimbursement requirement, a subsequent statute on the same program can only be subject to the reimbursement requirement if it imposes duties *beyond* those which are expressly included in or necessary to implement the ballot measure. Wholesale reenactment of a statute by the voters triggers the exclusionary provisions of section 17556(f), but subsequent amendment and reenactment by the *Legislature* does not defeat the application of section 17556(f) in the same manner. The analysis turns on only whether the test claim *statute* imposes duties expressly included in or necessary to implement the *ballot measure*. If so, those duties are not reimbursable, irrespective of any subsequent reenactment.

If the 2012 statute imposes duties *in excess of* what was required under prior law, and no 17556 exceptions apply, then those activities could be found to impose a new program or higher level of service and costs mandated by the state. However, a new test claim would have to be filed for the Commission to hear and decide the issue on the 2012 statute. The Commission's jurisdiction and findings in this matter only extend to the test claim statutes pled in CSM-4509 (Sections 6601, 6602, 6603, 6604, 6605, and 6608, as amended by Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); and Statutes 1996, Chapter 4 (AB 1496)) as those sections are alleged to be modified by Proposition 83, approved by the voters on November 7, 2006.

2. Some of the Requirements of the Test Claim Statutes Approved in CSM-4509 Impose Duties Expressly Included In a Ballot Measure.

Section 17556(f) provides that the Commission shall not find costs mandated by the state, within the meaning of section 17514, if the statute or executive order imposes duties that are expressly

⁸⁴ Exhibit H, CPDA Comments, at p.2.

included in a ballot measure enacted by the voters in a statewide or local election, and that this exception to the reimbursement requirement applies regardless of whether the statute or the ballot measure was enacted first. DOF, relying on section 17556(f), has alleged that the reenactment of sections 6601, 6604, 6605, and 6608 in Proposition 83 results in those sections, which were found to impose reimbursable mandates in CSM-4509, impose duties that are expressly included in a ballot measure approved by the voters in a statewide election.

CDAAs argue, in its comments, that DOF reads section 17556(f) incorrectly:

The Department of Finance contention that the mere recitation of any portion of a statute contained in a proposition, brings it within the "expressly included in" language of Government Code § 17556(f) regardless of whether the sections mandating local activity were amended or not, and whether or not the intent of the initiative and purpose of the initiative was to eliminate the subvention requirements of Article XIII B §6 by operation of Government Code § 17566(f), is not warranted. Such an interpretation would make the application of the statute so over broad and vague that no voter, local official, or legal analyst could accurately predict whether state mandated subvention would cease to exist as they voted to pass any ballot initiative that referenced existing law.

But CDAAs overstates the case, implying that "any ballot initiative that referenced existing law" could result in a mandate redetermination. Proposition 83 goes much further than simply "referenc[ing] existing law;" entire code sections that were approved for reimbursement are reenacted by the voters in Proposition 83. A finding for the DOF in this case does not lead to the unpredictable upending of mandates law that CDAAs comment implies. Moreover, the plain language of section 17556(f) supports DOF's interpretation: section 17556(f) *does not require* that a test claim statute be *amended* by a ballot proposition, or that the entire section or program be included in a ballot proposition. Section 17556(f) only prohibits a finding of costs mandated by the state if the statute upon which a test claim finding is to be made "*imposes duties that are...expressly included in*" a ballot measure, whether the ballot measure is enacted before or after the statute. Furthermore, as discussed below, whether eliminating subvention was intended by the voters in Proposition 83, as raised by CDAAs, is not dispositive where section 17556 is applicable.

3. Equitable Defenses Raised are not Applicable to this Request for Redetermination.

a. *Misrepresentation, Unclean Hands, Equitable Estoppel*

Several comments have raised equitable defenses against DOF's request, suggesting that because DOF's analysis of Proposition 83 leading up to the election on the measure gave no indication that mandate reimbursement would be in peril, DOF's request for a new decision on the SVP mandate should be rejected.

CPDA argues that "misrepresentation, unclean hands, and estoppel bar the DOF's redetermination request." CPDA cites "a letter dated September 2, 2005, addressed to the honorable Bill Lockyer, California Attorney General, issued pursuant to Elections Code section 9005, authored by Elizabeth G. Hill, Director of the Legislative Analyst's Office (LAO) and Tom Campbell, Director of the DOF," in which it is stated that Proposition 83 would have no effect on state reimbursement." CPDA argues that "[g]iven the DOF's stated position that the passage of Proposition 83 would not affect state reimbursement to counties, the DOF has "unclean

hands" and should be estopped from currently asserting the Sexually Violent Predator mandate (CSM-4509) is no longer a cost mandated by the state." CPDA goes on to argue that the voters were misled by the ballot pamphlet, prepared in reliance on the letter cited:

Not only was the electorate misled by the foregoing analysis and the September 2, 2005, letter, so were local government officials. Had local government officials not been lulled into a false sense of security, it is reasonably probable they would have publically [sic] opposed Proposition 83 given the financial ramifications due to the loss of mandate monies now proposed by the DOF. It is also reasonably probable that the electorate would have rejected Proposition 83 due to the same concerns. Furthermore, the probability of defeat would have increased had the electorate been accurately apprised of what law they were voting to replace- i.e., S.B. 1128 and not the language included in the ballot proposition, as discussed in the next section.⁸⁵

The County of Los Angeles DA argues, for its part, that "the Legislative Analyst's Office (LAO), in association with the Department of Finance, sent California Attorney General Bill Lockyer a fiscal analysis of the initiative eventually known as Prop 83." The DA argues that "California courts have long held that voters are presumed to carefully review published materials that concern the initiatives on which they vote, including measures that are more complex." The DA concludes, therefore, that "[a]s the electorate is presumed to have relied upon the state's broadly publicized assurances regarding the state's assumption of the fiscal costs associated with Prop 83 were it to pass, the state is foreclosed from using Prop 83 as the basis of its invocation of Section 17570 and request for a new test claim decision."⁸⁶

CDA does not explicitly invoke equitable defenses, but argues that:

The unequivocal conclusion of both officials is that the costs of the SVP program would remain a reimbursable by the state. "The portion of costs related to changes in the Sexual Violent Predators program would be reimbursed by the state." Since official duties are presumed to be correctly performed (Evidence Code § 664), the Director of Finance, the Legislative Analyst and the Attorney General must have been aware of the interaction of Government Code § 17556(f) on Proposition 83 and the state mandate in Article XIII B §6 in drawing their conclusion that the SVP program would remain reimbursable. Strong weight should be given to this conclusion, despite the Department of Finance's now changed opinion.⁸⁷

The defenses of unclean hands and misrepresentation are not neatly applied in this case. Unclean hands doctrine provides that a court of equity may refuse to grant relief to a party that has engaged in some improper or inequitable conduct related to the controversy.⁸⁸ If asserted successfully against DOF, the doctrine would prohibit DOF from obtaining relief (i.e., prevailing in its request for a new test claim decision) because of some alleged inequitable conduct. CPDA argues, as cited above, that DOF misrepresented the effect of Proposition 83 on mandates

⁸⁵ Exhibit H, CPDA Comments, at pp. 3-4.

⁸⁶ Exhibit L, County of Los Angeles District Attorney's Office Comments, at pp. 8-10.

⁸⁷ Exhibit F, CDA Comments, at p. 4.

⁸⁸ See California Jurisprudence 3d, Equity, section 26.

reimbursement, and that the measure might not have been successfully adopted had the effect been known.⁸⁹ This argument assumes that the alleged “misrepresentation” induced the electorate to adopt Proposition 83, which is now alleged to impose harm upon the claimants, or conferred a benefit upon DOF. There is, obviously, no evidence as to what voters might have chosen had they been given different information with respect to mandate reimbursement in the voter information pamphlet. More importantly, there is no evidence that local government officials would have had any impact on the outcome, had they not “been lulled into a false sense of security.”⁹⁰

CPDA’s argument also assumes that DOF, as the requesting party, should be barred from “relief.” But unclean hands, as an equitable doctrine, should not be applied where another injustice would result; moreover, “[i]t is well settled that public policy may favor the nonapplication of the doctrine as well as its application.”⁹¹ Here, the denial of DOF’s request on the basis of unclean hands could result in the imposition a subvention requirement, even if no state-mandated program exists. Article XIII B, section 6 requires reimbursement for state-mandated new programs or higher levels of service that impose *costs mandated by the state*, as defined. The courts have held that the statutory exclusions to “costs”⁹² for statutes implementing a federal mandate, or statutes necessary to implement a voter-enacted ballot initiative, are consistent with the reimbursement requirement of article XIII B, section 6, because in such cases the mandate does not derive from the state Legislature or the governor.⁹³ Proposition 83 clearly reenacted some of the provisions of the Welfare and Institutions Code that had been the subject of an earlier test claim. Article XIII B, section 6, as implemented by Government Code 17556, no longer requires reimbursement for mandated activities imposed by, or necessary to implement, Proposition 83. To deny “relief” to DOF on the basis of an unclean hands defense would be to ignore article XIII B, section 6 of the California Constitution and the implementing statutes of the Government Code.

Additionally, what all of the above comments fail to acknowledge is that in 2006 the conclusion that Proposition 83 would have no fiscal effect on local government was correct, and was not a misrepresentation of the facts as they existed at that time. When Proposition 83 was enacted, there was no process for redetermining a test claim; thus there would have been no effect on mandate reimbursement. Only after the mandate redetermination process embodied in section 17570 was *added to the code in 2010* was there any possibility of utilizing Proposition 83 to change a prior mandate finding.⁹⁴ Therefore, any representation that might be alleged to have

⁸⁹ Exhibit H, CPDA Comments, at pp. 3-4.

⁹⁰ Exhibit H, CPDA Comments, at pp. 3-4.

⁹¹ *Health Maintenance Network v. Blue Cross of Southern California* (Cal. Ct. App. 2d Dist. 1988) 202 Cal.App.3d 1043, at p. 1061.

⁹² See Government Code section 17556 (Stats. 2005, ch. 72 (AB 138); Stats. 2010, ch. 719 (SB 856)).

⁹³ *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859; *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183.

⁹⁴ Statutes 2010, chapter 719 (SB 856).

misled the voters was provided in good faith, and cannot now support a defense of ‘unclean hands.’

In comments filed in response to the draft staff analysis, CPDA strenuously disputes this point, arguing that the draft “erroneously rejects the equitable defense of unclean hands,” and that the draft “incorrectly states” that when Proposition 83 was adopted, no mechanism or process for redetermination existed.” CPDA argues that “[d]uring the relevant periods surrounding the passage of Proposition 83 (2005 through 2006), [former] Government Code sections 17570 and 17556, subdivision (f), *expressly provided* for the redetermination of test claims.”⁹⁵ CPDA cites to former Government Code section 17570, as that section appeared in 1986, which provided:

On November 30 of each year the Legislative Analyst shall submit a report to the Legislature regarding each unfunded statutory or regulatory mandate for which claims have been approved by the Legislature pursuant to a claims bill during the preceding fiscal year. The *Legislative Analyst shall review* each such statute or regulation in light of its estimated future costs recoverable through the claims process *and recommend, in each case, whether the Legislature should reconsider its original enactment of that statute or the state agency should reconsider its adoption of the regulation to repeal, modify, or make permissive its provisions.* The Legislative Analyst shall submit the report to the Joint Legislative Budget Committee, the chairs of the fiscal committees, and the chairs of the policy committees in each house which have jurisdiction over the subject matter of these statutes or regulations.⁹⁶

CPDA’s argument presumes that former section 17570 might be read to provide for a process of reconsideration or redetermination of a prior test claim decision; but nothing in the language of former section 17570 provides authority for the Commission to reconsider a test claim. Former section 17570 only required the Legislative Analyst’s Office to *provide recommendations* to the Legislature regarding possible amendments to the underlying test claim statutes or regulations. It did not provide authority for the Commission to reconsider a prior final test claim decision based on a subsequent change in the law.

Additionally, CPDA argues that the “regardless of...before or after” language of section 17556, as amended by AB 138 in 2005, evidences inherent authority for the Commission to reconsider a test claim. CPDA argues that “[p]ursuant to Legislative directive [*sic*] contained in A.B. 138 the CSM redetermined and set aside the ‘Open Meetings Act’ and ‘Brown Reform Act’ test claims in September, 2005.”⁹⁷ CPDA also cites the reconsideration of “School Accountability Report Cards” in 2005,⁹⁸ and concludes:

⁹⁵ Exhibit S, CPDA Comments on Draft Staff Analysis, at p. 2 [emphasis added].

⁹⁶ Statutes 1986, chapter 879, section 13 [emphasis added].

⁹⁷ Exhibit S, CPDA Comments on Draft Staff Analysis, at p. 2. See also, Statutes 2005, chapter 72 (AB 138) section 17 [directing the Commission to set aside and reconsider Open Meeting Act (CSM-4257) , and Brown Act Reform (CSM-4469)].

⁹⁸ See Statutes 2004, chapter 895 (AB 2855) section 18 [directing the Commission to reconsider School Accountability Report Cards (97-TC-21)].

When Proposition 83 took effect on November 8, 2006, the CSM had completed reconsideration of the foregoing three test claim redeterminations. The assertion that there was "no process or mechanism by which to redetermine a test claim" during the time period of 2005 through 2006 is disingenuous. Although the court in California School Boards reversed these redeterminations, the ruling was not handed down until March 9, 2009, nearly three years after the passage of Proposition 83. Therefore, the Draft Staff Analysis erroneously and inaccurately portrayed the state of the law vis-a-vis redetermination of test claims during the relevant period of 2005 through 2006 surrounding the passage of Proposition 83.⁹⁹

CPDA implies that the fact of these other test claims being reconsidered shows that a process or mechanism existed when Proposition 83 was adopted and, thus, statements that Proposition 83 would have no fiscal effect on local government was either in error or constituted an intentional misrepresentation.

CPDA's conclusion falters, however, because in the case of each of the mandates that CPDA cites, the Legislature *directed the Commission* (i.e., expressly required the Commission) to reconsider those specific test claims by statute.¹⁰⁰ AB 138 amended section 17556 to include the "before or after" language regarding a test claim statute implementing a ballot measure mandate, as discussed above, and also directed the Commission to reconsider three mandates decisions, in light of the amended Government Code provisions.¹⁰¹ Absent such action by the Legislature, the Commission did not have authority to reconsider a prior decision. However, as CPDA points out, the court of appeal eventually rejected the actions of the Commission, on the ground that the Legislature's directive to the Commission to reconsider these prior claims was not consistent with separation of powers principles.¹⁰²

As discussed at length above, section 17556 is not self executing; it requires some process or mechanism by which the test claim can come before the Commission. In the case of a ballot measure adopted after the test claim decision addressing a particular program, the proper mechanism is the mandate redetermination process provided in section 17570. It is well-settled that administrative agencies, such as the Commission, are entities of limited jurisdiction. Administrative agencies have only the powers that have been conferred on them, expressly or by implication, by statute or constitution. An administrative agency may not substitute its judgment for that of the Legislature. When an administrative agency acts in excess of the powers conferred upon it by statute or constitution, its action is void.¹⁰³ The Government Code gives the Commission jurisdiction only over those statutes or executive orders pled by an eligible claimant

⁹⁹ Exhibit S, CPDA Comments on Draft Staff Analysis, at p. 3.

¹⁰⁰ See Statutes 2005, chapter 72 (AB 138) section 17; Statutes 2004, chapter 895 (AB 2855) section 18.

¹⁰¹ Statutes 2005, chapter 72 (AB 138) section 17 [directing the Commission to reconsider Mandate Reimbursement Process (CSM-4202)].

¹⁰² California School Boards Association v. State of California (Cal. Ct. App. 3d Dist. 2009) 171 Cal.App.4th 1183.

¹⁰³ *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104.

in a test claim, and grants the Commission a single opportunity to make a final decision on the test claim. Government Code section 17559 grants the Commission statutory authority to reconsider prior final decisions, if a request to reconsider is made within 30 days after the Statement of Decision is issued based on an error of law, but no other section, until the addition of section 17570 in 2010, provided standing authority and a process to redetermine a prior final Commission decision.

The Alameda County District Attorney's Office argues that "[t]he Department of Finance request for a new test claim, filed some six and one-half years after the passage of Proposition 83, is untimely and should be rejected on common law principles of laches and estoppel."¹⁰⁴ The doctrine of estoppel is misplaced in this case. The essence of an estoppel, "if it is applicable at all in these circumstances, is that the party to be estopped has by false language or conduct led another to do that which he would not otherwise have done and as a result thereof that he has suffered injury."¹⁰⁵ Estoppel is applied "where the conduct of one side has induced the other to take such a position that it would be injured if the first should be permitted to repudiate its acts."¹⁰⁶ Estoppel generally binds "not only the immediate parties but also those in privity with them;" and as applicable here, agents of the same government are held to be in privity with one another.¹⁰⁷ And, estoppel is available against the government, but "estoppel will not be applied against the government if the result would be to nullify a strong rule of policy adopted for the benefit of the public or to contravene directly any statutory or constitutional limitations."¹⁰⁸

As discussed above, whatever representations were made regarding the effect on mandate reimbursement prior to the adoption of Proposition 83, and however local governments might have detrimentally relied on those representations, they were *true when made*, and only later did the circumstances allow for mandate reimbursement to be modified. Moreover, to apply estoppel against DOF in this case would "contravene directly" the statutory and constitutional limitations on reimbursement, and would "effectively nullify" the mandate redetermination process created in the Government Code. Furthermore, the premise that counties have detrimentally relied upon reimbursement is tenuous at best. Even if this redetermination results in mandate reimbursement being discontinued, the activities required under the test claim statutes will continue to be required. There cannot be detrimental reliance unless a party alters its behavior; here, the existence of the required activities does not turn on whether those activities are reimbursed.

¹⁰⁴ Exhibit P, Alameda County DA Comments, at p. 5.

¹⁰⁵ *In re Lisa R.* (1975) 13 Cal.3d 636, at p. 645.

¹⁰⁶ *Nicolopoulos v. Superior Court* (Cal. Ct. App. 2d Dist. 2003) 106 Cal.App.4th 304, at p. 311 [citing *Brookview Condominium Owners' Ass'n v. Heltzer Enterprises-Brookview* (Cal. Ct. App. 4th Dist. 1990) 218 Cal.App.3d 502, at p. 512].

¹⁰⁷ *Hartway v. State Board of Control*, (Cal. Ct. App. 1st Dist. 1976) 69 Cal.App.3d 502 See also *Carmel Valley Fire Protection Dist. v. State of California* (Cal. Ct. App. 2d Dist. 1987) 190 Cal.App.3d 521, at p. 535 [citing *Lerner v. Los Angeles City Board of Education* (1963) 59 Cal.2d 382, at p. 398].

¹⁰⁸ *Transamerica Occidental Life Insurance Co. v. State Board of Equalization* (Cal. Ct. App. 2d Dist. 1991) 232 Cal.App.3d 1048, at p. 1054 [internal citations omitted].

Accordingly, the arguments alleging misrepresentation, unclean hands, and equitable estoppel do not apply in this case.

b. Laches, or Unreasonable Delay of Cause of Action

The Alameda County District Attorney's Office and County of Los Angeles also argue that DOF was not required to delay this request for reconsideration "nearly six and a half years after the passage of Proposition 83." During this time, counties relied on mandate reimbursement from the state to perform the required duties. As a result, the counties argue that the DOF's request is untimely and that under the equitable doctrine of laches, the claim should be denied.

As raised by the Alameda County DA, the defense of laches is based on an assertion that the plaintiff unreasonably delayed bringing an action, and that the defendant has been prejudiced by the delay, such that granting relief would be inequitable. The Alameda County DA asserts that a delay of more than six years after the passage of Proposition 83 is unreasonable. But as discussed above, the mandate redetermination process was only added to the Government Code in 2010.¹⁰⁹ Prior to that, even if Proposition 83 were *known* to have undermined the 1998 mandate finding regarding the SVP program, there was no mechanism in place to bring the issue before the Commission. Therefore, any delay that might be attributed to DOF cannot be said to begin until such mechanism was provided, in Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

In comments filed in response to the draft staff analysis, the County of Los Angeles disputes this conclusion. The County argues that a mechanism or process was put in place by Statutes 2008, chapter 751, section 75 (AB 1389), which directed the Commission to reconsider the Sexually Violent Predators test claim (CSM-4509). However, the 2008 statute that the County cites clearly and unambiguously directed the Commission to wait until the *CSBA* decision was finalized:

Notwithstanding any other provision of law, the Commission on State Mandates, *upon final resolution of any pending litigation* challenging the constitutionality of subdivision (f) of Section 17556 of the Government Code, shall reconsider its test claim statement of decision in CSM-4509 on the Sexually Violent Predator Program to determine whether Chapters 762 and 763 of the Statutes of 1995 and Chapter 4 of the Statutes of 1996 constitute a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of ballot measures approved by the state's voters, federal and state statutes enacted, and federal and state court decisions rendered since these statutes were enacted.¹¹⁰

This statute was enacted as an urgency statute on September 30, 2008. The *CSBA* decision was handed down March 9, 2009, and addressed both the constitutionality of section 17556(f), and the statutes that directed the Commission to reconsider the prior test claim decisions in *Open Meetings Act*, *Brown Act Reform* and *School Accountability Report Cards*. Because the statute cited above directed the Commission to reconsider the SVP mandate only after final resolution of the *CSBA* matter, which ultimately declared that the Legislature's attempt to force a reconsideration of a final decision of the Commission, on a case by case basis, violates

¹⁰⁹ Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

¹¹⁰ Statutes 2008, chapter 751 (AB 1389) section 75 [emphasis added].

separation of powers principles,¹¹¹ no “mechanism and process”¹¹² to reconsider this particular test claim existed at any time prior to the enactment of section 17570 in Statutes 2010, chapter 719 (SB 856).¹¹³

The County of Los Angeles also points out that the *current* statute providing a process for redetermination was enacted, in response to *CSBA*, in Statutes 2010, chapter 719 (SB 856). The County *implies*, but does not clearly state, that failing to take advantage of that process until January of 2013 constitutes an unreasonable delay.¹¹⁴ A new *test claim* must be filed by June 30 of the fiscal year following the year in which the test claim statute at issue became effective, or the year in which the claimant first incurred costs under the statute. But section 17570 only requires that a redetermination request be filed “on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year.”¹¹⁵ It does not contain a statute of limitations.

Moreover, laches requires, in addition to an unreasonable delay in bringing an action, either acquiescence or prejudice to the other party resulting from the delay. Here, it is difficult to identify any prejudice that results from DOF’s delay. As discussed, DOF would have had no right or ability to bring this matter before 2010. And from the effective date of section 17570 to the time of filing this request, in the intervening two years and three months, the claimants have continued to receive reimbursement. The statute provides that if DOF prevails, reimbursement will be ended beginning in the 2011-2012 fiscal year, based on the filing date of this redetermination request.¹¹⁶ Had DOF filed this request two years earlier, the potential reimbursement period affected would have begun in the 2009-2010 fiscal year. Therefore, eligible claimants for the CSM-4509 mandate have not been harmed by DOF’s delay in filing this request for redetermination, and may have, in fact, benefited from it.

c. Equitable defenses are not applicable to mandates law.

Ultimately, the proffered equitable arguments of misrepresentation, unclean hands, equitable estoppel, laches, and unreasonable delay, are inapplicable to this case. The Commission is vested, pursuant to the Government Code, with sole and exclusive jurisdiction to determine mandates claims. Whether a statute requires reimbursement is a question of law, to be decided by the Commission, or the courts on review, and “legislative disclaimers, findings, and budget control language are not determinative.”¹¹⁷ Thus the question of reimbursement must be

¹¹¹ *CSBA v. State of California* (2009), 171 Cal.App.4th 1183, p.p. 1202-1203.

¹¹² Exhibit T, County of Los Angeles Comments on Draft Staff Analysis, at p. 2.

¹¹³ Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

¹¹⁴ Exhibit T, County of Los Angeles Comments on Draft Staff Analysis, at p. 2.

¹¹⁵ Government Code section 17570(f) (Stats. 2010, ch. 719 (SB 856)).

¹¹⁶ Section 17570(f) (Stats. 2010, ch. 719 (SB 856)) [“A request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year.”]

¹¹⁷ *County of Los Angeles v. Commission on State Mandates*, (Cal. Ct. App. 2d Dist. 2003) 110 Cal.App.4th 1176, 1186; 1194. See also, Government Code section 17552, which states that “This chapter shall provide the sole and exclusive procedure by which a local agency or school

evaluated by the Commission, exclusively, pursuant to article XIII B, section 6 of the California Constitution, on the basis of the statutes and case law that guide Commission decisions generally, and legislative declarations are irrelevant to the Commission's determination of whether a state mandate exists.¹¹⁸ The Commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state-mandate exists.¹¹⁹

As has been said by the courts of appeal, "[i]n making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."¹²⁰ The purpose of the mandates process is to enforce the Constitution, by way of its implementing statutes, including Government Code section 17556. If a local government is not entitled to reimbursement pursuant to the operation of the statutes and the Constitution, public policy cannot support application of equitable defenses or remedies.

4. Constitutionality of Section 17570

Several comments have raised the constitutionality of section 17570.¹²¹ The Commission is not the proper venue for airing constitutional arguments regarding the Commission's governing statutes. The Commission must presume that the Government Code statutes pertaining to the Commission's processes are constitutional, including section 17570, pursuant to article III, section 3.5 of the California Constitution.¹²² The Commission therefore declines to address the constitutional concerns of the interested parties and persons.

5. Conclusion

The issue for this first hearing is whether DOF has made an adequate showing that the state's liability has been modified based on a subsequent change in law. A subsequent change in law, as discussed above, is defined as a change in law that requires a finding that an incurred cost is a cost mandated by the state under section 17514, or is not a cost mandated by the state under section 17556. Here, a section 17556 analysis will indisputably result in a finding that at least some portion of the activities imposed by the test claim statutes are expressly included in Proposition 83. It is not necessary in this hearing to consider the extent to which the test claim statutes may be necessary to implement Proposition 83. It is sufficient, at this time, to determine

district may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution."

¹¹⁸ *CSBA v. State of California* (2009), 171 Cal.App.4th 1183, p. 1203; see also, *County of Los Angeles v. Commission on State Mandates*, *supra*, p. 1194.

¹¹⁹ *Id.*

¹²⁰ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

¹²¹ See Exhibit M, County of Los Angeles Comments, at p. 5; Exhibit H, CPDA Comments at p. 6; Exhibit N, Alameda County Public Defender's Comments; Exhibit L, County of Los Angeles District Attorney's Office Comments, at pp. 11-12; and Exhibit O, County Counsel of San Diego Comments at p. 2.

¹²² *CSBA II*, *supra*, 192 Cal.App.4th 770, 795; *Porter v. City of Riverside* (1968) 261 Cal.App.2d 832, 837.

that at least some number of the mandated activities imposed by the test claim statutes have been modified by a subsequent change in law.

IV. CONCLUSION

Based on the foregoing, the Commission finds that DOF has made a sufficient showing to proceed to a second hearing for a determination on whether to adopt a new test claim decision.¹²³ The Commission hereby directs Commission staff to notice the second hearing and to prepare a full mandates analysis on the issue of whether the Commission shall adopt a new test claim decision to supersede the Commission's previously adopted test claim decision in CSM-4509.

¹²³ See Government Code section 17570(d) (Stats. 2010, ch. 719 (SB 856)).

Hearing Date: September 27, 2013

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ITEM ___
MANDATE REDETERMINATION
SECOND HEARING: NEW TEST CLAIM DECISION
DRAFT STAFF ANALYSIS AND
PROPOSED STATEMENT OF DECISION

Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608

Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888);
 Statutes 1996, Chapter 4 (AB 1496)

Sexually Violent Predators, (CSM-4509)

As Alleged to be Modified by:

Proposition 83, General Election, November 7, 2006

12-MR-01

Department of Finance, Requester

Attached is the draft proposed statement of decision for this matter. This Executive Summary and draft proposed statement of decision also function as the draft staff analysis on the issue of whether the Commission shall adopt a new test claim decision.

EXECUTIVE SUMMARY

Overview

On June 25, 1998, the Commission adopted a statement of decision approving reimbursement for the *Sexually Violent Predators* (SVP) program, CSM-4509, which established civil commitment procedures for the civil detention and treatment of sexually violent predators following completion of the individual's criminal sentence for certain sex-related offenses. Before civil detention and treatment are imposed, the county counsel or district attorney is required to file a petition for civil commitment. A trial is then conducted to determine beyond a reasonable doubt if the person is a sexually violent predator. If the person alleged to be a sexually violent predator is indigent, the county is required to provide the indigent person with the assistance of counsel and experts necessary to prepare the defense.

In the CSM-4509 test claim decision, the Commission determined that Welfare and Institutions Code sections 6601(i), 6602, 6603, 6604, 6605(b)-(d), and 6608(a)-(d) as enacted or amended by the 1995 and 1996 test claim statutes, imposed the following reimbursable state-mandated activities on counties:

- Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601(i).)

- Initial review of reports and records by the county’s designated counsel to determine if the county concurs with the state’s recommendation. (Welf. & Inst. Code, § 6601(i).)
- Preparation and filing of the petition for commitment by the county’s designated counsel. (Welf. & Inst. Code, § 6601(i).)¹
- Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)
- Preparation and attendance by the county’s designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604.)
- Preparation and attendance by the county’s designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6605(b-d), and 6608(a-d).)
- Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6603 and 6605(d).)
- Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)²

On September 24, 1998, the Commission adopted parameters and guidelines for the approved activities. On October 30, 2009 the parameters and guidelines were amended to update the boilerplate language to conform to more recent Commission decisions and usage.

On November 7, 2006 the voters approved Proposition 83, also known as Jessica’s law, which, among other changes made, amended and reenacted several sections of the Welfare and Institutions Code, including sections approved for reimbursement in the CSM-4509 test claim.

On January 15, 2013, the Department of Finance (DOF) filed a request for redetermination of the CSM-4509 decision pursuant to Government Code section 17570.³ DOF asserts that Proposition 83 constitutes a subsequent change in the law, as defined in section 17570, which results in the state’s liability under the test claim statutes being modified. Specifically, DOF argues that sections 6601, 6604, 6605, and 6608 were included in their entirety in Proposition 83, and that “[t]he remainder of the mandate’s Welfare and Institutions Code sections that were not expressly included in the ballot measure [i.e., sections 6602 and 6603] are, nevertheless, necessary to

¹ The Test Claim Statement of Decision cites subdivision (j), but subdivision (j) addresses time limits, not a petition for commitment. The Commission therefore assumes that this is a typographical error, and that subdivision (i) was the intended citation for this activity.

² The title of the parameters and guidelines for the *Sexually Violent Predators* program refers to Welfare and Institutions Code sections 6250 and 6600 through 6608. However, the Commission approved reimbursement for only the activities required by sections 6601, 6602, 6603, 6604, 6605, and 6608.

³ Based on the January 15, 2013 filing date, the potential period of reimbursement affected by this redetermination begins July 1, 2011.

implement the ballot measure.” DOF concludes that “all activities found to be reimbursable by the Commission in the *Sexually Violent Predator* mandate are no longer reimbursable pursuant to Government Code section 17556, subdivision (f), as they are either: (1) expressly included in Prop 83 or, (2) necessary for the implementation of Prop 83.”

Section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission based on a subsequent change in law. The Government Code provides for a two-step hearing. The Commission’s regulations state that “the first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6, subdivision (a) of the California Constitution.” The regulations state that “[i]f the commission proceeds to the second hearing, it shall consider whether the state’s liability...has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.”⁴ If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission is required to adopt new parameters and guidelines or amend existing parameters and guidelines.⁵

On July 26, 2013, the Commission heard the first step of the two-step hearing process. The Commission found that DOF had made an adequate showing that the request has a substantial possibility of prevailing at the second hearing, and the Commission therefore directed staff to set the matter for hearing on a new test claim decision. The issue in this hearing, pursuant to the code and the applicable regulations, is whether to adopt a new test claim decision to supersede the previously adopted test claim decision. If a new test claim decision is adopted, new parameters and guidelines must also be adopted.

Because the determination of this matter will have significant budgetary impacts on the state and eligible local agency claimants beginning in the 2011-2012 fiscal year, requests have been made by DOF and some of the eligible local agency claimants to expedite this matter. Those requests were granted and, as a result, this matter has been scheduled for hearing ahead of other matters which were filed before it.

Staff Analysis

Government Code section 17570 provides, with respect to mandate redetermination, that:

“Subsequent change in law” is a change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to section 17556, or a change in mandates law...⁶

Government Code section 17556(f) provides that the Commission *shall not find* costs mandated by the state, within the meaning of article XIII B, section 6, if a test claim statute or executive order “imposes duties that are necessary to implement, or are expressly included in, a ballot

⁴ Code of Regulations, Title 2, section 1190.05 (Register 2010, No. 48).

⁵ Government Code section 17570(i).

⁶ Government Code section 17570(a)(2) (Stats. 2010, ch. 719 (SB 856)).

measure approved by the voters in a statewide or local election.” Section 17556(f) also states that this rule “applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.”⁷

Staff finds that Proposition 83, by which the voters amended and reenacted Welfare and Institutions Code sections 6601, 6604, 6605, and 6608, constitutes a subsequent change in law, as defined in section 17570. Pursuant to Government Code section 17556(f), the Commission shall not find costs mandated by the state for the activities imposed by sections 6601, 6604, 6605, and 6608, as determined in the original test claim decision, which are now expressly included in a ballot measure approved by the voters in a statewide election. Therefore a new test claim decision is required.

Additionally, the original test claim decision found that the following activities were imposed by code sections as added or amended by the test claim statutes that were not expressly reenacted by Proposition 83:

- Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)
- Preparation and attendance by the county’s designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604.)
- Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6603 and 6605(d).)
- Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

Staff finds that there is no requirement, either implicit in Proposition 83 or required by due process, to hold a probable cause hearing; the requirement arises only from section 6602, and is not expressly included in or necessary to implement Proposition 83. Therefore, preparation and attendance of the county’s designated counsel and indigent defense counsel at a probable cause hearing is required by a policy decision made by the Legislature. And, accordingly, staff finds that transportation between designated secured housing and the court, *for purposes of a probable cause hearing* required under section 6602, is not expressly included in or necessary to implement Proposition 83, and therefore remains reimbursable as a state-mandated cost.

Therefore the following activities, required for purposes of probable cause hearings remain reimbursable state-mandated costs.

- Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)
- Transportation for each potential sexually violent predator to and from a secured facility only to the *probable cause hearing* on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

⁷ Government Code section 17556 (As amended by Stats. 2010, ch. 719 (SB 856)).

This activity does not include transportation for purposes other than the probable cause hearing for potential sexually violent predators awaiting trial.

Staff further finds that the remaining activities described above are necessary to implement the voter-approved program. The preparation and attendance of the county's designated counsel and indigent defense counsel at trial are necessary to implement the civil commitments provided for in Proposition 83. And the retention of experts or investigators for trial is necessary to implement Proposition 83. The Commission cannot find costs mandated by the state pursuant to these activities consistent with the provisions of section 17556(f) and article XIII B, section 6.

Section 17570 provides that a request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. This request was filed on January 15, 2013, establishing eligibility beginning July 1, 2011. Therefore, as a result of this proposed decision, staff finds that several of the approved activities in the prior test claim decision are no longer reimbursable as of July 1, 2011.

Staff Recommendation

Staff recommends that the Commission adopt this analysis as its new test claim decision, ending reimbursement for several of the test claim activities as of July 1, 2011.

Staff further recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed new test claim decision and amended parameters and guidelines following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:
SECOND HEARING: NEW TEST CLAIM
DECISION FOR:

Welfare and Institutions Code sections 6601,
6602, 6603, 6604, 6605, and 6608;

As added or amended by Statutes 1995,
Chapter 762 (SB 1143); Statutes 1995, Chapter
763 (AB 888); Statutes 1996, Chapter 4 (AB
1496);

Sexually Violent Predators (CSM-4509), As
Modified by:

Proposition 83, General Election,
November 7, 2006

Filed on January 15, 2013

By the Department of Finance, Requester.

Case No.: 12-MR-01

Sexually Violent Predators (CSM-4509)

STATEMENT OF DECISION
PURSUANT TO GOVERNMENT
CODE SECTION 17500, ET SEQ.;
CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION
2, CHAPTER 2.5, ARTICLE 7.
[Gov. Code, § 17570; Cal. Code Regs.,
tit. 2, § 1190.05]

(Adopted September 27, 2013)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on September 27, 2013. [Witness list will be included in the final statement of decision.]

Government Code section 17570 and section 1190 et seq. of the Commission's regulations establish the mandate redetermination process. In addition, the law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., title 2, California Code of Regulations 1181 et seq., and related case law.

The Commission [adopted/modified] the proposed decision as its new test claim decision, granting the request for redetermination and partially approving the request to end reimbursement for the test claim activities by a vote of [vote count will be included in the final statement of decision].

Summary of the Findings

The Commission finds that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution for the *Sexually Violent Predators*, CSM-4509 mandate has been modified based on a subsequent change in law, and a new test claim decision is required. Specifically, Welfare and Institutions Code sections 6601, 6604, 6605, and 6608, as added or amended by Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); and

Statutes 1996, Chapter 4 (AB 1496) impose duties expressly included in Proposition 83, adopted by the voters on November 7, 2006. Additionally the duties imposed by section 6603 are necessary to implement the requirements of Proposition 83. Government Code section 17556(f) provides that the Commission shall not find “costs mandated by the state” for costs incurred as a result of statutes that impose duties that are expressly included in or necessary to implement a ballot measure approved by the voters. Based on the filing date of this request, and pursuant to Government Code section 17570, the following activities are no longer reimbursable beginning July 1, 2011 (the numbering of the activities utilized in DOF’s request for redetermination is adopted):

Activity 1 – Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601(i).)

Activity 2 – Initial review of reports and records by the county’s designated counsel to determine if the county concurs with the state’s recommendation. (Welf. & Inst. Code, § 6601(i).)

Activity 3 – Preparation and filing of the petition for commitment by the county’s designated counsel. (Welf. & Inst. Code, § 6601(j).)

Activity 5 – Preparation and attendance by the county’s designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604.)

Activity 6 – Preparation and attendance by the county’s designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6605(b-d), and 6608(a-d).)

Activity 7 – Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6603 and 6605(d).)

However, the preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing (**Activity 4**), and the portion of **Activity 8** that includes transportation of each sexually violent predator from a secured facility to the *probable cause hearing*, remain reimbursable as state-mandated costs, as explained below. The activities related to holding a probable cause hearing are found to be neither expressly included in, nor necessary to implement Proposition 83, but are mandated by the state in section 6602 of the Welfare and Institutions Code.

Therefore, the following activities are required as modified, only for probable cause hearings:

Activity 4- Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)

Activity 8 – ~~Transportation and housing~~ for each potential sexually violent predator from at a secured facility to the probable cause hearing while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

COMMISSION FINDINGS

Chronology

- 6/25/1998 The Commission adopted the test claim statement of decision for *Sexually Violent Predators*, (CSM-4509), approving reimbursement for certain activities under Welfare and Institutions Code sections 6601, 6602, 6603, 6604, 6605, and 6608.⁸
- 9/24/1998 The Commission adopted parameters and guidelines.⁹
- 11/08/2006 California voters approved Proposition 83, which amended and reenacted several sections of the Welfare and Institutions Code.¹⁰
- 10/30/2009 The Commission adopted amended parameters and guidelines, pursuant to the Controller's request to amend the boilerplate language of a number of existing parameters and guidelines.¹¹
- 1/15/2013 The Department of Finance (DOF) filed a request for redetermination of CSM-4509.¹²
- 1/24/2013 Commission staff deemed the filing complete.
- 2/13/2013 The State Controller's Office (SCO) submitted comments.¹³
- 2/13/2013 The County of Los Angeles requested an extension of time to file comments.
- 2/13/2013 The California State Association of Counties (CSAC) requested an extension of time to file comments.
- 2/14/2013 The County of San Diego requested an extension of time to file comments.
- 2/15/2013 The Executive Director granted an extension of time for the submittal of all comments until March 27, 2013, and set the matter for the first hearing on July 26, 2013.
- 3/19/2013 California District Attorneys' Association (CDAA) submitted comments on the request for redetermination.¹⁴
- 3/22/2013 CSAC submitted comments on the request for redetermination.¹⁵

⁸ Exhibit B, Test Claim Statement of Decision.

⁹ Exhibit C, Test Claim Parameters and Guidelines.

¹⁰ See Exhibit A, Request for Redetermination.

¹¹ Exhibit D, Test Claim Amended Parameters and Guidelines.

¹² Exhibit A, Request for Redetermination.

¹³ Exhibit E, SCO Comments on Request for Redetermination.

¹⁴ Exhibit F, CDAA Comments on Request for Redetermination.

¹⁵ Exhibit G, CSAC Comments on Request for Redetermination.

3/25/2013 California Public Defenders' Association (CPDA) submitted comments on the request for redetermination.¹⁶

3/25/2013 District Attorney of San Bernardino County submitted comments on the request for redetermination.¹⁷

3/25/2013 County of San Bernardino submitted comments on the request for redetermination.¹⁸

3/26/2013 District Attorney of Sacramento County submitted comments on the request for redetermination.¹⁹

3/26/2013 District Attorney of Los Angeles County submitted comments on the request for redetermination.²⁰

3/27/2013 County of Los Angeles submitted comments on the request for redetermination.²¹

3/27/2013 Alameda County Public Defender submitted comments on the request for redetermination.²²

3/27/2013 County Counsel of San Diego County submitted comments on the request for redetermination.²³

3/29/2013 Alameda County District Attorney submitted comments on the request for redetermination.²⁴

5/09/2013 Commission staff issued the draft staff analysis and proposed statement of decision.²⁵

5/17/2013 DOF submitted comments on the draft staff analysis.²⁶

5/28/2013 CPDA submitted comments on the draft staff analysis.²⁷

¹⁶ Exhibit H, CPDA Comments on Request for Redetermination.

¹⁷ Exhibit I, County of San Bernardino District Attorney Comments on Request for Redetermination.

¹⁸ Exhibit J, County of San Bernardino Comments on Request for Redetermination.

¹⁹ Exhibit K, County of Sacramento District Attorney Comments on Request for Redetermination.

²⁰ Exhibit L, Los Angeles County District Attorney Comments on Request for Redetermination.

²¹ Exhibit M, County of Los Angeles Comments on Request for Redetermination.

²² Exhibit N, Alameda County Public Defender Comments on Request for Redetermination.

²³ Exhibit O, County Counsel of San Diego Comments on Request for Redetermination.

²⁴ Exhibit P, Alameda County District Attorney Comments on Request for Redetermination.

²⁵ Exhibit Q, Draft Staff Analysis and Proposed Statement of Decision.

²⁶ Exhibit R, DOF Comments on Proposed Statement of Decision.

- 5/31/2013 County of LA submitted late comments on the draft staff analysis.²⁸
- 7/26/2013 The Commission determined that the requester made an adequate showing for redetermination and directed staff to set the matter for a second hearing.²⁹
- 8/02/2013 Commission staff issued the draft staff analysis for the second hearing.

I. Background

The Sexually Violent Predators Program and the Subsequent Change in Law

The Sexually Violent Predators (SVP) program established civil commitment procedures for the civil detention and treatment of sexually violent predators (SVPs) following the completion of an individual’s criminal sentence imposed for certain sex-related offenses. Before civil detention and treatment are imposed, the county counsel or district attorney is required to file a petition for civil commitment. A trial is then conducted to determine beyond a reasonable doubt if the person is an SVP. If the person alleged to be an SVP is indigent, the county is required to provide the indigent person with the assistance of counsel and experts necessary to prepare the defense.

The Commission concluded, in the CSM-4509 test claim statement of decision, that Welfare and Institutions Code sections 6601(i), 6602, 6603, 6604, 6605(b)-(d), and 6608(a)-(d) as enacted or amended by the 1995 and 1996 test claim statutes, imposed a reimbursable state-mandated program on counties within the meaning of article XIII B, section 6, of the California Constitution.³⁰

On November 7, 2006, the voters approved Proposition 83, also known as “Jessica’s Law.” Proposition 83 effected a number of amendments to the Penal Code, including strengthening penalties for kidnapping and sexual offenses perpetrated upon children, and especially removing the requirement of “force, violence, duress, menace, or fear of immediate and unlawful bodily injury” from the definitional elements of several crimes.³¹ Proposition 83 also mandated consecutive sentences for a number of sexual offenses,³² mandated a minimum 25 year sentence for a “habitual sexual offender,” as defined,³³ and required persons released on parole from a “registerable sex offense” to be monitored for the duration of their parole by a global positioning system device, for which the parolee is responsible to pay unless granted a waiver by the Department of Corrections.³⁴

²⁷ Exhibit S, CPDA Comments on Draft Staff Analysis.

²⁸ Exhibit T, County of LA Comments on Draft Staff Analysis.

²⁹ Exhibit U, Statement of Decision, First Hearing, July 26, 2013.

³⁰ Exhibit B, Test Claim Statement of Decision, at p. 12.

³¹ See, e.g., Penal Code sections 209, 220, 269, as amended by Proposition 83 (adopted November 7, 2006).

³² See Penal Code section 667.6, as amended by Proposition 83.

³³ Penal Code section 667.71, as amended by Proposition 83.

³⁴ Penal Code section 3000.07, as added by Proposition 83.

As directly relevant here, Proposition 83 also amended and reenacted provisions of the Welfare and Institutions Code, including sections 6601, 6604, 6605, and 6608 which were among the test claim statutes approved by the Commission in CSM-4509.

Section 6601(k) was amended by Proposition 83 to provide that a civil commitment under article 4 *shall toll the term of an existing parole*, where applicable. Under the amended section, if a person were granted parole but subsequently civilly committed, that individual's parole would not run concurrently, but would be "tolled," and the remaining term of parole would be served after the civil commitment ends. The test claim statute, as approved in CSM-4509, provided that a civil commitment "*shall not toll, discharge or otherwise affect the term of parole,*" meaning that a term of parole *could* run concurrently with a civil commitment, but that release from civil commitment would not discharge any remaining term of parole. The remainder of section 6601 was reenacted by Proposition 83 without amendment.

Section 6604 was amended by Proposition 83 to provide that if a court or jury determined that a person is a sexually violent predator, the person "shall be committed for an indeterminate term." The test claim statute, as approved in CSM-4509 had provided for a two year civil commitment, with an option for an extended commitment order from the court.

Section 6605 was amended by Proposition 83 to provide that if the Department of Mental Health (DMH) deems that the person's condition has changed, and that unconditional release or a conditional release to a less restrictive environment is appropriate and in the best interests of the person and conditions can be imposed to adequately protect the community, the Director "*shall authorize the person to petition the court*" for conditional release or unconditional discharge. The test claim statute, as approved by the Commission, required an annual notice to the person of his or her right to petition the court for release, and provided for an annual examination of his or her mental condition, but not, as the more recently amended section requires: "consideration of whether the committed person currently meets the definition of a sexually violent predator" and whether conditional release is appropriate in a particular case. Based on the plain language, the prior section 6605 was focused on the right of the individual to be annually evaluated for release, and to petition for release. As the section reads after Proposition 83, the focus is on the Department of State Hospitals making a determination that a person's condition has changed, and "authorizing" that person to petition for release.

And finally, Proposition 83 amended section 6608 to provide that, notwithstanding the provisions of section 6605, a person may petition the court for "*conditional release or an unconditional discharge*" without approval from the director of the DMH. The test claim statute stated "*conditional release and subsequent unconditional discharge.*"³⁵

On January 15, 2013, DOF filed a request for redetermination of the *Sexually Violent Predator* program based on Proposition 83, arguing that the program no longer imposes costs mandated by the state.

³⁵ Compare Penal Code sections 6601, 6604, 6605, and 6608 (as added or amended by Stats. 1995, ch. 762; Stats. 1995, ch. 763; Stats. 1996, ch. 4) with Penal Code sections 6601, 6604, 6605, and 6608, as amended by Proposition 83; full text of amended sections found in Exhibit X, 2006 Ballot Pamphlet, at pp. 136-138.

Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision if a subsequent change in law, as defined, has altered the state's liability for reimbursement. The redetermination process calls for a two stage hearing; at the first stage, the requester must make "an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior the claim decision, that may modify the state's liability pursuant to Article XIII B, section 6, subdivision (a) of the California Constitution."³⁶ At the second stage, the Commission shall determine whether a new test claim decision shall be adopted to supersede the previously adopted test claim decision.³⁷

A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law...³⁸

On July 26, 2013, the Commission determined, pursuant to a hearing, that DOF had made an adequate showing that the state's liability had been modified based on a subsequent change in law. The Commission directed staff to set the matter for a second hearing to determine whether to adopt a new test claim decision.

II. Positions of the Requester, Test Claimant, and Interested Parties and Persons

A. Department of Finance, Requester

On January 15, 2013, DOF submitted a request to adopt a new test claim decision regarding Welfare and Institutions Code sections 6601, 6602, 6603, 6604, 6605, and 6608, pursuant to Government Code section 17570. DOF asserts that Proposition 83 constitutes a subsequent change in the law, as defined in section 17570, which, when analyzed in light of section 17556, results in the state's liability under the test claim statutes being modified. DOF argues that "the state's obligation to reimburse affected local agencies has ceased."³⁹ Specifically, DOF argues that because sections 6601, 6604, 6605, and 6608 were included in their entirety in Proposition 83, the voters reenacted the entirety of those sections, "including the portions not amended," and therefore the test claim statutes impose duties expressly included in the voter-enacted ballot measure. DOF also argues that "[t]he remainder of the mandate's Welfare and Institutions Code sections that were not expressly included in the ballot measure are, nevertheless, necessary to implement the ballot measure." DOF concludes that "all activities found to be reimbursable by the Commission in the *Sexually Violent Predator* mandate are no longer reimbursable pursuant to Government Code section 17556, subdivision f, as they are either: (1) expressly included in Prop 83 or, (2) necessary for the implementation of Prop 83."⁴⁰

³⁶ Code of Regulations, Title 2, section 1190.05(a)(1).

³⁷ Government Code section 17570(d)(4) (as added by Stats. 2010, ch. 719 (SB 856)).

³⁸ Government Code section 17570(a)(2) (as added by Statutes 2010, chapter 719 (SB 856)).

³⁹ Exhibit A, Request for Redetermination, at p. 2.

⁴⁰ *Ibid.*

B. County of Los Angeles, Claimant for CSM-4509

LA County filed comments on the redetermination request, summarized as follows:

The County opposes the DOF's request to adopt a new test claim on the basis that: 1) the extraneous text included in the body of Prop 83 did not constitute a change in the law; 2) Prop 83 did not convert activities identified in the Commission's 1998 Statement of Decision to activities necessary to implement Prop 83, therefore, no longer reimbursable; and 3) Government Code Section 17570 is unconstitutional.⁴¹

LA County's position relies on its reasoning that Statutes 2006, chapter 337 (SB 1128), enacted as urgency legislation on September 20, 2006, made most of the same substantive amendments to the code that would be enacted by Proposition 83 less than two months later. LA County argues that because the law in effect immediately prior to the passage of Proposition 83 was substantially the same, Proposition 83 cannot constitute a subsequent change in law:

The changes actually proposed by Prop 83 were few and narrow, particularly in light of revisions to SVP laws that had recently been codified by S8 1128. The Secretary of State's practice of giving textual context to a ballot proposal by including unaffected statutory provisions is a benign protocol intended to fully inform the voters. Affirmation of existing law most certainly does not give rise to the change in law contemplated by Section 17570.⁴²

Thus, LA County also implies, in the excerpt above, that sections 6601, 6604, 6605, and 6608 were reproduced in the ballot measure in their entirety as a matter of "protocol," and not because the ballot measure was intended to effect substantive or pervasive changes. Finally, LA County argues that section 17570 is unconstitutional on separation of powers grounds, and because it is "an infringement of article XIII B, section 6, of the California Constitution."⁴³

In response to the draft staff analysis and proposed statement of decision at the first hearing, LA County argued in late comments that DOF's delay of "nearly six and a half years after the passage of Proposition 83" in bringing this reconsideration request was unreasonable because the Legislature in 2008 directed the Commission to set aside and reconsider the SVPs mandate "upon final resolution of any pending litigation challenging the constitutionality of subdivision (f) of section 17556." LA County also states that the current redetermination process was made effective October 19, 2010, but that DOF "waited until January 2013." Finally, LA County argues that Proposition 83's standards for defining a person as an SVP and for releasing an SVP, once adjudicated, should not be applied to "pre Prop 83 offenders."⁴⁴ LA County argues that to end mandate reimbursement for offenders determined to be SVPs prior to the adoption of Proposition 83 would violate the rights of offenders and "nullify judges' sentencing orders." LA

⁴¹ Exhibit M, County of Los Angeles Comments, at p. 1.

⁴² Exhibit M, County of Los Angeles Comments, at pp. 1-2.

⁴³ Exhibit M, County of Los Angeles Comments, at p 5.

⁴⁴ Exhibit T, County of Los Angeles Comments, at pp. 1-2.

County concludes that “[r]etroactive application of the Prop 83 SVP law (a violation of Ex Post Facto Law) would be unconstitutional.”⁴⁵

C. State Controller’s Office

The SCO agrees with DOF “that the eight activities previously determined to be reimbursable in the Statement of Decision adopted on June 25, 1998 cease to be reimbursable.”⁴⁶

D. Other Interested Parties and Persons

1. California District Attorneys’ Association; San Bernardino County District Attorney’s Office

The CDAA and the San Bernardino County DA argue that “[t]he application of Government Code § 17556(f) to Proposition 83 in order to terminate state subvention of mandated sexually violent predators is legally incorrect.” CDAA continues:

The Department of Finance contention that the mere recitation of any portion of a statute contained in a proposition, brings it within the "expressly included in" language of Government Code § 17556(f) regardless of whether the sections mandating local activity were amended or not, and whether or not the intent of the initiative and purpose of the initiative was to eliminate the subvention requirements of Article XIII B §6 by operation of Government Code § 17566(f), is not warranted. Such an interpretation would make the application of the statute so over broad and vague that no voter, local official, or legal analyst could accurately predict whether state mandated subvention would cease to exist as they voted to pass any ballot initiative that referenced existing law.⁴⁷

They also argue that there is no evidence, including in the ballot materials, that the voters intended Proposition 83 to terminate the state’s liability under article XIII B, section 6, to reimburse the test claim statutes. To support this argument they cite a letter from the Legislative Analyst’s Office (LAO) and DOF to then-Attorney General Lockyer, in which “[t]he unequivocal conclusion of both officials is that the costs of the SVP program would remain a

⁴⁵ This assertion is not relevant to the issue at hand: whether this program imposes a reimbursable state mandate when analyzed in the context of Proposition 83. “Ex post facto” describes a law which alters the legal consequences of an act after the act is committed, which is proscribed by the United States Constitution. (Article I, section 9; Article I, section 10.) However, the United States Supreme Court has held that the prohibition only applies to criminal statutes. A change in mandate reimbursement does not violate the prohibition, or affect in any way how an individual alleged to be a sexually violent predator is treated under the law, or what process is due. The redetermination of the test claim does not impact the rights of criminal defendants, rather it resolves who must pay for the costs of implementing the law: the state, if it is a state-mandated program; or the county, if it is not. The suggestion that a mandate redetermination would result in retroactive application of the SVP program is misleading, and will not be addressed further.

⁴⁶ Exhibit E, SCO Comments, at p. 1.

⁴⁷ Exhibit F, CDAA Comments, at p. 1; Exhibit I, San Bernardino County DA Comments, at p. 1.

reimbursable by the state.” They assert that this conclusion should be given great weight, “despite the Department of Finance’s now changed opinion.”⁴⁸

2. California State Association of Counties

CSAC argues that the state’s liability has not been affected by Proposition 83. Specifically, CSAC argues that the California Constitution mandates reimbursement for new programs or higher levels of service, subject to “four exceptions, but none of them are relevant in this case.” CSAC argues that “[i]n particular, there is no exception for a ballot measure that voters pass years later that does not substantively amend any of the language that established the mandate in the first place.”⁴⁹ CSAC further argues that the SVP program was unaffected by the passage of Proposition 83: “[b]ecause the ballot measure made no substantive changes to the reimbursable aspects of the program, the SVP program established by the Legislature would have remained in place whether voters approved or disapproved Proposition 83.” CSAC also notes that “SB 1128, by Senator Alquist, amended Sections 6600, 6601, 6604, 6604.1, and 6605 of the Welfare and Institutions Code, among many others,” less than two months prior to the election in which Proposition 83 was adopted, and that therefore Proposition 83 made no substantive changes to the law in effect at that time. Finally, CSAC argues that the request should be rejected because the Director of DOF “told the voters that counties would be reimbursed.” CSAC cites the ballot materials and the analysis published leading up to the election:

At the time Proposition 83 went to the ballot, the chief analysts representing both the Administration and the Legislature- the Director of Finance and the Legislative Analyst- agreed that all county costs related to the SVP commitment process would be reimbursed by the state. They stated the fact that counties would be reimbursed four times in their official fiscal analysis provided to the Attorney General, and voters decided the outcome of Proposition 83 based in part on that assurance.

In their official fiscal analysis of the ballot measure required by law, the Legislative Analyst and Director of Finance state unequivocally that Proposition 83 would increase state costs to, among other things, "reimburse counties for their costs for participation in the SVP commitment process."⁵⁰

CSAC implies that these analyses constitute evidence of voter intent, which in turn should be given substantial weight in evaluating whether a subsequent change in law has occurred.

3. California Public Defenders’ Association and Alameda County Public Defender’s Office

CPDA and Alameda County Public Defender’s Office submitted substantially identical comments opposing the request for redetermination, in which they argue:

(1) The 2012 legislative amendment and re-enactment of the Sexually Violent Predator Act (SVP A) either confirmed the viability of the Sexually Violent

⁴⁸ Exhibit F, CDAA Comments, at p. 4; Exhibit I, San Bernardino County DA Comments, at p. 4.

⁴⁹ Exhibit G, CSAC Comments, at p. 1.

⁵⁰ Exhibit G, CSAC Comments, at p. 3.

Predator Mandate (CSM-4509), or, *arguendo*, superseded any impact that Proposition 83 may have affected on the mandate; (2) Misrepresentation and the doctrines of estoppel and unclean hands bar the DOF's redetermination request; (3) Proposition 83 did not effectuate a "subsequent change in the law" as contemplated by Government Code section 17570; and (4) Government Code section 17570 is unconstitutional.⁵¹

The comments note that in 2012, the Legislature enacted substantive amendments to the SVP program, which, it is argued, "superseded any impact" of Proposition 83. CPDA and the Alameda County Public Defender's Office argue that due to the 2012 amendments to the relevant codes sections "Proposition 83 is no longer the statutory authority supporting the SVPA; consequently the cost incurred by local agencies to comply with the 2012 legislatively enacted SVPA is a cost mandated by the state."⁵² The comments cite the LAO and DOF analysis of Proposition 83, and argue that DOF should now be estopped from seeking redetermination of the SVP mandate because of the position taken prior to the election on Proposition 83.⁵³ The comments also focus on the 2006 legislative amendment to the SVP program, arguing that DOF's request for redetermination "is misleading because the statutory language quoted from the SVPA by the DOF's January 15, 2013, request, as well as that include [sic] in the actual proposition, was not the statutory language in effect at the time Proposition 83 was passed on November 7, 2006."⁵⁴ The comments also assert that section 17570 is unconstitutional, because it is unconstitutionally vague, with respect to the term "subsequent change in law," and because it violates separation of powers doctrine.⁵⁵

Finally, in comments submitted on the draft staff analysis for the first hearing, CPDA argues that prior reconsiderations conducted at the direction of the Legislature with respect to four prior test claims, and ultimately struck down by the court of appeal, demonstrate that a legal process or mechanism for reconsidering a test claim was in effect at the time Proposition 83 was adopted, and that therefore the analysis included in the ballot materials was incorrect and misleading to voters, and that estoppel principles, or unclean hands doctrine, should be applied to bar DOF from bringing its redetermination request under section 17570.⁵⁶

⁵¹ Exhibit H, CPDA Comments, at p. 1; Exhibit N, Alameda County Public Defender's Comments, at p. 2.

⁵² Exhibit H, CPDA Comments, at p. 2; Exhibit N, Alameda County Public Defender's Comments, at p. 3.

⁵³ Exhibit H, CPDA Comments, at pp. 3-4; Exhibit N, Alameda County Public Defender's Comments, at pp. 4-5.

⁵⁴ Exhibit H, CPDA Comments, at p. 4; Exhibit N, Alameda County Public Defender's Comments, at p. 5.

⁵⁵ Exhibit H, CPDA Comments, at p. 6; Exhibit N, Alameda County Public Defender's Comments, at p. 7.

⁵⁶ Exhibit S, CPDA Comments on Draft Staff Analysis.

4. County of San Bernardino

The County of San Bernardino argues that DOF’s interpretation of section 17556 is legally incorrect. San Bernardino focuses on the intent of the voters in adopting Proposition 83, stating:

The Department of Finance's flawed interpretation of the "expressly included" language of Government Code Section 17556(f) fails to consider whether the ballot language intended to enact or change the state reimbursement of mandated activities.

San Bernardino also implies that no subsequent change in law has occurred, reasoning that “[t]he statutory changes in the initiative did not relieve counties of their preexisting state mandated activities per Welfare and Institutions Code section 6601 through 6604.”⁵⁷

5. Sacramento County District Attorney’s Office

The Sacramento County DA argues that no subsequent change in law has occurred, and that “the legislature still retains a true choice in whether to have the duties imposed on local government in the statute remain with local governments, or change the statutes so that the mandated duties are performed at the state level.” The Sacramento County DA focuses on the fact that Proposition 83 permits the Legislature “to amend, by a statute passed by a roll call vote of two-thirds of each house,” and implies that the failure to relieve local agencies of the duties imposed by Proposition 83 constitutes a reimbursable state mandate.

The Sacramento County DA argues further that “[t]he fact that pre-existing law has simply been recited again, either in a statute re-enacted by the legislature, or as part of a new ballot measure...does not amount to a change in the law for § 17570 purposes.” The Sacramento County DA focuses on the fact that “the mandated activities at issue here were in place before the initiative was enacted,” and concludes that “there has been no change in the applicable law.”⁵⁸

Finally, the Sacramento County DA argues that DOF’s redetermination request was never intended by the voters, and that a new test claim decision eliminating reimbursement would provide a windfall to the state, and impose a hardship on local governments.⁵⁹

6. Los Angeles County District Attorney’s Office

The LA County DA argues that “[t]he activities for which the county is being reimbursed, the basis for the Commission's Statement of Decision, and the need for reimbursement from the State in order to comply with SVP laws have not changed since the Statement of Decision was adopted.”

The LA County DA argues that Proposition 83 “simply reaffirmed many of the changes already effectuated by SB 1128,” that “the changes actually proposed by Prop 83 were few and narrow,” and that “[a]ffirmation of existing law certainly does not give rise to the change in law contemplated by Section 17570.”⁶⁰ The LA County DA argues that “inclusion, within the text of

⁵⁷ Exhibit J, County of San Bernardino Comments.

⁵⁸ Exhibit K, Sacramento County District Attorney’s Office Comments, at pp. 1-2.

⁵⁹ Exhibit K, Sacramento County District Attorney’s Office Comments, at p. 3.

⁶⁰ Exhibit L, Los Angeles County District Attorney’s Office Comments, at pp. 2-3.

an initiative, of language that is unaffected by proposed revisions to the law does not constitute a change in the law.”⁶¹ The LA County DA further asserts that “[a]n activity may not fairly be recharacterized as “necessary to implement” another activity simply because an antecedent activity may have been affected by a change in the law,” and that “a reimbursable activity does not cease to be a reimbursable activity because it happens to have constitutional implications.” And the LA County DA argues that “Prop 83’s mere reaffirmation of legislative action does not constitute a change in the law.”⁶² Additionally, the LA County DA proffers a theory of equitable estoppel, based on the LAO and DOF analysis of Proposition 83 leading up to the election, discussed below, and the conclusion that Proposition 83 would not affect mandates.⁶³ Finally, LA County DA asserts that section 17570 is unconstitutional, as a violation of separation of powers doctrine.⁶⁴

7. County Counsel of San Diego

The County Counsel of San Diego argues that “Jessica’s Law [Proposition 83] did not make any changes material to the relevant statutes as they existed immediately before the adoption of Jessica’s Law,” that the 2012 reenactment “supersedes any effects that Jessica’s Law may have had on the state’s obligation,” that “DOF’s request is based on the unconstitutionally broad language in Section 17556(f) that impermissibly directs the commission to apply the ballot measure exception to previously enacted legislation.” The County Counsel of San Diego further argues that “DOF’s Request relies on the unconstitutionally broad definition of what constitutes a ‘subsequent change in the law’ set forth in Section 17570.”⁶⁵

8. Alameda County District Attorney’s Office

The Alameda County DA argues that Proposition 83 did not make any material changes to the responsibilities of county counsel offices or district attorneys’ offices; that DOF’s interpretation of section 17556(f) “cannot be the correct interpretation;” and that DOF’s request “should be rejected on common law principles of laches and estoppel.”⁶⁶

III. Discussion

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the increased costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a successful test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the

⁶¹ Exhibit L, Los Angeles County District Attorney’s Office Comments, at pp. 4-5.

⁶² Exhibit L, Los Angeles County District Attorney’s Office Comments, at pp. 4-8.

⁶³ Exhibit L, Los Angeles County District Attorney’s Office Comments, at pp. 8-10.

⁶⁴ Exhibit L, Los Angeles County District Attorney’s Office Comments, at pp. 11-12.

⁶⁵ Exhibit O, County Counsel of San Diego Comments, at p. 2.

⁶⁶ Exhibit P, Alameda County District Attorney’s Comments, at pp. 2-5.

test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁶⁷ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁶⁸ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁶⁹

Under Government Code section 17570, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the states liability. If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission is required to adopt new parameters and guidelines or amend existing parameters and guidelines.

A. Finance’s Argument for the Adoption of a New Test Claim Decision to Supersede the Prior Decision in Test Claim (CSM-4509).

On May 28, 1998, the Commission heard the CSM-4509 test claim on the SVP program. That test claim alleged that the following Welfare and Institutions Code sections imposed reimbursable state-mandates: 6250, and 6600 through 6608, as amended by Statutes 1995, chapter 762; Statutes 1995, chapter 763; and Statutes 1996, chapter 4.⁷⁰

The Commission approved reimbursement only for the following activities under sections 6601, 6602, 6603, 6604, 6605, and 6608:

1. Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601(i).)
2. Initial review of reports and records by the county’s designated counsel to determine if the county concurs with the state’s recommendation. (Welf. & Inst. Code, § 6601(i).)
3. Preparation and filing of the petition for commitment by the county’s designated counsel. (Welf. & Inst. Code, § 6601(i).)⁷¹

⁶⁷ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487; Government Code sections 17551; 17552.

⁶⁸ *County of San Diego v. State of California*, (1997) 15 Cal.4th 68, 109.

⁶⁹ *County of Sonoma v. Commission on State Mandates*, (2000) 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁷⁰ Exhibit B, Test Claim Statement of Decision.

⁷¹ The Test Claim Statement of Decision cites subdivision (j), but subdivision (j) addresses time limits, not a petition for commitment. The Commission therefore assumes that this is a typographical error, and that the citation intended is to subdivision (i).

4. Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)
5. Preparation and attendance by the county’s designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604.)
6. Preparation and attendance by the county’s designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6605(b-d), and 6608(a-d).)
7. Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6603 and 6605(d).)
8. Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

All remaining provisions of the test claim statutes were denied.⁷²

DOF asserts that activities 1, 2, 3, and 6, approved in the test claim statement of decision, were expressly included in Proposition 83. Activities 1, 2, and 3 involve the county’s role in filing and litigating a civil commitment hearing on behalf of the state. These activities are required by section 6601(i), and while DOF concedes that Proposition 83 did not make amendments to subdivision (i), specifically, it amended and reenacted the entirety of section 6601, including the activities approved under subdivision (i). Activity 6 is required by sections 6605 and 6608. The sections encompassing these activities were reenacted and amended also by Proposition 83.⁷³ DOF asserts that the reenactment of sections 6601, 6604, 6605, and 6608 is sufficient to implicate the “expressly included in” limitation of section 17556(f), prohibiting the Commission from finding “costs mandated by the state,” and in turn supporting the adoption of a new test claim decision.

DOF asserts as well that Activities 4, 5, 7 and 8 are “necessary to implement” Proposition 83, within the meaning of section 17556(f), and therefore these requirements also have been superseded by the ballot initiative.⁷⁴ DOF therefore brings this request to adopt a new test claim decision, in accordance with the provisions of section 17570.

B. Section 17556(f) Prohibits the Commission from Finding Costs Mandated by the State for Most of the Duties Imposed by the Test Claim Statutes Because those Duties are Necessary to Implement or Expressly Included in a Ballot Measure Approved by the Voters in a Statewide Election.

⁷² Exhibit B, Test Claim Statement of Decision, at p. 12. The numbers attached to the activities above are assigned by DOF, in its request for redetermination; the same numbering is adopted in this analysis, for purposes of expedience and clarity, rather than utilizing the bulleted list adopted by the Commission in the test claim statement of decision.

⁷³ Exhibit A, Redetermination Request, at pp. 1-2.

⁷⁴ Exhibit A, Redetermination Request, at pp. 2-3 and Exhibit R, DOF Comments on Draft Staff Analysis, at p. 1. where DOF corrected the original inadvertent omission of activity number 8.

Government Code section 17556(f) provides that the Commission “shall not find” costs mandated by the state if:

The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.⁷⁵

CSBA I makes clear that this statutory exclusion from reimbursement is consistent with the subvention requirements of article XIII B, section 6.⁷⁶ The court in *CSBA I* reasoned that the subvention requirement applies to mandates imposed by the Legislature, not by the voters; the voters’ powers of initiative and referendum are reserved powers, not vested in the Legislature, and are therefore not limited by article XIII B, section 6. *CSBA I* holds that the reimbursement requirement applies only to *state-mandated* costs, not costs incurred by way of “the people acting pursuant to the power of initiative.”⁷⁷

“Having established that costs imposed on local governments by ballot measure mandates need not be reimbursed by the state,” and thus approving the statutory exclusion to the extent of statutes imposing duties “expressly included in” a ballot measure, the court considered also whether reimbursement is required for activities embodied in a test claim statute that are “necessary to implement” a voter-enacted ballot measure. In *San Diego Unified*, costs that were incidental to a federal mandate were not reimbursable under section 17556(c), because those costs were imposed under Education Code provisions “adopted to implement a federal due process mandate.”⁷⁸ The *CSBA I* court therefore concluded that “[t]he language of [section 17556(f)] relieving the State of the obligation to reimburse a local government for duties ‘necessary to implement’ a ballot measure is *unobjectionable* because it corresponds to the Supreme Court’s holding in *San Diego Unified* that state statutes codifying federal mandates are not reimbursable.”⁷⁹ The court rejected, however, the “reasonably within the scope of” test also provided in subdivision (f) at that time as being overbroad, and the Legislature amended the code section the following year to excise the offending language.⁸⁰

Section 17556(f) also states that the rule “applies regardless of whether the statute or executive order was adopted prior to or after the date on which the statute or executive order was enacted

⁷⁵ As amended by Statutes 2010, chapter 719 (SB 856).

⁷⁶ *California School Boards Association v. State of California (CSBA I)* (Cal. Ct. App. 3d Dist. 2009) 171 Cal.App.4th 1183, 1206-1207; 1210.

⁷⁷ *Ibid.*

⁷⁸ *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859.

⁷⁹ *California School Boards Association v. State, supra, (CSBA I)* (Cal. Ct. App. 3d Dist. 2009) 171 Cal.App.4th 1183, at p. 1213 [emphasis added], citing *San Diego Unified, supra, (2004) 33 Cal.4th 859.*

⁸⁰ Government Code section 17556(f) (Stats. 2010, ch. 719 (SB 856) [amended to remove “reasonably within the scope of,” as an alternative test to “expressly included in,” or “necessary to implement,” consistent with the court’s decision in *CSBA I, supra*]).

or issued.” This provision, like the “reasonably within the scope of,” and “necessary to implement” tests, first appeared in section 17556 in 2005.⁸¹ This last provision, stating that the order of enactment is not material to the analysis under section 17556(f), has not yet been determined in the courts,⁸² but the Commission must presume that the statutes enacted by the Legislature are constitutional until the courts declare otherwise.⁸³

For the following reasons, the Commission finds that section 17556(f) applies in this case to end reimbursement for most of the activities, as specified, beginning July 1, 2011.

1. The test claim statutes impose duties that are expressly included in Proposition 83.

The original test claim decision assumed jurisdiction over Welfare and Institutions Code sections 6601, 6602, 6603, 6604, 6605, and 6608, as amended by Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); and Statutes 1996, Chapter 4 (AB 1496).⁸⁴ Here, the Commission’s jurisdiction is confined to the statutes pled in the original test claim.⁸⁵

Proposition 83 amended and reenacted, wholesale, sections 6601, 6604, 6605, and 6608 of the Welfare and Institutions Code, and made other changes which likely impact the operation of the remaining sections. By amending the code sections, Proposition 83 does not *expressly include the test claim statutes* exactly as amended by Statutes 1995, chapters 762 and 763, and Statutes 1996, chapter 4; but the focus of Government Code section 17556(f) is not whether *the test claim statute* is expressly included in a ballot measure, but whether the *duties imposed by the test claim statute* are expressly included in a voter-enacted ballot measure.⁸⁶ Therefore it is incumbent upon the Commission to consider the activities approved (duties imposed by the statute) in the earlier test claim, and whether those activities have been subsumed within the requirements of Proposition 83. If so, then the *duties imposed by the test claim statute*, as determined in the original test claim decision, are *expressly included* in the approved ballot measure.

In the original test claim statement of decision, the Commission approved reimbursement for the following activities, numbered one through eight for purposes of this analysis:

Activity 1 – Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601(i).)

⁸¹ As discussed above, the “reasonably within the scope of” test has been disapproved by the courts and removed from the code; compare Statutes 2004, chapter 895 (AB 2855) to Statutes 2005, chapter 72 (AB 138).

⁸² The constitutionality of Government Code sections 17570, in conjunction with section 17556, is being challenged in *California School Boards Assoc., et al. v. State of California, Commission on State Mandates, John Chiang, as State Controller, and Ana Matosantos, as Director of the Department of Finance*, Alameda County Superior Court, Case No. RG11554698.

⁸³ *California School Boards Association v. State of California, (CSBA II)* (Cal. Ct. App. 4th Dist. 2011) 192 Cal.App.4th 770, 795; *Porter v. City of Riverside* (1968) 261 Cal.App.2d 832, 837.

⁸⁴ Exhibit B, Test Claim Statement of Decision.

⁸⁵ Exhibit A, Redetermination Request.

⁸⁶ Government Code section 17556(f).

Activity 2 – Initial review of reports and records by the county’s designated counsel to determine if the county concurs with the state’s recommendation. (Welf. & Inst. Code, § 6601(i).)

Activity 3 – Preparation and filing of the petition for commitment by the county’s designated counsel. (Welf. & Inst. Code, § 6601(j).)

Activity 4 – Preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)

Activity 5 – Preparation and attendance by the county’s designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604.)

Activity 6 – Preparation and attendance by the county’s designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6605(b-d), and 6608(a-d).)

Activity 7 – Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6603 and 6605(d).)

Activity 8 – Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)⁸⁷

Activities 1, 2, and 3 derive from section 6601, as amended by Statutes 1995, chapter 762 (SB 1143); Statutes 1995, chapter 763 (AB 888); and Statutes 1996, chapter 4 (AB 1496), and are expressly included in section 6601, as amended by Proposition 83. Section 6601, as amended, provides, in pertinent part:

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county’s designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.⁸⁸

⁸⁷ Exhibit B, Test Claim Statement of Decision, at p. 13.

⁸⁸ Exhibit X, Ballot Pamphlet, November 7, 2006, at p. 137.

Section 6601(i) requires the county board of supervisors to designate counsel to assume responsibility for proceedings “under this article.” Activity 1 is the requirement that the county designate counsel to assume responsibility for civil commitment proceedings.⁸⁹ Activity 1 is thus expressly included in Proposition 83. Sections 6601(h) and 6601(i) provide for a recommendation to be made by DMH, and copies of mental health evaluations and other documents to be made available to the designated counsel, who, if he or she concurs with the recommendation, shall file a petition.⁹⁰ Activity 2 is the requirement that the designated counsel review the reports and records to determine whether he or she agrees with the recommendation of DMH.⁹¹ Activity 2 is thus expressly included in the provisions of Proposition 83. Section 6601(i) requires the designated counsel to file a petition and “assume responsibility for proceedings.” Activity 3 is the requirement that designated counsel prepare and file a petition for civil commitment.⁹² Thus, Activity 3 is expressly included in Proposition 83.

Activities 6 and 7 are also expressly included in the provisions of Proposition 83. Activity 6 requires “[p]reparation and attendance by the county’s designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator.”⁹³ Sections 6605 and 6608, as amended by Proposition 83, provide for a subsequent hearing to determine whether a person continues to fit the definition of a sexually violent predator, and whether release to a less-restrictive environment is appropriate. That hearing is triggered in one of two ways: either by a petition from the person committed, or by the recommendation of DMH. In either case, the designated counsel identified in section 6601(i) is required to represent the state, and the committed person is entitled to the assistance of counsel.

Section 6605, as amended by Proposition 83, provides, in pertinent part:

(b) If the Department of Mental Health determines that either: (1) the person’s condition has so changed that the person no longer meets the definition of a sexually violent predator, or (2) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the director shall authorize the person to petition the court for conditional release to a less restrictive alternative or for an unconditional discharge.

¶...¶

(d) *At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have*

⁸⁹ Exhibit B, Test Claim Statement of Decision, at p. 13.

⁹⁰ Exhibit X, Ballot Pamphlet, November 7, 2006, at p. 137.

⁹¹ Exhibit B, Test Claim Statement of Decision, at p. 13.

⁹² *Ibid.*

⁹³ Exhibit B, Test Claim Statement of Decision, at p. 13.

the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment...⁹⁴

And section 6608, as amended by Proposition 83, provides:

Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release or an unconditional discharge without the recommendation or concurrence of the Director of Mental Health...The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel.

¶...¶

The court shall give notice of the hearing date to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed person, and the Director of Mental Health at least 15 court days before the hearing date.⁹⁵

Thus Activity 6, as approved in the original test claim decision, is expressly included in Proposition 83: the preparation and attendance of both the county's designated counsel and indigent defense counsel are expressly included in the voter-approved ballot measure.

Activity 7 includes "[r]etention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator."⁹⁶ Activity 7 is expressly included in Proposition 83 *to the extent* of retaining experts for subsequent hearings recommended by DMH. Section 6605, as amended by Proposition 83, provides:

At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also *shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf*. The court *shall appoint an expert if the person is indigent and requests an appointment*.⁹⁷

Similar language regarding the appointment of an expert to evaluate the person on his or her behalf is not found in section 6608, with respect to a hearing initiated on petition of the committed person. But the California Supreme Court held, in *People v. McKee*, that "[w]e do not believe, however, that the statute needs to be interpreted in this narrow manner." The court

⁹⁴ Exhibit X, Ballot Pamphlet, November 7, 2006, at p. 137.

⁹⁵ Exhibit X, Ballot Pamphlet, November 7, 2006, at p. 138.

⁹⁶ Exhibit B, Test Claim Statement of Decision, at p. 13.

⁹⁷ Exhibit X, Ballot Pamphlet, November 7, 2006, at p. 137.

held that “[a]lthough section 6605, subdivision (a) does not explicitly provide for the appointment of the expert in conjunction with a section 6608 petition, such appointment may be reasonably inferred.”⁹⁸ The court concluded that “[t]here is no indication that the Legislature that authorized these expert appointments on behalf of an indigent SVP believed that such experts should be disallowed from testifying at an SVP’s section 6608 hearing, nor that an SVP’s indigence should serve as an obstacle to such testimony.”⁹⁹ Therefore, to the extent of retaining experts for subsequent hearings only, activity 7, as approved in the original test claim decision, is expressly included in the provisions of Proposition 83.

Many of the interested parties and persons to this redetermination request have suggested that the “expressly included in” language of section 17556(f) should apply only to a substantive amendment of a test claim statute.¹⁰⁰ LA County in particular argues that the amendments to the test claim statutes made by the November 2006 ballot measure had already been effected by the Legislature in Statutes 2006, chapter 337 (SB 1128), and that the Welfare and Institutions Code sections were included in the ballot measure because it is the Secretary of State’s practice to give “textual context to a ballot proposal by including unaffected statutory provisions.”¹⁰¹ However, the Commission has already determined, in the first hearing on this redetermination request, that statutory changes made prior to the ballot measure are irrelevant to the analysis of the existence of a subsequent change in law.¹⁰² The Commission does not have jurisdiction over Welfare and Institutions Code sections 6600-6608, as amended by Statutes 2006, chapter 337 (SB 1128), and in any event, the analysis of a subsequent change in law is more narrowly circumscribed: “Here, with respect to the code sections reenacted in Proposition 83, it must be said that the test claim statutes impose duties that are expressly included in a voter enacted ballot measure.”¹⁰³

In addition, some commenters have suggested that reimbursement should continue for this program because the voters had no express or implied intent, or indeed notice, that adoption of Proposition 83 would result in termination of mandate reimbursement; the comments rely on representations made by the LAO and DOF to then-Attorney General Lockyer, concluding that

⁹⁸ *People v. McKee* (2010) 47 Cal.4th 1172, at p. 1192.

⁹⁹ *Id.*, at p. 1193.

¹⁰⁰ See, e.g., Exhibit F, CDAA Comments, at p. 1; Exhibit I, San Bernardino County DA Comments, at p. 1. See also Exhibit G, CSAC Comments at p. 1 [“[T]here is no exception [to the reimbursement requirement] for a ballot measure that voters pass years later that does not substantively amend any of the language that established the mandate in the first place.”].

¹⁰¹ Exhibit M, County of Los Angeles Comments, at pp. 1-2; 5; Exhibit L, LA County District Attorney’s Office, at pp. 2-3. See also Exhibit G, CSAC Comments, at p. 3 [noting that SB 1128 made many, or most, of the same substantive changes less than two months prior to the November 2006 ballot measure]. See also Exhibit K, Sacramento County District Attorney’s Office Comments, at pp. 1-2 [“[T]he mandated activities at issue here were in place before the initiative was enacted.”].

¹⁰² Exhibit U, Statement of Decision, First Hearing, July 27, 2013, at p. 18.

¹⁰³ *Ibid.*

the SVP program would remain reimbursable.¹⁰⁴ The County of San Bernardino argues: “[t]he Department of Finance’s flawed interpretation of the ‘expressly included’ language of Government Code Section 17556(f) fails to consider whether the ballot language intended to enact or change the state reimbursement of mandated activities.”¹⁰⁵ Furthermore, CPDA charges that the electorate was “misled by the foregoing analysis,” and local government officials who supported Proposition 83 were “lulled into a false sense of security.”¹⁰⁶ These arguments, raised by multiple parties and interested parties, are tantamount to a plea for estoppel, based on an inaccurate statement of the effect of the ballot measure, and an imputed lack of intent of the voters to impact mandate reimbursement. However, the Commission found in the first hearing on this redetermination request as follows:

[W]hatever representations were made regarding the effect on mandate reimbursement prior to the adoption of Proposition 83, and however local governments might have detrimentally relied on those representations, they were *true when made*, and only later did the circumstances allow for mandate reimbursement to be modified. Moreover, to apply estoppel against DOF in this case would “contravene directly” the statutory and constitutional limitations on reimbursement, and would effectively “nullify” the mandate redetermination process created in the Government Code.

Accordingly, the arguments alleging misrepresentation, unclean hands, and equitable estoppel do not apply in this case.¹⁰⁷

Based on the foregoing, the Commission finds that the following requirements of the test claim statutes are expressly included in Proposition 83, and therefore do not constitute a reimbursable state mandate within the meaning of article XIII B, section 6 and Government Code section 17556(f), beginning July 1, 2011:

- Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings.¹⁰⁸
- Initial review of reports and records by the county’s designated counsel to determine if the county concurs with the state’s recommendation.¹⁰⁹
- Preparation and filing of the petition for commitment by the county’s designated counsel.¹¹⁰

¹⁰⁴ Exhibit F, CDAA Comments, at p. 4; Exhibit I, San Bernardino County DA Comments, at p. 4; Exhibit G, CSAC Comments, at p. 3.

¹⁰⁵ Exhibit J, County of San Bernardino Comments.

¹⁰⁶ Exhibit H, CPDA Comments, at pp. 3-4.

¹⁰⁷ Exhibit U, Statement of Decision, First Hearing, July 27, 2013, at p. 25 [citing *Transamerica Occidental Life Insurance Co. v. State Board of Equalization* (Cal. Ct. App. 2d Dist. 1991) 232 Cal.App.3d 1048, at p. 1054].

¹⁰⁸ Welfare and Institutions Code section 6601(i) (as amended by Proposition 83 (2006)).

¹⁰⁹ Welfare and Institutions Code section 6601(i) (as amended by Proposition 83 (2006)).

- Preparation and attendance by the county’s designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator.¹¹¹
 - Retention of necessary experts, investigators, and professionals for preparation for *subsequent hearings* regarding the condition of the sexually violent predator.¹¹²
2. Civil Commitments Provided for Under Proposition 83 Implicate Significant Due Process Considerations, and to the Extent the Test Claim Statutes Satisfy Due Process Requirements Triggered by Proposition 83, Those Statutes Impose Duties That are Necessary to Implement a Voter-Enacted Ballot Measure.

Activities 4, 5, 8, and the remaining elements of activity 7, above, are not expressly included in Proposition 83, but some of these activities are necessary to implement Proposition 83.

Activities 4 and 5, as approved in the original test claim decision, require the preparation and attendance of counsel designated by the county pursuant to section 6601(i), and of indigent defense counsel, at the probable cause hearing and at trial. These activities were found to arise from Welfare and Institutions Code sections 6602, 6603, and 6604, as amended by Statutes 1995, chapter 762 (SB 1143); Statutes 1995, chapter 763 (AB 888); and Statutes 1996, chapter 4 (AB 1496).¹¹³ Activity 8, as approved in the original test claim decision, requires the local government to provide “[t]ransportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator.” That activity was found by the Commission to arise from section 6602, as amended by Statutes 1995, chapters 762 and 763, and Statutes 1996, chapter 4.¹¹⁴ And the portion of activity 7 not expressly included in Proposition 83, as discussed above, requires local government to retain experts, investigators, and professionals for trial to testify on the issue of whether an individual is or is not a sexually violent predator. That activity is attributed, in the test claim statement of decision, to section 6603, as amended by Statutes 1995, chapters 762 and 763.

Welfare and Institutions Code section 6602, as amended by Statutes 1995, chapter 763 (AB 888) and Statutes 1996, chapter 4 (AB 1496), provides:

A judge of the superior court shall review the petition and shall determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. The person named in the petition shall be entitled to assistance of counsel at the probable cause hearing. If the judge determines there is not probable cause, he or she shall dismiss the petition and any person subject to parole shall report to parole. If the judge determines that there is probable cause,

¹¹⁰ Welfare and Institutions Code section 6601(i) (as amended by Proposition 83 (2006)).

¹¹¹ Welfare and Institutions Code sections 6605(b-d); 6608(a-b) (as amended by Proposition 83 (2006)).

¹¹² Welfare and Institutions Code section 6605(d) (as amended by Proposition 83 (2006)).

¹¹³ Exhibit B, Test Claim Statement of Decision, at p. 13.

¹¹⁴ *Ibid.*

the judge shall order that the person remain in custody in a secure facility until a trial is completed and shall order that a trial be conducted to determine whether the person is, by reason of a diagnosed mental disorder, a danger to the health and safety of others in that the person is likely to engage in acts of sexual violence upon his or her release from the jurisdiction of the Department of Corrections or other secure facility.

And Section 6603, as amended by Statutes 1995, chapters 762 and 763, provides:

A person subject to this article shall be entitled to a trial by jury, the assistance of counsel, the right to retain experts or professional persons to perform an examination on his or her behalf, and have access to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall appoint counsel to assist him or her, and, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf.

These sections were not amended and reenacted by Proposition 83, and therefore continue to provide a statutory requirement that a person alleged to be a sexually violent predator be accorded a probable cause hearing, and trial by jury, and shall be entitled to the assistance of counsel. Section 6603 also requires that the person alleged to be a sexually violent predator is entitled to experts or professional persons to perform an examination on his or her behalf.

The issue is whether those requirements, as approved in the test claim statement of decision, constitute duties *necessary to implement* Proposition 83, or are additional requirements imposed as a matter of policy by the Legislature, thus requiring a finding that the requirements remain reimbursable under article XIII B, section 6. As discussed above, where mandated activities are imposed by the voters, not the Legislature, the courts have held that those activities are not reimbursable under article XIII B, section 6.¹¹⁵ In this context, reimbursement is required, consistent with article XIII B, section 6, only if the requirements of the test claim statutes go beyond what is necessary to implement the ballot initiative.

The due process clause of the United States Constitution provides that the state shall not “deprive any person of life, liberty, or property without due process of law.”¹¹⁶ When an individual's liberty or property interest is impacted by governmental action, due process protections attach, and require that certain procedural safeguards be provided to the individual. Although the SVPs program entails a *civil* commitment, not a *criminal conviction*, the person identified as a sexually violent predator is subject to a deprivation of liberty. And under Proposition 83, that deprivation is highly significant, being of indeterminate duration, rather than a two year commitment as provided under the prior statutes. Proposition 83 provides for indeterminate civil commitment of a person found to be a sexually violent predator, as follows:

The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a

¹¹⁵ *California School Boards Association v. State of California (CSBA I)* (Cal. Ct. App. 3d Dist. 2009) 171 Cal.App.4th 1183, 1206-1207; 1210.

¹¹⁶ U.S. Constitution, 5th and 14th Amendments; see also, due process provisions in the California Constitution, article 1, sections 7 and 15.

reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. *If the court or jury determines that the person is a sexually violent predator, the person shall be committed for an indeterminate term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health.* The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.¹¹⁷

It is well-settled law that even temporary deprivations of an individual's liberty or property interest trigger due process protections. The length or severity of the deprivation must be weighed in determining what kind of process is due—not *whether* process is due.¹¹⁸

In *San Diego Unified*,¹¹⁹ the California Supreme Court addressed whether procedures instituted to provide a hearing and some modicum of due process to public school students under threat of expulsion constituted a reimbursable state mandate, or merely codified federal law, rendering such procedures not subject to reimbursement under article XIII B, section 6. The court reasoned as follows:

[T]he Legislature, in adopting specific statutory procedures to comply with the general federal mandate [to provide due process protections], reasonably articulated various incidental procedural protections. These protections are designed to make the underlying federal right enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective rights; viewed singly or cumulatively, they did not significantly increase the cost of compliance with the federal mandate. The Court of appeal in *County of Los Angeles II*¹²⁰ concluded that, for purposes of ruling upon a claim for reimbursement, such incidental procedural requirements, producing at most de minimis added cost, should be viewed as part and parcel of the underlying federal mandate, and hence nonreimbursable under Government Code, section 17556, subdivision (c).

¹¹⁷ Welfare and Institutions Code section 6604, as amended by Proposition 83 (2006); Exhibit X, Ballot Pamphlet, at p. 137.

¹¹⁸ See *Fuentes v. Shevin* (1972) 407 U.S. 67, p. 86 (“The Fourteenth Amendment draws no bright lines around three-day, 10-day, or 50-day deprivations of property”); *Goss v. Lopez* (1975) 419 U.S. 565, p. 576 (holding that a 10-day suspension from school is a cognizable deprivation of liberty and property). Note that due process standards apply equally to liberty and property deprivations. See *Wolff v. McDonnell* (1974) 418 U.S. 539, p. 558 and *Zinerman v. Burch* (1990) 494 U.S. 113, p. 131.

¹¹⁹ *San Diego Unified School District v. Commission on State Mandates*, *supra*, (2004) 33 Cal.4th 859.

¹²⁰ *County of Los Angeles v. Commission on State Mandates* (Cal. Ct. App. 2d Dist. 1995) 32 Cal.App.4th 805.

Also in *San Diego Unified, supra*, the California Supreme Court considered whether due process procedures involved in a *state-mandated* pre-expulsion hearing were fully reimbursable, or whether the procedures merely implemented federal due process requirements.¹²¹ The court held that even though some of the requirements of the test claim statute, “the parties agree, codif[ied] requirements of federal due process,”¹²² “a school district would not automatically incur the due process hearing costs that are mandated by federal law” in the absence of the test claim statute triggering the due process requirements.¹²³ The court therefore concluded that all hearing costs associated with the mandatory expulsion provisions of the test claim statutes were state-mandated, as follows:

Because it is state law, . . . and not federal due process law, that requires the District to take steps that in turn require it to incur hearing costs, it follows, contrary to the view of the Commission and the Department, that we cannot characterize any of the hearing costs incurred by the District, triggered by the mandatory provision of Education Code section 48915, as constituting a federal mandate (and hence being nonreimbursable).¹²⁴

The court concluded that: “state rules or procedures that are intended to implement an applicable federal law – and whose costs are, in context, de minimis – should be treated as part and parcel of the underlying federal mandate.”¹²⁵ *CSBA I*¹²⁶ “established that costs imposed on local governments by ballot measure mandates need not be reimbursed by the state,” and concluded that the “necessary to implement” test of section 17556(f) is “even more restrictive” than the “adopted to implement” language of *San Diego Unified, supra*.¹²⁷

Therefore the analysis that results from the two findings in *San Diego Unified, supra*, and the holding in *CSBA I, supra*, that section 17556(f) is applied similarly to, if more restrictively than, section 17556(c), is as follows: if costs incurred to satisfy due process protections are triggered by a state statute or executive order, reimbursement is required, whether or not the due process protections exceed federal due process requirements; but if costs incurred to satisfy due process protections are triggered by other than a state statute or executive order (such as a voter-enacted ballot measure), then reimbursement is required only if the state’s due process requirements truly exceed federal due process requirements and are not part and parcel of the federal requirements.

Activities 4, 5, 7, and 8, discussed below, were determined to be imposed by state law in the prior test claim decision.¹²⁸ However, elements of these activities may also be required to satisfy

¹²¹ *San Diego Unified, supra*, 33 Cal.4th 859.

¹²² *Id.*, at p. 868.

¹²³ *Id.*, at p. 880.

¹²⁴ *Id.*, at p. 881.

¹²⁵ *Id.*, at p. 890.

¹²⁶ *California School Boards Association v. State of California, supra*, (Cal. Ct. App. 3d Dist. 2009) 171 Cal.App.4th 1183

¹²⁷ *Id.*, at pp. 1210; 1214.

¹²⁸ Exhibit B, Test Claim Statement of Decision, at p. 13.

the due process protections implicated by Welfare and Institutions Code sections 6601, 6604, 6605, and 6608, as those sections were adopted by the voters in Proposition 83. This is so because even due process protections expressly included in the test claim statutes intended to satisfy federal due process requirements were triggered, prior to Proposition 83, entirely by a state-mandated local program. Thus, requirements of the code sections not expressly included in Proposition 83 may nevertheless be “necessary to implement” the provisions of Proposition 83 to the extent that due process protections must be satisfied in order to validly enforce and administer the voter-approved SVP program consistently with the Constitution.

- a. *Activity 4, preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing, is not necessary to implement Proposition 83, and is therefore reimbursable.*

Penal Code section 6602 establishes a probable cause hearing requiring the court to determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. The person named in the petition shall be entitled to assistance of counsel at the probable cause hearing.

As discussed above, the liberty interest at stake in implementing the SVP program triggers due process protections; but what process is due can vary depending on the importance of the governmental interest, and the severity of the deprivation. The Supreme Court of California has held that “[t]here is no question that civil commitment itself is constitutional so long as it is accompanied by the appropriate constitutional protections.”¹²⁹ In criminal cases, the appropriate constitutional protections have been explored and defined through decades of case law, but in the case of a civil commitment for the safety of the public and treatment of the committed person, due process requirements remain less defined. In *People v. Dean*,¹³⁰ the court of appeal articulated the appropriate constitutional protections, holding that due process in proceedings under the Sexually Violent Predators Act (SVPA) requires application of a balancing test, rather than strict adherence to the constitutional rights commonly afforded criminal defendants:

The measure of due process that is due in civil proceedings, including proceedings under the SVPA, is a complex determination that depends upon several factors: “(1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail; and (4) the dignitary interest in informing individuals of the nature, grounds, and consequences of the action and in enabling them to present their side of the story before a responsible government official.”¹³¹

Activity 4, as cited above, requires the “[p]reparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing.” A probable cause hearing

¹²⁹ *People v. McKee* (2010) 47 Cal.4th 1172, at p. 1188 [internal citations and quotations omitted].

¹³⁰ *People v. Dean* (Cal. Ct. App. 4th Dist. 2009) 174 Cal.App.4th 186.

¹³¹ 174 Cal.App.4th 186, at p. 204 [citing *People v. Otto* (2001) 26 Cal.4th 200].

is required by Welfare and Institutions Code section 6602, one of two sections of the test claim statutes *not adopted by the voters in Proposition 83*. Proposition 83 makes *no other reference to a probable cause hearing*, such as would render such a hearing necessary to implement the program. In addition, no case law on point, nor any other reference to state or federal due process jurisprudence, provides a clear and unambiguous statement that a probable cause hearing is required to satisfy due process in this context.

Applying the balancing test above, the liberty interest at stake is significant, but the risk of an erroneous deprivation of that liberty is less so, given that each person held must be screened and evaluated at several levels before a petition is filed,¹³² and the process is required to begin before an individual's prison term is expired; moreover, the deprivation of liberty absent a probable cause hearing would be of limited duration, because a trial would still follow after, pursuant to section 6604, as amended by Proposition 83 (2006); furthermore, the government's interest in holding persons suspected to be SVPs is compelling, and the administrative burdens involved in providing a due process hearing and counsel for that hearing are significant: counsel must be appointed, and the county's designated counsel must prepare for and attend the hearing. Finally, the "dignitary interest in informing individuals of the nature, grounds, and consequences of the action and in enabling them to present their side of the story before a responsible government official" will be fully vindicated at trial, and does not necessitate substantial consideration. This balancing test shows that whether a probable cause hearing is required by due process is a close issue.

A number of cases of the California courts of appeal and the Supreme Court address due process requirements of providing counsel and expert witnesses, furnished at the state's expense, to indigent persons alleged to be sexually violent predators.¹³³ Another slate of precedents address the due process requirements of analogous civil commitment programs, such as committing persons who are "mentally disordered" for treatment and confinement in a secured mental health facility.¹³⁴ But in none of those cases is there any direct statement that the probable cause

¹³² Welfare and Institutions Code section 6601, as amended by Proposition 83 (2006) [Director of Corrections refers a person for evaluation who may be a sexually violent predator; person is "screened by the Department of Corrections and the Board of Prison Terms," the screening instrument to be "developed and updated by the State Department of Mental Health;" Department of Mental Health "shall evaluate the person in accordance with a standardized assessment protocol;" two practicing psychiatrists or psychologists must concur, or further evaluation must be ordered by independent professionals, who must also concur, or a petition cannot be filed; county's designated counsel only files the petition "[i]f the county's designated counsel concurs with the recommendation."].

¹³³ E.g., *People v. Otto* (2001) 26 Cal.4th 200, at p. 210 [outlining four part test of due process applicable to Sexually Violent Predators Act proceedings]; *People v. Fraser* (Cal. Ct. App. 6th Dist. 2006) 138 Cal.App.4th 1430, at pp. 1449-1451 [assuming, without deciding, that SVPs have a right to counsel pursuant to the four part test of *Otto, supra*, but holding that there is no right to self-representation]; *People v. Dean, supra*, 174 Cal.App.4th 186, at p. 204 [Based on balancing test concluding: "Here, even though an SVPA proceeding is a civil proceeding, due process requires the provision of a qualified expert for defendant."];

¹³⁴ E.g., *People v. McKee* (2010) 47 Cal.4th 1172, at pp. 1188-1192 [SVP determination "functional equivalent" of not guilty by reason of insanity commitment, for due process

hearing provided for under section 6602 is necessary to satisfy due process.¹³⁵ Given the lack of precedent supporting a probable cause hearing as an essential feature of due process, and the fact that the activity is not part and parcel of either the federal mandate or the voter-enacted ballot measure or that the costs would most obviously not be “de minimis,” the Commission must conclude that provision of a probable cause hearing is not necessary to implement the civil commitment procedures outlined in Proposition 83.

Based on the foregoing, the Commission finds that Activity 4, preparation and attendance by the county’s designated counsel and indigent defense counsel at the probable cause hearing, is not necessary to implement Proposition 83, and remains reimbursable state-mandated cost.

b. Activity 5, preparation and attendance by the county’s designated counsel and indigent defense counsel at trial, is necessary to implement Proposition 83.

Penal Code section 6603, as amended by Statutes 1995, chapter 762 and 763, provides:

A person subject to this article shall be entitled to a trial by jury, the assistance of counsel, the right to retain experts or professional persons to perform an examination on his or her behalf, and have access to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall appoint counsel to assist him or her, and, upon the person’s request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person’s behalf.

In the test claim statement of decision, the Commission attributed activity 5, the preparation and attendance by the county’s designated counsel and indigent defense counsel at trial, and activity 7, the retention of necessary experts, investigators, and professionals for preparation for trial, to section 6603, as amended by Statutes 1995, chapters 762 and 763. However, there is precedent indicating that the provision of counsel and of an expert to assist a person alleged to be an SVP is required in order to satisfy due process.

The involuntary civil commitment of a person determined to be a sexually violent predator, as defined, is not meaningfully distinct from involuntary detention for medical treatment, insofar as the liberty interests thereby imperiled. The United States Supreme Court has held, in cases involving the involuntary detention for medical treatment, that due process requires the individual be given written notice; an opportunity to be heard before a neutral decision maker; the ability to review and challenge the evidence supporting the action; a written statement of reasons for the decision; the availability of legal counsel, furnished by the state if the individual is indigent; and timely notice of these rights.¹³⁶ This finding applies equally to commitments under the SVPA; the indeterminate civil commitments provided for by Proposition 83 implicate

purposes]; *Vitek v. Jones* (1980) 445 U.S. 480, at pp. 494-495 [United States Supreme Court found a right to counsel for mentally disordered offenders, furnished by the state.]

¹³⁵ See *Cooley v. Superior Court* (2002) 29 Cal.4th 228, at p. 246 [discussing standards of proof for probable cause hearing under section 6602, but relying only on section 6602, and not federal or state due process jurisprudence].

¹³⁶ *Vitek v. Jones* (1980) 445 U.S. 480, 494-495. See also, *People v. Hayes* (Cal. Ct. App. 1st Dist. 2006) 137 Cal.App.4th 34, at pp. 42-44 [describing probable cause hearing as “mandatory,” but relying only on section 6602].

significant due process protections including the right to counsel, furnished by the state if a person is indigent.¹³⁷ Therefore, the provision of indigent defense counsel is required to satisfy federal due process requirements, as those requirements are triggered by the voter-enacted Proposition 83.

Furthermore, Proposition 83 provides specifically that a “court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator,”¹³⁸ and requires the county to designate counsel to “assume responsibility for proceedings under this article.”¹³⁹ Thus the county’s designated counsel is clearly expected to prepare for and attend the trial that is necessary to determine “whether, beyond a reasonable doubt, the person is a sexually violent predator.” Although there is no apparent *due process* consideration met by requiring that the state’s representative prepare for and attend the trial, that requirement is “necessary to implement” other express provisions of Proposition 83.

Based on the foregoing, Activity 5, preparation and attendance by the county’s designated counsel and indigent defense counsel at trial, is necessary to implement Proposition 83, and is not reimbursable.

c. Activity 7, retention of necessary experts, investigators, and professionals for preparation for trial regarding the condition of the sexually violent predator, is necessary to implement Proposition 83.

In *People v. Dean, supra*, the court of appeal articulated the appropriate constitutional protections, holding:

Here, even though an SVPA proceeding is a civil proceeding, due process requires the provision of a qualified expert for defendant. An SVP commitment directly affects a defendant's liberty interest. The provision of an expert allows a defendant the opportunity to present his side of the story before the trier of fact, which in turn reduces the risk of an erroneous deprivation of defendant's liberty. (Emphasis added.)¹⁴⁰

The court thus held, pursuant to the balancing test borrowed from *People v. Otto*,¹⁴¹ that an expert witness, furnished by the state, is required to satisfy due process in conducting proceedings under the SVP program.

As discussed above, the portion of Activity 7 that requires experts, investigators, and professionals for “subsequent hearings” is expressly included in section 6605, as amended by Proposition 83. The remaining portion of the approved Activity 7 under consideration here is only the provision of experts or investigators for trial, which is not expressly provided for in any

¹³⁷ See *People v. Fraser* (Cal. Ct. App. 6th Dist. 2006) 138 Cal.App.4th 1430, at pp. 1449-1451 [assuming, without deciding, that SVPs have a right to counsel pursuant to the four part test of *Otto, supra*, but holding that there is no right to self-representation].

¹³⁸ Section 6604, as amended by Proposition 83 (2006).

¹³⁹ Section 6601(i), as amended by Propostion 83 (2006).

¹⁴⁰ *Ibid.*

¹⁴¹ *People v. Otto* (2001) 26 Cal.4th 200, at p. 210.

of the provisions amended and reenacted by Proposition 83, but which has been clearly held by the courts to be necessary to satisfy due process.

Based on the foregoing, the Commission finds that Activity 7, retention of necessary experts, investigators, and professionals for preparation for trial regarding the condition of the sexually violent predator, is necessary to implement Proposition 83, and is not reimbursable.

d. Activity 8, transportation and housing of each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator, is necessary to implement Proposition 83.

The purpose and intent of Proposition 83 is to protect the public from dangerous felony offenders with mental disorders and to provide mental health treatment for their disorders.¹⁴² The efficient operation of the program requires therefore that persons must be held in custody while awaiting trial to determine whether long-term (or permanent) commitment is appropriate. To release persons alleged to be dangerous and unable to control their violent sexual impulses would seriously blunt the effectiveness of the program. Accordingly, a more recent addition to the chapter (over which the Commission does not have jurisdiction) provides that if a judge of the superior court determines that the petition supports a finding of probable cause, the judge “shall order that person be detained in a secure facility until a hearing can be completed pursuant to section 6602” (the probable cause hearing). The same section also provides that the probable cause hearing “shall commence within 10 calendar days,” in respect of a person’s right to a speedy trial.¹⁴³ And, because persons so situated generally have a right to be present at trial and other hearings,¹⁴⁴ they must be transported to and from the courthouse. Given the dual purpose of Proposition 83, to provide mental health treatment to SVPs, and to protect the public, there is ample reason to hold individuals awaiting trial, rather than releasing those individuals to parole.

However, as discussed above, holding a probable cause hearing for each alleged SVP is a requirement mandated by the Legislature, and not necessary to implement Proposition 83. Therefore, while holding an individual pending trial is considered necessary to implement Proposition 83, and transportation to and from the court for trial is necessary as well, transportation to and from the court for a *state-mandated probable cause hearing* is not necessary to implement the ballot measure approved by the voters, and must remain a reimbursable state-mandated cost.

Based on the foregoing, the Commission finds that Activity 8, the transportation and housing of each potential sexually violent predator at a secured facility *while the individual awaits trial* on the issue of whether he or she is a sexually violent predator, is necessary to implement

¹⁴² *People v. McKee* (2010) 47 Cal.4th 1172, at p. 1203.

¹⁴³ See Welfare and Institutions Code section 6601.5 (added, Stats. 1998, ch. 19 (SB 536); amended, Stats. 2000, ch. 41 (SB 451)).

¹⁴⁴ Section 6605, as amended by Proposition 83 [“the committed person shall have the right to be present at the [subsequent] hearing”]; California Constitution, article 1, section 15 [“defendant in a criminal case has the right to...be personally present with counsel”]. As discussed above, the Sexually Violent Predators Act provides for civil commitments, not criminal conviction, but the due process protections are nearly as strong under the balancing test.

Proposition 83, and is not reimbursable; but transportation to and from the courthouse *for a probable cause hearing* required by the statute remain reimbursable state-mandated costs.

IV. CONCLUSION

Based on the foregoing, the Commission partially approves the request for redetermination and concludes that the following activities do not constitute reimbursable state-mandated activities within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17556(f), beginning July 1, 2011:

- Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601(i).)
- Initial review of reports and records by the county's designated counsel to determine if the county concurs with the state's recommendation. (Welf. & Inst. Code, § 6601(i).)
- Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601(i).)¹⁴⁵
- Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604.)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6605(b-d), and 6608(a-d).)
- Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6603 and 6605(d).)
- Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

The Commission further finds that the activity of preparation and attendance of county's designated counsel and indigent defense counsel at the probable cause hearing is not expressly included in or necessary to implement Proposition 83, and therefore remains a reimbursable state-mandated activity. Additionally, the transportation to and from court *for a probable cause hearing* on whether the person is a sexually violent predator is not expressly included in or necessary to implement Proposition 83, and remains a reimbursable state-mandated activity.

Therefore the following activities, required for purposes of probable cause hearings, remain reimbursable state-mandated costs.

- Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)

¹⁴⁵ The Test Claim Statement of Decision cites subdivision (j), but subdivision (j) addresses time limits, not a petition for commitment. The Commission therefore assumes that this is a typographical error, and that subdivision (i) was the intended citation for this activity.

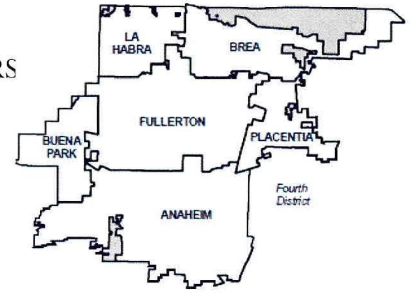
- Transportation for each potential sexually violent predator to and from a secured facility only to the *probable cause hearing* on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

This activity does not include transportation for purposes other than the probable cause hearing for potential sexually violent predators awaiting trial.



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Received
August 22, 2013
Commission on
State Mandates

August 20, 2013

Ms. Heather Halsey
Executive Director
California Commission on State Mandates
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Re: 12-MR-01, Mandate Redetermination Request, CSM-4509, Department of Finance, Requestor—Comments to the Draft Staff Analysis and Proposed Statement of Decision for the Second Hearing

Dear Ms. Halsey:

The County of Orange hereby submits the following comments in opposition to the Commission on State Mandates' Draft Staff Analysis and Proposed Statement of Decision for the Hearing of September 27, 2013, in case 12-MR-01.

Orange County is the sixth most populous county in the nation. Since the SVP mandate was determined by the Commission in 1998, three Orange County agencies have performed state mandated services, made claims and received partial reimbursement relating to the SVP mandate. Those three agencies are the District Attorney, the Public Defender and the Sheriff. The collective annual reimbursement claims from these three agencies over the past five years have ranged from a low of \$1,151,024 to a high of \$2,516,553. The proposed statement of decision will greatly impact Orange County's ability to continue providing the services associated with SVP laws.

I. Background

In 1979, the voters of the State of California passed Proposition 4, which "required the state to reimburse local governments for the costs of complying with state-imposed programs." (*California School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183, 1190, fn. omitted.) Proposition 4 amended the state Constitution by adding article XIII B, section 6, which requires that "[w]henver the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service" The purpose of the section is "to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations" imposed by other constitutional provisions. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.)

The Commission on State Mandates (the “Commission”) is the body the Legislature has charged with determining whether the state has an obligation under the Constitution to reimburse the state for the costs of new state mandates. To determine whether or not the State must reimburse local governments, the Commission is guided by a variety of statutes and regulations.

Title 2, section 1190.05 of the California Code of Regulations governs the two-part hearing procedure for “test claims”¹ to determine whether costs to local government are reimbursable by the state.

Government Code section 17514 defines “costs mandated by the state” to mean “any increased costs which a local agency or school district is required to incur after July 1, 1980, as result of any statute enacted on or after January 1, 1975 ... which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

While the state must reimburse local governments for costs mandated by the state, there is no such requirement for costs which are not mandated by the state. Government Code section 17556 guides the Commission in determining whether costs are not mandated by the state. Relevant to this comment is subdivision (f), which provides that costs are not mandated by the state if “the statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election.”

Subdivision (a)(2) of Government Code section 17570 allows for the redetermination of a prior test claim decision where there has been a “subsequent change in law,” which is defined, in pertinent part as, “a change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law....”

The Sexually Violent Predators Act (“SVPA”) was created by the Legislature and signed by the governor in 1995 and is codified in Welfare and Institution Code section 6600, et seq. The SVPA established civil commitment procedures for the continued detention and treatment of sexually violent offenders following their completion of a prison term for certain sex-related offenses.

On June 25, 1998, the Commission issued a Statement of Decision (CSM-4509) approving reimbursement to local government for costs associated with implementing the SVPA, including prosecution and defense of SVPA petitions, retention of experts and other professionals to prepare cases for litigation and the housing and transportation of those individuals subject to the SVPA.

¹ “‘Test claim’ means the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state....”

On September 20, 2006, the Legislature amended the SVPA. (Stats. 2006, Chapter 337, § 53 (SB 1128).) The amendments largely conformed to a then-pending ballot initiative, Proposition 83, commonly known as “Jessica’s Law.” Proposition 83 was passed by the voters on November 7, 2006. Because most of the amendments proposed by Proposition 83 had already been effectuated by SB 1128, the ballot initiative had little impact on the statutory scheme. Most significantly, Proposition 83 made some changes related to the findings the State Department of Mental Health must make before individuals adjudicated to be a sexually violent predator could be released to a less restrictive level of confinement (Welf. & Inst. Code, & 6605, subd. (b)) and modified the definition of a “sexually violent predator” from a person who has been convicted of sexually violent offense against two victims, to a person who has been convicted of sexually violent offense against one victim (Welf. & Inst. Code, § 6600 subd. (a)(1)). Nothing in Proposition 83 altered the laws or the duties on local entities that were imposed by the SVP laws and previously determined to be reimbursable costs pursuant to the Commission’s 1998 decision.

On January 15, 2013, the Department of Finance filed a Request to Adopt a New Test Claim Decision, essentially a redetermination of the prior test claim decision (CSM-4509) with respect to the SVPA on the grounds that Proposition 83 created a “subsequent change in law” within the meaning of Government Code section 17570 and that subvention to local governments was no longer required under subdivision (f) of Government Code section 17556.

II. Analysis

A. Proposition 83 did not create a subsequent change in law

The Department of Finance’s argument is wholly reliant on this single claim: “The enactment of Prop. 83 constituted a ‘subsequent change in law’, as defined in Government Code section 17570, because all of the Welfare and Institutions Code section of the SVP mandate are either expressly included in Prop. 83 or are necessary to implement Prop. 83.” (Dept. of Finance, Request to Adopt a New Test Claim Decision (Jan. 13, 2013), § 5, p. 2.)

This argument was accepted by the Commission in its Statement of Decision on the first hearing, adopted on July 26, 2013: “[W]ith respect to the code sections reenacted in Proposition 83, it must be said that the test claim statutes impose duties that are expressly included in a voter-enacted ballot measure. Therefore, DOF has made an adequate showing....” (Statement of Decision, pp. 18-19, footnote omitted.) This finding, however, is not binding at the second hearing as the Department of Finance only had to show that there “was a substantial possibility of prevailing at the second hearing.” (Cal. Code Regs., tit. 2, § 1190.05.) However, it is repeated in the Draft Staff Analysis for the second hearing. The Executive Summary to the Draft Staff Analysis succinctly states:

Staff finds that Proposition 83, by which the voters amended and reenacted Welfare and Institutions Code sections 6601, 6604, 6605 and 6608, constitutes a subsequent change in law, as defined in section 17570. Pursuant to Government Code section 17556(f), the Commission shall not find costs mandated by the state for the

activities imposed by sections 6601, 6604, 6605 and 6608, as determined in the original test claim decision, which are now expressly included in a ballot measure approved by the voters in a statewide election. Therefore a new test claim decision is required.

(Draft Staff Analysis and Proposed Statement of Decision, Second Hearing, p. 4.)

The underlying reasoning which the Department of Finance and the Commission claim support this argument is that the reenactment of existing legislation by way of ballot proposition triggers subdivision (f) of Government Code section 17556 and thereby satisfies the criteria for finding that the costs associated with implementing the statutes are not mandated by the state. In other words, because Government Code section 17556, subdivision (f), states that duties expressly included in a ballot initiative do not create costs mandated by the state, the mere reiteration and non-substantive amendment in a ballot initiative of an existing statute enacted by the Legislature relieves the state of its constitutional obligation to reimburse the counties for the cost of implementing the statutory scheme.

This is a flawed and legally incorrect premise and it establishes a dangerous precedent from a public policy perspective. For over a hundred years, the appellate courts of this state have repeatedly held that the restatement of a statute or its amendment does not mean it has been reenacted: “[T]o construe a statute amended in certain particulars as having been wholly re-enacted as of the date of the amendment, is to do violence to the code and all canons of construction.” (*County of Sacramento v. Pfund* (1913) 165 Cal. 84, 88.)

The confusion stems from article IV, section 9 of the California Constitution, which provides, in part, “A section of a statute may not be amended unless the section is re-enacted as amended.” The purpose of this rule, however, is not to create a new law or change in law by virtue of the statute’s reenactment at the time of the amendment—the premise suggested by the Department of Finance. The use of the word “re-enacted” is a requirement that the statute be restated in its entirety when it is amended “to make sure legislators are not operating in the blind when they amend legislation and to make sure the public can become apprised of changes in the law.” (*St. Johns Well Child and Family Center v. Schwarzenegger* (2010) 50 Cal.4th 960, 983, fn. 20, quoting *American Lung Assn. v. Wilson* (1996) 51 Cal.App.4th 743, 749.) Put plainly, the requirement that a statute or statutory scheme be restated in a ballot measure—even as to those sections not amended—is meant to provide the voters with additional context to inform their decisions. Accordingly, Government Code section 9605, provides, in relevant part,

Where a section or part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form. The portions which are not altered are to be considered as having been the law from the time when they were enacted; the new provisions are to be considered as having been enacted at the time of the amendment; and the omitted portions are to be considered as having been repealed at the time of the amendment.

Proposition 83's mere restatement of large portions of the statutory scheme in accordance with article IV, section 9 of the Constitution, did not create a change in law. The restatements were legal requirements to educate the voters on how the proposed amendments would affect the SVPA as a whole. The restatements did not morph a legislatively created statutory scheme that had previously been determined a state mandate into one created by the voters. In other words, because the SVPA was enacted by the Legislature, thereby imposing significant duties on the counties, the restatement and amendment of the statutory scheme by a ballot measure did not impact the State's subvention duties. Had Proposition 83 failed SVPA would still exist as it now exists; Proposition 83's failure would not have repealed the act. Instead, Proposition 83 merely asked voters whether they wanted to amend the act in the limited manner described above and recited a large portion of the remaining statutory scheme to provide the voters with context to guide their decision. The non-substantive changes to the SVP laws resulting from the electorate's approval of Proposition 83 did not require local entities perform new services or provide a "higher level of service" and thus nothing thereunder would be the basis for the Commission to determine that Proposition 83 is a mandate imposed by voter initiative. This is especially true in light of the fact that the information provided to the electorate regarding the fiscal impact of Proposition 83 explicitly indicated that the passage of Proposition 83 would not alter the funding the local entities receive.

B. Dangerous Precedent

The proposed statement of decision now pending before the Commission would establish a dangerous public policy precedent. Effectively, one body of the state government – the Attorney General – could lead the electorate down the primrose path by providing information to the electorate that ultimately results in the passage a voter initiative. Based on the information provided to the electorate, the electorate believes their vote effects no substantive changes to the laws at issue, and that the fiscal impact of the initiative is neutral to local government. All the while, another body of the state government is lying in wait to seek redetermination of a State Mandate on the basis that the voter initiative caused a change in the law and thus the state should no longer be required to reimburse local governments for costs rightfully determined state mandated costs. Such a decision invites the state government to engage in activities contrary to the will of the electorate and allows the state to avoid their subvention duties under article XIII B, section 6 of the California Constitution.

If the Commission alters the determination of the SVP mandate as proposed in the statement of decision, there is nothing to stop the state legislature from bringing initiative measures pertaining to previously determined mandates to the voters, not to obtain a substantive change to the law but rather to render the laws imposed by voter initiative instead of by the legislature and thereby provide a basis to seek redetermination of the mandate. The Commission would be providing the legislature with the ability to avoid previously determined fiscal obligations through by abusing the voter initiative process.

Ms. Heather Halsey
August 20, 2013
Page 6 of 6

For the foregoing reasons, the Orange County Board of Supervisors respectfully requests the Commission to deny the Department of Finance's request for redetermination.

On behalf of the County of Orange, I want to extend our thanks for your time and consideration of this important matter. Please address your comments or questions to Nicholas Chrisos, County Counsel, at 714-834-3300.

Sincerely,



CHAIRMAN SHAWN NELSON
Board of Supervisors
Fourth District

cc: Members, Board of Supervisors
Michael B. Giancola, County Executive Officer
Nicholas, Chrisos, County Counsel

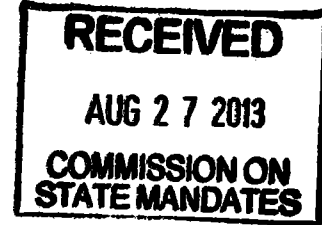


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August 15, 2013

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900 Ninth Street, Suite 300
Sacramento, CA 95814



RE: 12-MR-01, Mandate Redetermination Request, CSM-4509; Department of Finance, Requestor —
Comments to the Draft Staff Analysis and Proposed Statement of Decision for the Second Hearing

Dear Ms. Halsey:

The Orange County District Attorney's Office hereby submits the following comments to the Commission on State Mandate's Draft Staff Analysis and Proposed Statement of Decision for the Hearing of September 27, 2013, in case 12-MR-01.

The Orange County District Attorney (OCDA) is opposed to the Department of Finance's request to adopt a new test claim and end state reimbursement because such a change would be inequitable and impose a financial hardship on the county. The OCDA's office expends tremendous time and voluminous resources in complying with the SVPA in an effort to maintain the public's safety and protect the county from these most dangerous sexually violent predators.

Proposition 83 did not effectuate a "subsequent change in the law" as contemplated by Government Code (GC) § 17570. The SVP reimbursement program should not have been affected by Prop 83 because the ballot measure made no substantive changes to the reimbursable component of the program. Had the people voted against Prop 83, the SVP program established by the Legislature still would have remained in place. Additionally, the ballot material accompanying Prop 83 prepared by the Legislative Analyst's Office stated that the state would continue to bear any costs associated with implementing the SVPA.

Furthermore, the application of GC § 17556(f) to Prop 83 in order to put an end to state reimbursement for SVPA related expenses is incorrect. The mere recitation of any portion of an existing statute in a ballot initiative later passed by the voters should not bring it within the "expressly included in" language of GC § 17556(f).

Respectfully submitted,

Tony Rackauckas
Tony Rackauckas
District Attorney

:vlb

Law Offices of the Public Defender

Administration

Phyllis K. Morris
Public Defender

*Promoting justice through effective litigation
that protects constitutional rights.*



G. Christopher Gardner
Assistant Public Defender

September 5, 2013

RECIEVED
September 5, 2013
COMMISSION ON
STATE MANDATES

Ms. Heather Halsey, Executive Director
California Commission on State Mandates
900 Ninth Street, Suite 300
Sacramento, CA 95814

RE: 12-MR-01, SVP Mandate Redetermination Request (CSM-4509), Comments to Proposed Decision

Dear Ms. Halsey:

In response to the Commission's Draft Staff Analysis and Proposed Statement of Decision hearing scheduled on September 27, 2013, the San Bernardino County Public Defender submits the following comments in opposition to the Department of Finance's request to adopt a new test claim and end state reimbursements under the Sexually Violent Predator's Act (SVPA).

This office opposes the Department of Finance's assertions that state reimbursements should end because the Welfare and Institutions Code sections pertaining to the SVPA are "expressly included" in Proposition 83 or are "necessary to implement" Proposition 83 as provided for in Government Code §17556(f). In 1995, the Legislature created and the Governor signed into law the SVPA (Welfare and Institutions Code §6600, et seq.), which was subsequently amended by SB 1128 in 2006. Since Proposition 83 mirrored many of the same provisions as cited in SB 1128 and effectuated changes that were procedural rather than substantive, its enactment did not constitute a "subsequent change in the law" as required under Government Code §17570. Nor did Proposition 83 change any of the state-mandated activities the legislative scheme had previously imposed upon counties' law and justice agencies. The state should not use the mere recitation of an existing law that gives contextual meaning to proposed procedural amendments as a shield to negate its responsibility to reimburse local governments for activities that support a legislatively created state-mandated program. To do so results in a legal application that is vague and impermissibly overbroad (See *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183).

The fiscal impact to our county is significant. The Public Defender currently provides representation on 55 outstanding SVP petitions filed against individuals. A competent defense requires a significant investment of time from attorneys and investigators and the retention of qualified experts and other professionals. The state's reimbursement for services rendered under SVPA for FY 2010-2011 by the Public Defender was \$846,339.

I respectfully urge the Commission on State Mandates to deny the Department of Finance's test claim for the redetermination of costs under SVPA.

Sincerely,

Phyllis K. Morris
Public Defender

PKM/roz

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September 5, 2013
COMMISSION ON
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September 5, 2013

Ms. Heather Halsey
Executive Director
California Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

**RE: 12-MR-01, Mandate Redetermination Request, CSM-4509, Department of Finance,
Requestor – Comments to the Draft Staff Analysis and Proposed Statement of Decision for the
Second Hearing**

Dear Ms. Halsey:

On behalf of the California State Association of Counties, I respectfully submit our opposition to the mandate redetermination request 12-MR-01.

The state's obligation to provide reimbursement for the Sexually Violent Predators mandate has not ceased, and its liability has not been modified. Therefore, the Commission should reject the claim made by the Department of Finance.

First of all, and most importantly, the language in the California Constitution makes it clear that the state is required to reimburse counties for the costs of the program. Secondly, the parts of the Sexually Violent Predator (SVP) program that established a reimbursable mandate were not affected by the passage Proposition 83 (2006). Third, voter approval of Proposition 83 did not reenact the parts of the law that implemented the mandated activities.

1. The California Constitution is clear that the state is required to reimburse counties for the costs of the program.

The Constitution is unequivocal. Whenever the Legislature or a state agency mandates a new program on any local government, the state shall provide funds to reimburse the local government for the costs of the program. There are four exceptions allowed by the Constitution, but none of them are relevant in this case. In particular, there is no exception for statutes that voters have amended when those amendments do not relate to the activities found to be reimbursable.

There is no question in this case that the Legislature mandated a new program or higher level of service, evidenced by the Commission's Statement of Decision on the matter. By approving Proposition 83, voters merely amended irrelevant parts of the program the Legislature had long-before mandated. If voters instead had rejected Proposition 83, the reimbursable mandates would have continued uninterrupted. The claim that it is the voters instead of the Legislature who

have mandated this program—even though the program would have existed in substantially the same form whether voters approved or disapproved of the question posed to them—strains credulity.

The Constitution therefore requires, regardless of any contradicting statute, that the Legislature must either appropriate fund the mandate in the Budget Act or suspend its operation.

2. The parts of the SVP program that established a reimbursable mandate were unaffected by the passage of Proposition 83.

Of the fourteen sections and subsections that formed the basis of the Commission's 1998 Statement of Decision, Proposition 83 purported to amend only three, although even in these three cases the Legislature had already made substantially the same changes in the months prior to the ballot measure's passage (SB 1128, Alquist).

As argued by the California District Attorneys Association in their comments on this matter dated March 19, 2013, the Department of Finance claims Government Code Section 17556(f) applies so broadly as to make it no different than the interpretation already ruled unconstitutional by the courts (*School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183).

3. Voter approval of Proposition 83 did not reenact the parts of the law that implemented the mandated activities.

Case law is clear on the point that the mere recitation of unamended law to give context for proposed amendments does not constitute reenactment. The Department of Finance's claim relies entirely on the opposite presumption: that the mere recitation of the laws that mandated activities on counties does constitute a reenactment of those laws. California's Government Code contains statutory contradiction of the Department's position, and court cases contradicting the Department's position abound.

California Government Code Section 9605 states outright that the portions of an amended statute that remains unamended "are to be considered as having been the law from the time when they were enacted" and "not to be considered as having been repealed and reenacted in the amended form."

One example is *County of Sacramento v Pfund*, 165 Cal. 84, 87. In this case, briefly, statute set county clerks' "full compensation." Later statute allowed them to retain a percentage of fees (additional compensation), but later still the statutes setting full compensation were amended in certain particulars and "entirely reenacted," "and that such re-enactment should be held to be the latest expression of the legislative view." The court continues: "But it is conceded that the

amendments...made absolutely no change in the sections of the code as they previously stood. In other words, the provisions of the law, so far as [two relevant sections are] concerned, are identical, and so far as [the other relevant section], they were not changed in any material respect by the amendment.” The court found that considering the entire statute as having been wholly reenacted when only “certain particulars” were changed “is to do violence to the code and all canons of construction.”

Another example is *Swamp Land Dist. No. 307 v. Glide*, 112 Cal. 85-91, 44 Pac. 451. The court in this case likewise found that republication of the whole of an amended act is not repeal and re-enactment of the portion of the act unchanged by amendment, which continues as law throughout.

These examples are not comprehensive. Courts across the country have regularly found that the mere recitation of an entire statute when only a part of it is amended does not mean the entire statute should be considered repealed and reenacted. For the Commission to find otherwise, it must overturn more than one hundred years of conclusive case law.

The Department of Finance should be wary when using this argument. If it proves persuasive, then every time an old statute is amended in any particular—thus, by this reasoning, reenacting the entire section—local agencies will be able to bring new reimbursement claims for those “new” mandates.

For all these reasons, CSAC respectfully requests that the Draft Analysis be changed to reflect the fact that the state’s liability for the mandate in question is unchanged. If you have any questions about our position, please do not hesitate to contact Geoffrey Neill at 916/327-7500.

Thank you for your careful attention to this matter.

Respectfully,



Jean Kinney Hurst
Senior Legislative Representative



RECEIVED
September 5, 2013
COMMISSION ON
STATE MANDATES

THOMAS E. MONTGOMERY
COUNTY COUNSEL

DEBORAH A. McCARTHY
ASSISTANT COUNTY COUNSEL

CLAUDIA ANZÚRES
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GEORGE W. BREWSTER, JR.
CHIEF DEPUTIES

County of San Diego OFFICE OF COUNTY COUNSEL

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September 5, 2013

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STEPHEN R. MAGRUDER	THOMAS DEAK
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RICKY R. SANCHEZ	THOMAS L. BOSWORTH
TIMOTHY M. BARRY	WALTER J. DE LORRELL III
WILLIAM L. PETTINGILL	JAMES M. TOPPER
JUDITH A. McDONOUGH	CARRA L. RHAMY
JAMES R. O'DAY	PAULA FORBIS
RODNEY F. LORANG	WILLIAM W. WITT
DAVID J. SMITH	B. GEORGE SEIKALY
THOMAS D. BUNTON	JAMES G. BOYD
MIRIAM E. BREWSTER	BRYAN M. ZIEGLER
WILLIAM H. SONGER	LORI A. WINFREE
MARK C. MEAD	CHRISTOPHER J. WELSH
DENNIS FLOYD	STEPHANIE KARNAVAS
LISA MACCHIONE	SHIRI M. HOFFMAN
DAVID BRODIE	SMITHA ARONS
ALEC S. BEYER	DANA A. BEGLEY
PAUL J. MEHNERT	MARK M. DAY
KEVIN G. KENNEDY	JUSTIN A. CRUMLEY
DAVID G. AXTMANN	CHRISTOPHER DAWOOD
JAMES M. CHAPIN	KRISTEN LAYCHUS

Ms. Heather Halsey
Executive Director
California Commission on State Mandates
900 Ninth Street, Suite 300
Sacramento, CA 95814

Re: County of San Diego's Comments to Draft Staff Analysis and Proposed Statement of Decision re Second Hearing: New Test Claim Decision Mandate Redetermination Request 12-MR-01
Sexually Violent Predators, (CSM 4509)
Welfare and Institutions Code Sections 6601 through 6608
Statutes 1995, Chapter 762; Statutes 1995, Chapter 763;
Statutes 1996, Chapter 4
Requestor: California Department of Finance

Dear Ms. Halsey:

The County of San Diego, on behalf of the San Diego County Office of the Public Defender, the San Diego District Attorney's Office and the San Diego County Sheriff (collectively referred to as the "County"), hereby submits the following comments in response to the Draft Staff Analysis and Proposed Statement of Decision re Second Hearing: New Test Claim Decision, filed August 2, 2013 ("Proposed SOD").

The State's Liability Pursuant to Article XIII B, Section 6, Subdivision (a) of the California Constitution has Not Been Modified Based on a Subsequent Change in Law.

The Department of Finance ("DOF") has the burden to prove that the "state's liability pursuant to Article XIII B, section 6, subdivision (a) of the California Constitution has been modified based on [a] subsequent change in the law" Cal. Code of Regs. tit. 2, § 1190.05(b)(1). The DOF has failed to meet this burden.

As noted in the Commission's Statement of Decision adopted July 26, 2013, the primary focus of Jessica's Law was to amend provisions of the Penal Code to strengthen penalties for certain crimes against children, expand the definitions of certain sexual offenses, mandate a minimum 25 year sentence for habitual sexual offenders, and require certain sex offenders who are released on parole to be monitored, while on parole, by a global positioning system device. (Statement of Decision adopted July 26, 2013, p. 8.) Jessica's Law did not enact any changes to the activities that were previously found by the Commission to be reimbursable mandates. (See County Counsel of San Diego Comments filed March 27, 2013, AR 204-206, 211-216, summarizing the law as it existed immediately before and immediately after the adoption of Jessica's Law.) Those activities remained exactly the same, before and after the adoption of Jessica's Law. So, while there was a change in the form of the law, there was no change in the substance of the law as it relates to the mandated activities.

As articulated by the Honorable Shawn Nelson in the comments submitted by the Orange County Board of Supervisors, the mere reiteration or restatement of an existing statute in a ballot measure does not mean that it has been reenacted. (Orange County Board of Supervisors Comments dated August 20, 2013, pp. 3-5.) "The portions [of a statute] which are not altered are to be considered as having been the law from the time when they were enacted" Gov't Code § 9605.¹ Because Jessica's Law did not substantively alter any of the provisions of the Welfare & Institutions Code sections containing the mandated activities, those provisions must be considered as having been the law of the land from the time when they were enacted, and Jessica's Law cannot be considered to have affected a subsequent change in the law.

The logic of this argument demonstrates the illogical and overly broad nature of the definition of "subsequent change in law" set forth in Section 17570 that includes provisions expressly included in a ballot measure approved by the voters notwithstanding the fact that there was no actual change in the existing statutory language that originally created the mandated activities. The overly broad definition of subsequent change in law contained in Section 17570 is contrary to the purpose and intent of Article XIII B, section 6, which requires the state to provide a subvention of funds for the activities the Commission has previously found to be reimbursable.

The Commission can only set aside a prior test claim decision and adopt a new one upon a showing that the state's liability "has been modified based on a subsequent change in the law." Section 17570(b). The DOF has the burden to show that "the state's liability pursuant to Article XIII B, section 6, subdivision (a) has been modified based on

¹ Unless otherwise stated, all section references are to the Government Code.

a subsequent change in law” Cal. Code of Regs. tit. 2, § 1190.05(b)(1). Jessica’s Law did not affect a change in the law with respect to the mandated activities and the DOF’s request should be denied in its entirety.

Costs Related to the Retention of Necessary Experts, Investigators, and Professionals for Preparation for the Probable Cause Hearing Should Continue to be Reimbursable.

The Proposed SOD correctly concludes that certain costs relating to the probable cause hearing required pursuant to Welfare & Institution Code section 6602 continue to be reimbursable. This includes the cost of transporting each potential sexually violent predator to and from a secured facility to the probable cause hearing on the issue of whether he or she is a sexually violent predator, notwithstanding that this activity was not previously expressly found by the Commission to be reimbursable

The same rationale should apply to the costs the county’s designated counsel and indigent defense counsel incur for retention of necessary experts, investigators, and professionals for preparation and appearance at the probable cause hearing. As set forth in the declaration of Michael F. Ruiz submitted herewith (see ATTACHMENT A), probable cause hearings require thorough preparation, which includes in many cases the retention of experts, investigators and/or other professionals, necessary to provide individuals with an adequate defense. Even though these costs are not expressly identified as reimbursable costs in the original test claim decision, these costs have been and should continue to be reimbursed to claimants by the state.

Recognizing that the retention of qualified experts, investigators and professionals for probable cause hearings is critical to the prosecution and defense of individuals at the probable cause hearing, the County requests that the Commission specifically find that these costs continue to be reimbursable to local agencies pursuant to the SVP mandate.

Conclusion

The Commission can only adopt a new test claim decision upon a showing that the state’s liability for that test claim under the Constitution “has been modified based on a subsequent change in the law.” The DOF has failed to meet its burden of proof by demonstrating the existence of “... a subsequent change in law ... *material to the prior test claim decision* that” modified the state’s liability pursuant to Article XIII B, section 6.

Ms. Halsey

-4-

In addition, the Commission should expressly find that the costs incurred by the county's designated counsel and defense counsel for the retention of necessary experts, investigators, and professionals for preparation and appearance at the probable cause hearing continue to be reimbursable.

Declaration


I, Timothy Barry declare that I am employed as a Senior Deputy County Counsel for the County of San Diego; that I am familiar with the facts and issues presented in this matter; and that I am authorized to make this declaration on behalf of the County of San Diego.

I further certify under penalty of perjury that the facts set forth in the foregoing comments and the attachment hereto are true and correct to the best of my own knowledge except as to matters stated on information and belief and as to those matters, I believe them to be true.

Executed this 5th day of September, in San Diego, California.

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By 

TIMOTHY BARRY, Senior Deputy

Cc: Ms. Laura Arnold
Mr. John Rice
Mr. Ronald Lane
13-90066

ATTACHMENT A

DECLARATION OF MICHAEL F. RUIZ
IN SUPPORT OF COUNTY OF SAN DIEGO'S COMMENTS TO DRAFT STAFF
ANALYSIS AND PROPOSED STATEMENT OF DECISION
RE SECOND HEARING: NEW TEST CLAIM DECISION

I, Michael F. Ruiz, declare as follows:

1. I make this declaration based on my own personal knowledge, except for matters set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify herein, I could and would competently testify to the following.
2. I am an attorney authorized to practice law in the State of California. I am employed as a Deputy Public Defender IV by the County of San Diego Department of Public Defender.
3. My employment responsibilities include litigating cases pursuant to Welfare & Institutions Code ("W&I Code") sections 6600 *et. seq.*, at all stages of the proceedings.
4. Our office represents individuals as respondent (defense) counsel at probable cause hearings held pursuant to W&I Code § 6602 and at the trials of such individuals and any subsequent hearings held pursuant to W&I Code §§ 6603, 6604, 6605 and 6608.
5. Our office is also responsible for the retention of necessary experts, investigators, and professionals for preparation for the probable cause hearings as well as for trial and any subsequent hearings for such individuals.
6. I am informed and believe that the Draft Staff Analysis and Proposed Statement of Decision re: Second Hearing: New Test Claim Decision ("Proposed SOD") proposes to allow local governmental entities to continue to recover costs related to the preparation and attendance of the county's designated counsel and indigent defense counsel at probable cause hearing as well as the costs of transporting and housing each potential sexually violent predator at a secured facility while the individual awaits the probable cause hearing on the issue of whether he or she is a sexually violent predator.
7. I am also informed and believe that the Proposed SOD is silent with respect to whether the costs that either the county's designated counsel or indigent defense counsel incur for the retention of necessary experts, investigators, and professionals for preparation for the probable cause hearing continue to be reimbursable.
8. The retention of necessary experts, investigators and professionals for purposes of preparing for a probable cause hearing can be critical to the defense of individual.

9. The probable cause hearing is a critical stage of any SVP civil commitment proceeding. It is the hearing at which the court makes a determination whether sufficient evidence exists to continue to detain an individual (who would otherwise be released on parole) in a confined setting and set a matter for trial.
10. The burden is on the government to prove, by probable cause, that three statutory requirements are met: i.e. (1) that the Respondent has been convicted of a “sexually violent offense”; (2) that the Respondent currently suffers from a mental disorder which predisposes him to the commission of sexually violent predatory offenses; and (3) that there is a serious and well-founded risk that the Respondent will commit another sexually violent predatory offense unless he is treated in a confined setting in the custody of the Department of State Hospitals and subsequently beyond a reasonable doubt, at trial.
11. While the first requirement is strictly a matter of law, the second and third requirements require that the attorney designated by the county (in San Diego, the District Attorney) and Respondent’s counsel (in San Diego, the Public Defender) have a working knowledge not only of the statutory terms and case law construing those terms, but also of psychiatric diagnoses and actuarial and dynamic risk assessment.
12. SVP litigation is a high-end forensic practice. The areas of diagnosis and risk assessment are ever-changing and the assistance of qualified professionals is critical to the preparation of these cases.
13. At the probable cause stage of SVP proceedings, practitioners for both sides must be able to independently assess both the diagnostic and the relative risk conclusions reached by the designated DSH evaluators. For instance, just last year in San Diego County, in the case of *People v. Alfredo Mejia*, a W&I Code § 6600 petition was dismissed at the probable cause hearing, because mistakes had been made in the scoring of the actuarial instruments by the DSH evaluators, elevating the Respondent’s *actual* relative risk category (S99R score of -1) from extremely low to extremely high. Had Respondent’s counsel not had the ability to consult with a qualified expert and present his testimony at the probable cause hearing, the case would have proceeded to trial at great and unnecessary taxpayer expense.
14. In another case in this County, *People v. Mark McKinney*, investigation conducted by Respondent’s counsel in preparation for the probable cause hearing revealed that the Respondent was approximately twenty years older than his documented age, that a victim’s date of birth from a decades-old out-of-state conviction had been incorrectly documented by law enforcement at the

-7-

time of arrest, making her appear younger than she actually was. Additional investigation also revealed that a second victim was, potentially, four years older than had been documented by the records available to the DSH evaluators. This information discovered by our investigator and subsequently consulted with the appropriate experts prior to the probable cause hearing was extremely significant to the issues related to diagnoses.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 5th day of September, 2013 at San Diego, California.



MICHAEL F. RUIZ



RECEIVED
September 5, 2013
COMMISSION ON
STATE MANDATES

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

September 5, 2013

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: Commission Request for Comments on Draft Staff Analysis and Proposed Statement of Decision for Mandate Redetermination (Sexually Violent Predators, 12-MR-01)

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed the Draft Staff Analysis and Proposed Statement of Decision for the Mandate Redetermination (12-MR-01) requested by Finance on the Sexually Violent Predators test claim decision.

We continue to assert that Proposition 83 constitutes a subsequent change in law as defined in Government Code section 17570. Pursuant to Government Code section 17556, subdivision (f), the Commission shall not find costs mandated by the state if the statute imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election.

The filing by the Orange County Board of Supervisors attempts to diminish the effect of article IV, section 9 of the California Constitution on the statutes amended by Proposition 83. The characterization of the voters' statutory amendments as mere restatement of large portions of the statutory scheme inaccurately downplays the Constitutional mandate that "a section of statute may not be amended unless the section is re-enacted as amended."

Orange County's reference to Government Code section 9605 is misleading. The application of that section to the facts before us does not mean the voters failed to re-enact the statutes they amended via their approval of Proposition 83. Rather, section 9605 speaks only to the effective date of the un-amended portions of the amended statutes. More specifically, in disagreeing with a similar argument made by the Orange County District Attorney, the California Supreme Court said:

Article IV, section 9 of the state Constitution mandates that a 'section of a statute may not be amended unless the section is re-enacted as amended.' The purpose of this section is to avoid the 'confusion which almost always results when amendments are attempted by way of directing the insertion, omission or substitution of certain words, or by adding a provision, without setting out the entire context of the section [of the statute] to be amended. The effect of this section is that voters considering an initiative (like Proposition 114) that seeks to make discrete amendments to selected provisions of an existing statute, are forced to

reenact the entire statute as amended in order to accomplish the desired amendments. (*Yoshisato v. Superior Court* (1992) 2 Cal.4th 978, 989-990).

In footnote 6, the court said:

The People, through the District Attorney of Orange County, appear to contend otherwise, based on their reading of Government Code section 9605. That section provides, inter alia, "Where a section or part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form. The portions which are not altered are to be considered as having been the law from the time when they were enacted. . ." From this, the District Attorney reasons that the unaltered parts of section 190.2 were not in fact "reenacted" by Proposition 114, but instead "simply remained the law as previously enacted." Contrary to the District Attorney's view, the quoted portion of the Government Code section does not purport to stand for the proposition that statutory amendments may be accomplished without reenacting the statute as amended, as required by article IV, section 9 of the Constitution. Instead, it merely establishes that the effective date for unaltered portions of an amended statute remains the date on which the original, unaltered enactment was first operative. (*Yoshisato* at p. 990).

Government Code section 17556, subdivision (f), applies to the voters' approval of Proposition 83 and the SVP mandate. The voters reenacted the entire statutes they amended in Proposition 83.

Orange County suggests also that the Attorney General and the Department of Finance will essentially collude in the future on proposed ballot measures to avoid reimbursable state mandates. According to Orange County, the Attorney General "could lead voters down the primrose path" by providing the electorate information resulting in passage of the initiative while another body of state government is "lying in wait" to seek redetermination of a state mandate. This language disparages the significant duties the Attorney General and the Department of Finance have in the preparation of a ballot measure's title and summary.

The Attorney General has duties specified in the Constitution and Elections Code regarding the language provided to voters about a ballot measure. Article II, section 10(d) of the California Constitution requires the Attorney General to prepare a title and summary for an initiative measure before its circulation for signatures. Elections Code section 9051(c) says "In providing the ballot title and summary, the Attorney General shall give a true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure."

Case law has established that the Attorney General's title and summary need not be an exhaustive description of all of a measure's provisions. The title and summary inform the public of the general purpose of the [measure] ... [it] need not contain a complete catalog or index of all of the measure's provisions ... substantial compliance with the 'chief purpose and points' provision is sufficient ... Within certain limits what is and what is not an important provision is a question of opinion. Within those limits the opinion of the attorney-general should be accepted by this court. (*Lungren v. Superior Court* (1996) 48 Cal.App.4th 435, 439-440).

Further, in a post election challenge, the court said, "We need only add that in light of the fact that the Legislature has determined in the Election Code that an election cannot be undone on

the basis of alleged deficiencies in an impartial analysis, trying to achieve the same result under the rubric of constitutional due process, as was unsuccessfully attempted in *Horwath*, requires a showing that the impartial analysis profoundly misled the electorate, not just that it didn't educate the electorate as to all the legal nuances of the measure." (*California Family Bioethics Council v. California Institute for Regenerative Medicine* (2007) 147 Cal.App.4th 1319, 1348).

The Department of Finance also has a statutory duty in the preparation of the title and summary. Elections Code section 9005(b) requires the department to jointly prepare the estimated fiscal impact of the ballot measure, if adopted, on state or local government. As noted before, when these sections applied to Proposition 83 put before the voters in 2006, the new test claim decision process in Government Code section 17570 did not even exist at the time.

In light of the language in case law, statutes, and the Constitution, the Commission would be correctly applying the law in finding provisions of the SVP mandate no longer reimbursable.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission on State Mandates need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Michael Byrne, Principal Program Budget Analyst, at (916) 445-3274.

Sincerely,

for


TOM DYER
Assistant Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF MICHAEL BYRNE
DEPARTMENT OF FINANCE
CLAIM NO. 12-MR-01

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

9/5/2013

at Sacramento, CA



Michael Byrne



WENDY L. WATANABE
AUDITOR-CONTROLLER

**COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
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RECEIVED
September 5, 2013
COMMISSION ON
STATE MANDATES

September 5, 2013

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

**LOS ANGELES COUNTY'S COMMENTS ON COMMISSION ON STATE
MANDATES' DRAFT STAFF ANALYSIS AND STATEMENT OF DECISION FOR
SEXUALLY VIOLENT PREDATORS ("SVP") REDETERMINATION**

The County of Los Angeles respectfully submits its comments on the Commission on State Mandates' draft staff analysis issued on August 2, 2013 for the SVP's Redetermination Process, *Second Hearing: New Test Claim Decision*.

We are e-filing our comments pursuant to Section 1181.2, subd. (c)(1)(E) of the California Code of Regulations, "Documents e-filed with the Commission need not be otherwise served on the persons that have provided an e-mail address for the mailing list."

If you have any questions, please contact Hasmik Yaghobyan at (213) 893-0792 or hyaghobyan@auditor.lacounty.gov.

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

WLW:JN:CY:ED:hy
H:\SB90\CSM's Extensions\SVP Cover 9-15-13.doc

Attachment

**LOS ANGELES COUNTY'S COMMENTS ON COMMISSION ON STATE
MANDATES' DRAFT STAFF ANALYSIS AND STATEMENT OF DECISION FOR
SEXUALLY VIOLENT PREDATORS ("SVP") REDETERMINATION**

The County of Los Angeles ("the County, we, our") disagrees with the CSM's draft staff analysis and Statement of Decision ("SOD"), recommending that the Commission adopt a new test claim allowing reimbursement for only two of the eight activities mandated by the SVP Law: these are: 1) probable cause hearing, and 2) transportation of the SVP's to the probable cause hearing.

Our disagreements are based on the following: 1) Prop. 83 did not convert activities identified in the Commission's 1998 SOD to activities necessary to implement Prop. 83 and therefore, are no longer reimbursable, and 2) even if there was a change in the law, the new law should not be applied retroactively to pre Prop. 83 SVP's.

**Prop. 83 did not convert activities identified in the SVP Law
to "Necessary to implement" Prop. 83**

The CSM staff recommends CSM to adopt a new SOD, allowing reimbursement for following activities:

Activity 4: Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code § 6602.)

Activity 8: Transportation for each potential sexually violent predator to and from a secured facility only to the probable cause hearing on the issue of whether he or she is a sexually violent predator (Welf. & Inst. Code § 6602)

The remaining six activities, the CSM staff concludes, are either "**expressly**" included in the Prop. 83, or are "**necessary to implement**" Prop. 83.

We disagree. Activity 7 is necessary for performing Activity 4, and Activities 5 and 6 are not necessary for the implementation of Prop. 83:

Activity 7: Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, § 6603, 6604.)

CSM staff argues that providing constitutional rights to SVPs is a necessary component to the implementation of Prop. 83 and is thus not reimbursable. Department of Finance also insists that this activity, which pertains exclusively to trials and subsequent hearings (Welf. & Inst. Code, § 6602), is no longer reimbursable because Prop. 83 amended a code section (Welf. & Inst. Code, § 6604) that changed commitment terms from renewable two year periods to indeterminate terms.

The need for the County to provide constitutional protections was the basis of the Commission's 1998 finding that State reimbursement was necessary and appropriate. As noted by the Commission, "case law is clear that where there is a right to representation by counsel, necessary ancillary services, such as experts and investigative services, are within the scope of that right." (Statement of Decision, at p.11, Citing *Mason v. State of Arizona* (9th Cir.1974) 504 F.2d 1345; *People v. Worthy* (1980) 109 Cal.app.3d 514). The Commission continued: "[L]ocal agencies would *not* be compelled to provide defense and ancillary services to indigent persons accused of being a sexually violent offender following completion of their prison term if the new program had not been created by the state." Therefore, this activity should be reimbursable.

Activity 5: Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, § 6603 and 6604.)

This activity concerns the need for prepared counsel to participate in SVP's trial and is analogous to the Commission's recognition of the mandate to reimburse services provided at probable cause hearings.

Proposition 83 did not amend the trial provisions of the prior SVP Act (Welf. & Inst. Code § 6603). The Commission staff contends that this activity is "necessary to implement" Proposition 83's amendment to Welf. & Inst. Code § 6604 which made commitments indeterminate. In other words, the staff implies that in order to have an indeterminate term for an SVP, a trial is needed.

A trial is not necessary to implement the indeterminate provisions of Proposition 83. SB1128 (which preceded Prop. 83) had already made SVP commitments indeterminate. In other words, a trial is not necessary to implement an indeterminate term under Prop. 83 because the law already required an indeterminate term.

In addition, a mandated service may not fairly be re-characterized as "necessary to implement" another activity simply because an antecedent activity may have been affected by a change in the law. Further, in some cases an individual may choose to admit his/her petition and thus not have a trial. So trials under 6603 are not necessarily "necessary" to implement Prop. 83 and therefore, this activity should be reimbursable.

Activity 6: Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, § 6605, subds. (b) through (d) and Welf. & Inst. Code, § 6608, subds. (a) through (d).)

Prop 83 did not affect the need for the prosecution and appointed defense counsel to prepare for and attend hearings regarding the condition of an SVP. Again, a reimbursable activity does not cease to be a reimbursable activity because it happens to have constitutional implications.

Prop. 83 law should be applied prospectively to Post Prop. 83 SVP's only

Under the SVP law, individuals were subject to a 2-year commitment. When SB1128 and Prop. 83 passed, the recommitment provisions of Welf. & Inst. Code § 6604 were deleted. Currently, under Prop. 83, there is no provision to recommit someone after the 2-year term. Thus recommitments are not mandated by Prop. 83. Recommitments would thus be mandated under the SVP Law. SVP should not be applied to the pre Prop. 83 offenders until they leave the program.

Retroactive application of Prop. 83 (a violation of Ex Post facto Law) to pre Prop. 83 SVP's would be unconstitutional. In adopting new Parameters and Guidelines for Chapter 641, Statutes of 1995, CSM stated:

Chapter 641/95, eliminated diversion as a domestic violence sentencing for those arrested on or after January 1, 1996, under prior law, (Chapter 221/93, and Chapter 1158/80) was not terminated by chapter 641/95 and continues until the period of diversion has been completed. Such completion and resultant closeout costs, for the period January 1, 1996 through June 30, may be claimed as provided. CSM-4447A, Page 1

To eliminate the right of the pre Prop. 83 SVP's from the pre Prop. 83 (2006) applicable laws would be **nullifying the sentencing judges' orders**. Our interpretation of statutes declares all laws are to commence in the future and operate prospectively. Therefore, reimbursement should continue on all pre Prop. 83 SVP's in accordance with the SVP Law until jurisdiction is terminated.

Conclusion

Based on the foregoing analysis, the County respectfully urges the CSM to deny the CSM staff's recommendation for adopting a new SOD.

CALIFORNIA GENERAL ELECTION



**Tuesday,
NOVEMBER 7, 2006**

CERTIFICATE OF CORRECTNESS

I, Bruce McPherson, Secretary of State of the State of California, do hereby certify that the measures included herein will be submitted to the electors of the State of California at the General Election to be held throughout the State on November 7, 2006, and that this guide has been correctly prepared in accordance with the law.

Witness my hand and the Great Seal of the State in Sacramento, California, this 14th day of August, 2006.

Bruce McPherson
Secretary of State

Official Voter Information Guide



SECRETARY OF STATE

Dear California Voter,

There is no greater right than the right to vote — to participate in the electoral process, to elect responsible leaders, and to make your voice heard. As the general election nears, I urge you to exercise this fundamental right on Tuesday, November 7th.

In this Voter Information Guide, you will find information to assist you in making informed choices on Election Day. Impartial analyses, arguments in favor and against thirteen measures, statements from candidates, and other useful information is presented here as your one-stop educational point of reference. These materials are also available on the Secretary of State's website at www.ss.ca.gov. The website also provides a link to campaign finance disclosure information (<http://cal-access.ss.ca.gov>) so you can learn who is funding each of the campaigns.

To prepare for Election Day, please carefully review the material in this Voter Information Guide. As a registered voter, you have the opportunity to further strengthen the foundation of our democracy by exercising your right to vote.

Please let my office or your local elections official know if you have questions, ideas, or concerns about registering to vote or voting. To contact the office of the Secretary of State, call our toll-free number—1-800-345-VOTE or visit our website at www.ss.ca.gov to find contact information for your local elections official.

Thank you for being a part of California's future by casting your vote in the November 7th General Election.

TABLE OF CONTENTS

★ ★ ★ PAGE

QUICK REFERENCE PULL-OUT GUIDE/BALLOT MEASURE SUMMARIES	5
<hr/>	
PROPOSITIONS	
1A Transportation Funding Protection. Legislative Constitutional Amendment.	14
1B Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006.	18
1C Housing and Emergency Shelter Trust Fund Act of 2006.	24
1D Kindergarten–University Public Education Facilities Bond Act of 2006.	30
1E Disaster Preparedness and Flood Prevention Bond Act of 2006.	36
83 Sex Offenders. Sexually Violent Predators. Punishment, Residence Restrictions and Monitoring. Initiative Statute.	42
84 Water Quality, Safety and Supply. Flood Control. Natural Resource Protection. Park Improvements. Bonds. Initiative Statute.	48
85 Waiting Period and Parental Notification Before Termination of Minor's Pregnancy. Initiative Constitutional Amendment.	54
86 Tax on Cigarettes. Initiative Constitutional Amendment and Statute.	60
87 Alternative Energy. Research, Production, Incentives. Tax on California Oil Producers. Initiative Constitutional Amendment and Statute.	70
88 Education Funding. Real Property Parcel Tax. Initiative Constitutional Amendment and Statute.	76
89 Political Campaigns. Public Financing. Corporate Tax Increase. Campaign Contribution and Expenditure Limits. Initiative Statute.	82
90 Government Acquisition, Regulation of Private Property. Initiative Constitutional Amendment.	90
<hr/>	
AN OVERVIEW OF STATE BOND DEBT	96
<hr/>	
LIST OF CANDIDATES FOR STATEWIDE ELECTIVE OFFICE	98
<hr/>	
CANDIDATE STATEMENTS	100
<hr/>	
BOARD OF EQUALIZATION DISTRICTS	112
<hr/>	
JUSTICES OF THE SUPREME AND APPELLATE COURTS	113
<hr/>	
TEXT OF PROPOSED LAWS	114
<hr/>	
VOTER BILL OF RIGHTS	191
<hr/>	
INFORMATION PAGES	
• Your Vote Makes A Difference.....	4
• Ballot Measures Defined.....	13
• The Process of Voting Absentee	190

Should any candidate or ballot measure information be incorrect or change after the printing of this Voter Information Guide, please rely on the information provided in the Sample Ballot provided by your county elections official.

YOUR VOTE MAKES A DIFFERENCE! ★ ★ ★

FOLLOW THESE 3 SIMPLE STEPS OF VOTING

REGISTER ★ ★ ★

If you are a United States citizen, a resident of California, not in prison or on parole for conviction of a felony, and will be 18 years of age by November 7, 2006, you can register to vote. To register to vote, you can:

- **Call or visit** your county elections office.
- **Call** the Secretary of State's Toll-Free Voter Hotline at 1-800-345-VOTE.
- **Register online** at www.ss.ca.gov/elections/elections_vr.htm.

Your completed registration form should be received by your county elections office at least 15 days before the election (October 23, 2006).

LEARN ★ ★ ★

There are several ways you can learn about candidates and ballot measures.

- **Your County Sample Ballot** provides the location of your polling place, polling place hours, who your local and state legislative candidates are, how to apply for an absentee ballot, and how to use the voting equipment in your county.
- **The State Voter Information Guide** provides the information you need to know about statewide candidates and ballot measures. An audio version is available for the visually impaired by calling 1-800-345-VOTE. The State Voter Information Guide is also available online at www.voterguide.ss.ca.gov.
- **Cal-Access** is an online tool which provides information on who is contributing campaign funds to support or oppose statewide candidates and ballot measures. Go online at www.cal-access.ss.ca.gov for more information.
- **Talk with Family and Friends** because the decisions you make in the voting booth are important and help keep our country strong.

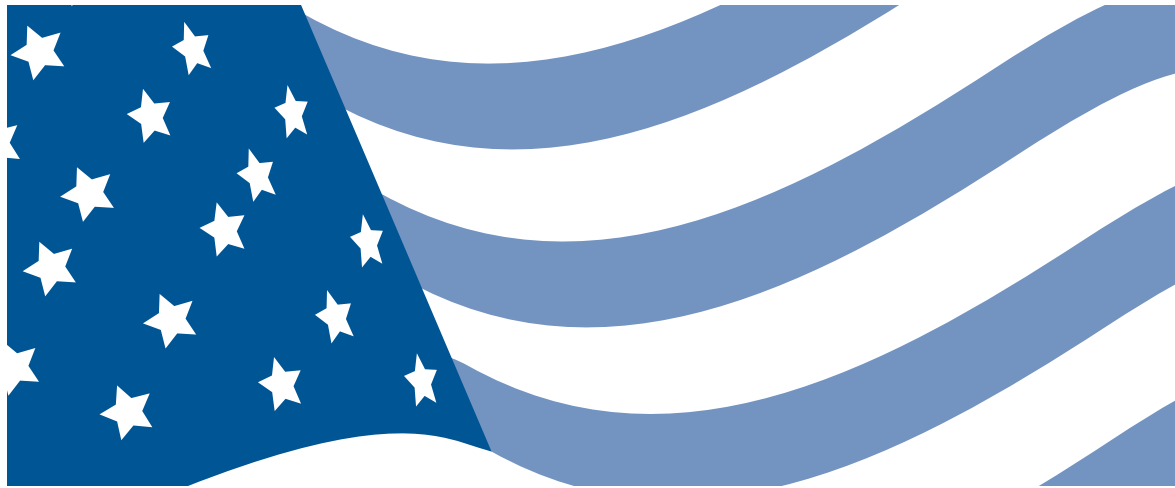
VOTE ★ ★ ★

Election Day is Tuesday, November 7, 2006. The polls are open from 7:00 a.m. to 8:00 p.m.

- **Find Your Polling Place**—The location of your polling place is provided on the back of your county sample ballot. You can also find your polling place by calling your county elections office or online at http://www.ss.ca.gov/elections/elections_ppl.htm.
- **To Vote by Mail**—Your county sample ballot contains an application for an “absentee ballot.” In order to receive your absentee ballot in time to vote, this application must be received by your county elections office by October 31, 2006. In order to be counted, your absentee ballot must be received by your county elections office no later than 8:00 p.m. on Election Day, November 7, 2006.

CALIFORNIA

QUICK REFERENCE PULL-OUT GUIDE



Tuesday, NOVEMBER 7, 2006

GENERAL ELECTION

This pull-out reference guide contains summary and contact information for each state proposition appearing on the November 7, 2006 ballot.

PULL OUT THIS GUIDE AND
TAKE IT WITH YOU
TO THE POLLS!



OFFICIAL VOTER INFORMATION GUIDE

Visit our website at www.ss.ca.gov

BALLOT MEASURE SUMMARY ★ ★ ★

PROP 1A Transportation Funding Protection. Legislative Constitutional Amendment.

SUMMARY *Put on the Ballot by the Legislature*

Protects transportation funding for traffic congestion relief projects, safety improvements, and local streets and roads. Prohibits the state sales tax on motor vehicle fuels from being used for any purpose other than transportation improvements. Authorizes loans of these funds only in the case of severe state fiscal hardship. Requires loans of revenues from states sales tax on motor vehicle fuels to be fully repaid within the three years. Restricts loans to no more than twice in any 10-year period. Fiscal Impact: No revenue effect or cost effects. Increases stability of funding to transportation in 2007 and thereafter.

WHAT YOUR VOTE MEANS

YES

A YES vote on this measure means: The State Constitution would specify additional limitations on the state's ability to suspend the transfer of gasoline sales tax revenues from the General Fund to transportation. In addition, all past suspensions would be required to be repaid by June 30, 2016, at a specified minimum rate of repayment each year.

NO

A NO vote on this measure means: The State Constitution would not further limit the state's ability to suspend the transfer of gasoline sales tax revenues. State law, instead of the State Constitution, would specify when past suspensions would be repaid.

ARGUMENTS

PRO

YES on 1A dedicates taxes we *already* pay at the pump for transportation improvements like building roads, congestion relief, and safety repairs. 1A closes a loophole in the law to prevent politicians from spending gas taxes on other programs. Rebuild California: YES on 1A—safer roads, reduced congestion, www.ReadForYourself.org.

CON

Vote "NO" on Proposition 1A! Keep Education, health care, and disaster relief our State's top priorities. In hard economic times, "autopilot" budgeting causes massive unnecessary cuts to schools, firefighters, trauma centers, and health care. The Governor and Legislature must have flexibility to meet the needs of Californians. *Vote "NO" on Proposition 1A.*

FOR ADDITIONAL INFORMATION

FOR

Let's Rebuild California
1127 11th Street, Suite 950
Sacramento, CA 95814
(916) 448-1401
info@readforyourself.org
www.readforyourself.org

AGAINST

Jackie Goldberg, Chair
Assembly Education
Committee

PROP 1B Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006.

SUMMARY *Put on the Ballot by the Legislature*

This act makes safety improvements and repairs to state highways, upgrades freeways to reduce congestion, repairs local streets and roads, upgrades highways along major transportation corridors, improves seismic safety of local bridges, expands public transit, helps complete the state's network of car pool lanes, reduces air pollution, and improves anti-terrorism security at shipping ports by providing for a bond issue not to exceed nineteen billion nine hundred twenty-five million dollars (\$19,925,000,000). Fiscal Impact: State costs of approximately \$38.9 billion over 30 years to repay bonds. Additional unknown state and local operations and maintenance costs.

WHAT YOUR VOTE MEANS

YES

A YES vote on this measure means: The state could sell \$19.9 billion in general obligation bonds, for state and local transportation improvement projects to relieve congestion, improve the movement of goods, improve air quality, and enhance the safety and security of the transportation system.

NO

A NO vote on this measure means: The state could not sell \$19.9 billion in general obligation bonds, for these purposes.

ARGUMENTS

PRO

YES on 1B jump-starts traffic relief, mass transit, and safety improvements in every corner of the state *without raising taxes*. 1B builds new roads and transportation improvement projects that enhance mobility and protect our economic future. Rebuild California: YES on 1B—safer roads, reduced congestion, and a strong economy, www.ReadForYourself.org.

CON

California cannot afford to continue borrowing its way into a false sense of economic security. More borrowing means worsening budget deficits. A no vote will force the Legislature to focus on paying for our transportation needs with existing funds in a fiscally responsible manner. Please vote NO on 1B.

FOR ADDITIONAL INFORMATION

FOR

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AGAINST

California Taxpayer
Protection Committee
Thomas N. Hudson,
Executive Director
9971 Base Line Road
Elverta, CA 95626-9411
(916) 991-9300
info@protecttaxpayers.com
www.protecttaxpayers.com

PROP 1C Housing and Emergency Shelter Trust Fund Act of 2006.

SUMMARY *Put on the Ballot by the Legislature*

For the purpose of providing shelters for battered women and their children, clean and safe housing for low-income senior citizens; homeownership assistance for the disabled, military veterans, and working families; and repairs and accessibility improvements to apartment for families and disabled citizens, the state shall issue bonds totaling two billion eight hundred fifty million dollars (\$2,850,000,000) paid from existing state funds at an average annual cost of two hundred and four million dollars (\$204,000,000) per year over the 30 year life of the bonds. Requires reporting and publication of annual independent audited reports showing use of funds, and limits administration and overhead costs.

WHAT YOUR VOTE MEANS

YES

A YES vote on this measure means: The state could sell \$2.85 billion in general obligation bonds to support a variety of housing and development programs.

NO

A NO vote on this measure means: The state could not sell \$2.85 billion in general obligation bonds for these purposes.

ARGUMENTS

PRO

YES on Proposition 1C provides emergency shelters for battered women, affordable homes for seniors and former foster youths, and shelters with social services for homeless families without raising taxes. Rebuild California: Join Habitat for Humanity, AARP, and CA Partnership to End Domestic Violence, vote Yes on 1C.

CON

Vote “no” on Proposition 1C. Almost \$3 billion in new government debt and big bureaucracy won’t make California housing affordable. Proposition 1C gives your money to a select few chosen by bureaucrats then sticks every California family of four with \$600 of debt and interest. Vote “no” on irresponsible debt.

FOR ADDITIONAL INFORMATION

FOR

Let’s Rebuild California
1127 11th Street, Suite 950
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(916) 448-1401
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www.readforyourself.org

AGAINST

Assemblyman Chuck DeVore
California State Assembly
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(916) 991-9300
NoProp1C@aol.com
www.NoProp1C.com

PROP 1D Kindergarten–University Public Education Facilities Bond Act of 2006.

SUMMARY *Put on the Ballot by the Legislature*

This ten billion four hundred sixteen million dollar (\$10,416,000,000) bond issue will provide needed funding to relieve public school overcrowding and to repair older schools. It will improve earthquake safety and fund vocational educational facilities in public schools. Bond funds must be spent according to strict accountability measures. Funds will also be used to repair and upgrade existing public college and university buildings and to build new classrooms to accommodate the growing student enrollment in the California Community Colleges, the University of California, and the California State University. Fiscal Impact: State costs of about \$20.3 billion to pay off both the principal (\$10.4 billion) and interest (\$9.9 billion) on the bonds. Payments of about \$680 million per year.

WHAT YOUR VOTE MEANS

YES

A YES vote on this measure means: The state could sell \$10.4 billion in general obligation bonds for education facilities (\$7.3 billion for K–12 school facilities and \$3.1 billion for higher education facilities).

NO

A NO vote on this measure means: The state could not sell \$10.4 billion in general obligation bonds for these purposes.

ARGUMENTS

PRO

Yes on 1D makes our school buildings earthquake-safe and reduces overcrowding in classrooms for students. It updates schools with new technology, builds vocational education facilities, and funds our rapidly growing community college system. Rebuild California: YES on 1D—an investment in our children is an investment in California’s future.

CON

We should make school construction a top priority for current spending. We cannot afford \$10,416,000,000 in new debt, which today’s schoolchildren will still be paying back long after their own children have graduated. Most schools will receive nothing from this bond. Fairness requires local districts to pay for local projects.

FOR ADDITIONAL INFORMATION

FOR

Lance Olson
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AGAINST

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BALLOT MEASURE SUMMARY ★ ★ ★

PROP 1E Disaster Preparedness and Flood Prevention Bond Act of 2006.

SUMMARY *Put on the Ballot by the Legislature*

This act rebuilds and repairs California's most vulnerable flood control structures to protect homes and prevent loss of life from flood-related disasters, including levee failures, flash floods, and mudslides; it protects California's drinking water supply system by rebuilding delta levees that are vulnerable to earthquakes and storms; by authorizing a \$4.09 billion dollar bond act. Fiscal Impact: State costs of approximately \$8 billion over 30 years to repay bonds. Reduction in local property tax revenues of potentially up to several million dollars annually. Additional unknown state and local operations and maintenance costs.

WHAT YOUR VOTE MEANS

YES

A YES vote on this measure means: The state could sell about \$4.1 billion in general obligation bonds to fund flood management projects, including repairs and improvements to levees, weirs, bypasses, and other flood control facilities throughout the state.

NO

A NO vote on this measure means: The state could not sell about \$4.1 billion in general obligation bonds for these purposes.

ARGUMENTS

PRO

Yes on Proposition 1E protects against floods and helps ensure an adequate supply of clean drinking water for all Californians. It repairs levees and increases flood protection. 1E also helps prevent water pollution in our streams and ocean. Rebuild California: YES on 1E—Clean Water, Flood Protection, and Disaster Preparedness.

CON

We cannot afford \$4,090,000,000 in new debt and higher taxes to pay it back. Local projects should be funded locally, without unfair subsidies. This bond will not provide any new drinking water. The repairs funded by this bond will need to be repaired again before this bond is repaid.

FOR ADDITIONAL INFORMATION

FOR

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(916) 448-1401
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www.readforyourself.org

AGAINST

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PROP 83 Sex Offenders. Sexually Violent Predators. Punishment, Residence Restrictions and Monitoring. Initiative Statute.

SUMMARY *Put on the Ballot by Petition Signatures*

Increases penalties for violent and habitual sex offenders and child molesters. Prohibits residence near schools and parks. Requires Global Positioning System monitoring of registered sex offenders. Fiscal Impact: Net state operating costs within ten years of up to a couple hundred million dollars annually; potential one-time state construction costs up to several hundred million dollars; unknown net fiscal impact on local governments.

WHAT YOUR VOTE MEANS

YES

A YES vote on this measure means: Some sex offenders would serve longer prison and parole terms. Sex offenders released from prison would be monitored with Global Positioning System (GPS) devices while on parole and for life after discharge from state supervision. Registered sex offenders would not be allowed to reside within 2,000 feet of a school or park. More sex offenders would be eligible for commitment by the courts to state mental health facilities for treatment under the Sexually Violent Predator (SVP) program.

NO

A NO vote on this measure means: Current sentencing and residency laws regarding sex offenders stay in effect. State and local agencies would continue to have authority to monitor sex offenders with GPS devices while on parole and probation. Requirements for placement of sex offenders into the SVP program would not change.

ARGUMENTS

PRO

YES on Proposition 83—JESSICA'S LAW. Prop. 83 gives police the tools they need to keep track of sex criminals. Prop. 83 stops child molesters from moving near a school or park. Prop. 83 keeps sexual predators in prison longer. Endorsed by COPS and VICTIMS—Vote YES on 83.

CON

Proposition 83 would cost taxpayers an estimated \$500 million but would not increase public safety because it's most restrictive and expensive provisions apply to misdemeanor offenders and others convicted of minor, nonviolent offenses. Similar laws have been tried and have failed in other states. Vote "No" on Proposition 83!

FOR ADDITIONAL INFORMATION

FOR

Campaign for Child Safety
921 11th Street, Suite 400
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www.83YES.com

AGAINST

Gail Jones, Admin. Director
California Attorneys
For Criminal Justice
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www.cacj.org

PROP 84 Water Quality, Safety and Supply. Flood Control. Natural Resource Protection. Park Improvements. Bonds. Initiative Statute.

SUMMARY *Put on the Ballot by Petition Signatures*

Funds water, flood control, natural resources, park and conservation projects by authorizing \$5,388,000,000 in general obligation bonds. Emergency drinking water safety provisions. Fiscal Impact: State cost of \$10.5 billion over 30 years to repay bonds. Reduced local property tax revenues of several million dollars annually. Unknown state and local operations and maintenance costs, potentially tens of millions of dollars annually.

WHAT YOUR VOTE MEANS

YES

A YES vote on this measure means: The state could sell \$5.4 billion in general obligation bonds for safe drinking water, water quality, and water supply; flood control; natural resource protection; and park improvements.

NO

A NO vote on this measure means: The state could not sell \$5.4 billion in general obligation bonds for these purposes.

ARGUMENTS

PRO

Provides clean, safe drinking water for California’s rapidly growing population; supports vital projects for coastal protection, water quality, flood prevention. Accountability, public disclosure, annual audits, no new taxes. Join League of Women Voters of California, Clean Water Action, Nature Conservancy, business groups, public health experts, local water districts throughout California.

CON

This bond was placed on the ballot by special interests that will likely receive taxpayers’ money if the bond passes. This so-called “water and flood control bond” has no funding for dams or water storage and little funding for flood control. This initiative would spend billions without effective oversight.

FOR ADDITIONAL INFORMATION

FOR

Fiona Hutton
Californians For Clean Water, Parks and Coastal Protection/Yes on Prop. 84
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AGAINST

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www.protecttaxpayers.com

PROP 85 Waiting Period and Parental Notification Before Termination of Minor’s Pregnancy. Initiative Constitutional Amendment.

SUMMARY *Put on the Ballot by Petition Signatures*

Amends California Constitution prohibiting abortion for unemancipated minor until 48 hours after physician notifies minor’s parent/guardian, except in medical emergency or with parental waiver. Mandates reporting requirements. Authorizes monetary damages against physicians for violation. Fiscal Impact: Potential unknown net state costs of several million dollars annually for health and social services programs, court administration, and state health agency administration combined.

WHAT YOUR VOTE MEANS

YES

A YES vote on this measure means: The State Constitution would be changed to require that a physician notify, with certain exceptions, a parent or legal guardian of a pregnant minor at least 48 hours before performing an abortion.

NO

A NO vote on this measure means: Minors would continue to receive abortion services to the same extent as adults. Physicians performing abortions for minors would not be subject to notification requirements.

ARGUMENTS

PRO

PARENTS! Right now anyone can arrange a *secret abortion* for your minor daughter and you won’t even know. Don’t permit your young daughter to be subjected to *dangerous medical procedures* without your knowledge. Keep her life and health in your hands and not those of strangers. *Vote YES on 85.*

CON

No law can mandate family communication. Vulnerable teenagers from abusive, violent homes can’t talk to their parents, can’t navigate overcrowded courts, and may resort to dangerous, illegal abortions. Prop. 85 won’t stop predators, won’t protect teens, and is the first step in overturning *Roe* and banning all abortions. *Vote NO.*

FOR ADDITIONAL INFORMATION

FOR

Paul E. Laubacher, R.N.
YES on 85/Parents’ Right to Know and Child Protection
1703 India Street
San Diego, CA 92101
Toll-Free (866) 828-8355
Janet@YESon85.net
www.YESon85.net

AGAINST

Steve Smith
No on 85—for Real Teen Safety
555 Capitol Mall, Suite 510
Sacramento, CA 95814
(916) 669-4802
info@Noon85.com
www.Noon85.com

BALLOT MEASURE SUMMARY ★★★

PROP 86 Tax on Cigarettes. Initiative Constitutional Amendment and Statute.

SUMMARY *Put on the Ballot by Petition Signatures*

Imposes additional \$2.60 per pack excise tax on cigarettes and indirectly increases taxes on other tobacco products. Provides funding for various health programs, children's health coverage, and tobacco-related programs. Fiscal Impact: Increase in excise tax revenues of about \$2.1 billion annually in 2007–08 spent for the specified purposes outlined above. Other potentially significant costs and savings for state and local governments due to program changes.

WHAT YOUR VOTE MEANS

YES

A YES vote on this measure means: The existing state excise tax on cigarettes and other tobacco products would increase by \$2.60 per pack to support new or expanded programs for health services, children's health coverage, and tobacco-related activities. Other existing programs supported with tobacco excise taxes would continue.

NO

A NO vote on this measure means: State excise taxes on cigarettes and other tobacco products would remain at the current level of 87 cents per pack and would continue to be used for existing purposes, including childhood development programs and various health and tobacco-related programs.

ARGUMENTS

PRO

Proposition 86 reduces smoking and saves lives. A study by the California Department of Health Services says Proposition 86 will keep 700,000 kids from becoming adult smokers and prevent 300,000 smoking-related deaths. The same study says Proposition 86 will save over \$16 BILLION in health care costs. Yes on 86.

CON

Proposition 86 is really about hospitals using our Constitution and laws to pocket millions for themselves and HMOs through a \$2.1 billion tax hike. Section 9 even gives hospitals an exemption to antitrust laws! It's another lottery mess—and no guarantees on how the money will be spent. No on 86.

FOR ADDITIONAL INFORMATION

FOR

Bob Pence
Coalition For A
Healthy California
1717 I Street
Sacramento, CA 95814
(916) 448-2720
info@healthycalifornia.com
www.yesprop86.com

AGAINST

No on 86—Stop the
\$2 Billion Tax Hike
3001 Douglas Blvd. #225
Roseville, CA 95661
(916) 218-6640
info@86facts.org
www.86facts.org

PROP 87 Alternative Energy. Research, Production, Incentives. Tax on California Oil Producers. Initiative Constitutional Amendment and Statute.

SUMMARY *Put on the Ballot by Petition Signatures*

Establishes \$4 billion program to reduce petroleum consumption through incentives for alternative energy, education and training. Funded by tax on California oil producers. Fiscal Impact: State oil tax revenues of \$225 million to \$485 million annually for alternative energy programs totaling \$4 billion. State and local revenue reductions up to low tens of millions of dollars annually.

WHAT YOUR VOTE MEANS

YES

A YES vote on this measure means: The state would impose a tax on oil production to support \$4 billion in expenditures to develop and promote alternative energy technologies and promote the reduction of petroleum use.

NO

A NO vote on this measure means: The state would not impose a tax on oil production to fund these activities.

ARGUMENTS

PRO

Vote YES on Prop. 87 and make oil companies pay their fair share for cleaner, cheaper energy. Oil companies pay billions in oil drilling fees in Alaska and Texas—but almost nothing in California. Prop. 87 makes oil companies pay and makes it illegal to pass the cost to consumers.

CON

\$4 BILLION oil tax increase! HIGHER GAS PRICES. HUGE BUREAUCRACY, LACKS ACCOUNTABILITY. *No requirement they produce results.* DENIES REVENUES to SCHOOLS. We need alternative energy, but Proposition 87 is *not* the way to get there. CA Taxpayers' Association, small business, labor, schools, police, firefighters, farmers, Auto Club say: Vote NO.

FOR ADDITIONAL INFORMATION

FOR

Yes on 87
Californians for
Clean Energy
6399 Wilshire Blvd.,
Suite 1010
Los Angeles, CA 90048
(323) 782-1045
info@yeson87.com
www.yeson87.com

AGAINST

Californians Against
Higher Taxes—No on 87,
a coalition of taxpayers,
educators, schools, public
safety officials, businesses,
labor, energy producers,
agriculture, and seniors.
111 Anza Blvd., Suite 406
Burlingame, CA 94010
(650) 340-0262
info@NoOilTax.com
www.NoOilTax.com

PROP 88 Education Funding. Real Property Parcel Tax. Initiative Constitutional Amendment and Statute.

SUMMARY *Put on the Ballot by Petition Signatures*

Imposes \$50 tax on each real property parcel to provide additional public school funding for kindergarten through grade 12. Exempts certain elderly, disabled homeowners from tax. Use of funds restricted to specific educational purposes. Fiscal Impact: State parcel tax revenue of roughly \$450 million annually, allocated to school districts for specified education programs.

WHAT YOUR VOTE MEANS

YES

A YES vote on this measure means: The state would levy an annual \$50 tax on most parcels of land in California, with the proceeds allocated to school districts for five specified K–12 education programs.

NO

A NO vote on this measure means: The state would not levy an annual \$50 tax on most parcels of land to raise additional funding for K–12 education programs.

ARGUMENTS

PRO

Proposition 88 will improve our schools. It helps teachers by providing funds directly to local schools to reduce class size and provide textbooks and learning materials. It requires strict accountability and exempts disabled and elderly homeowners. Teachers, businesses, and taxpayers agree: YES on 88 for Textbooks, Smaller Classes, Better Schools.

CON

The State Legislature decides where your tax money goes. New layers of costly bureaucracy are created. 95%+ of schools could NEVER receive facility grants under Proposition 88! Proposition 88 creates a NEW KIND OF NEVER ENDING PROPERTY TAX, opening the door to UNLIMITED property parcel tax increase propositions. Proposition 88—NO!

FOR ADDITIONAL INFORMATION

FOR

Yes on 88—Taxpayers for Better Schools and Smaller Classes
1107 9th Street
Sacramento, CA 95814
(916) 448-3868
VoteFor88@EdVoice.org
www.VoteFor88.org

AGAINST

Californians Against the Statewide Parcel Property Tax
925 University Ave.
Sacramento, CA 95825
(916) 927-1512
info@NoProp88.com
www.NoProp88.com

PROP 89 Political Campaigns. Public Financing. Corporate Tax Increase. Campaign Contribution and Expenditure Limits. Initiative Statute.

SUMMARY *Put on the Ballot by Petition Signatures*

Provides that eligible candidates for state elective office may receive public campaign funding. Increases tax on corporations and financial institutions by 0.2 percent to fund program. Imposes new campaign contribution/expenditure limits. Fiscal Impact: Increased revenues (primarily from increased taxes on corporations and financial institutions) totaling more than \$200 million annually to pay for the public financing of political campaigns.

WHAT YOUR VOTE MEANS

YES

A YES vote on this measure means: Candidates for state offices could choose to receive public funds to pay for the costs of campaigns if they meet certain requirements. Candidates not accepting public funds would be subject to lower contribution limits than currently. The tax rate on corporations and financial institutions would be increased to pay for the public financing of political campaigns.

NO

A NO vote on this measure means: Candidates for state offices would continue to pay for their campaigns with private funds subject to current contribution limits. The tax rate on corporations and financial institutions would not change.

ARGUMENTS

PRO

Proposition 89 will curb corruption in Sacramento and reduce the power of special interests and lobbyists over our government. It will level the playing field and assure that elections are about ideas, not money. It will enable everyday people, like teachers, nurses and firefighters, to run for public office.

CON

Proposition 89 is phoney reform. Prop. 89 increases taxes for politicians to finance their political campaigns and negative ads. The special interests behind 89 wrote it to give themselves an unfair advantage, limiting the voice of small businesses and nonprofits and damaging consumers. It's too complicated and unworkable. Vote No on 89.

FOR ADDITIONAL INFORMATION

FOR

Michael Lighty
Californians for Clean Elections, Yes on 89
2000 Franklin Street
Oakland, CA 94612
(800) 440-6877
info@yeson89.org
www.yeson89.org

AGAINST

Californians to Stop 89
1415 L Street, Suite 1250
Sacramento, CA 95814
(916) 708-7824
info@noprop89.org
www.noprop89.org

BALLOT MEASURE SUMMARY ★★★

PROP 90 Government Acquisition, Regulation of Private Property. Initiative Constitutional Amendment.

SUMMARY *Put on the Ballot by Petition Signatures*

Bars state/local governments from condemning or damaging private property to promote other private projects, uses. Limits government's authority to adopt certain land use, housing, consumer, environmental, workplace laws/regulations. Fiscal Impact: Increased annual government costs to pay property owners for losses to their property associated with new laws and rules, and for property acquisitions. These costs are unknown, but potentially significant on a statewide basis.

WHAT YOUR VOTE MEANS

YES

A YES vote on this measure means: State and local governments would have significantly increased requirements to compensate property owners for economic losses to their property resulting from new laws or rules. Also, government would be more restricted in taking private property for public uses.

NO

A NO vote on this measure means: There would be no changes in the requirements on government for: (1) paying for economic losses to property resulting from new laws and rules and (2) taking private property for public purposes.

ARGUMENTS

PRO

Proposition 90 stops eminent domain abuse and protects the American Dream—the fundamental right of every American to own a home. It prevents government from taking your home or property without your permission and turning it over to powerful developers who want to build strip malls or other commercial projects.

CON

Prop. 90 is a deceptive and costly taxpayer trap. It would create new categories of lawsuits costing taxpayers billions of dollars every year. It is anti-taxpayer and anti-homeowner. Join taxpayers, homeowners groups, conservationists, police, firefighters, and businesses. Vote NO on 90.

FOR ADDITIONAL INFORMATION

FOR

California Protect our
Homes Coalition
2443 Fair Oaks Blvd.,
Suite 191
Sacramento, CA 95825
(916) 924-7501
info@90yes.com
www.90yes.com

AGAINST

No on 90, Californians
Against the Taxpayer Trap
1121 L Street #803
Sacramento, CA 95814
info@noprop90.com
www.NoProp90.com

BALLOT MEASURES DEFINED ★ ★ ★

Legislative Bond Measure

Any bill that calls for the issuance of general obligation bonds must be adopted in each house of the Legislature by a two-thirds vote, signed by the Governor, and approved by a simple majority of the public's vote to be enacted. Whenever a bond measure is on a statewide ballot, an overview of California's bond debt is included in the ballot pamphlet.

Legislative Constitutional Amendment

Whenever the Legislature proposes an amendment to the California Constitution, it is known as a legislative constitutional amendment. It must be adopted in the Senate and the Assembly by a two-thirds vote before it can be placed on the ballot. A legislative constitutional amendment does not require the Governor's signature. This type of amendment requires a simple majority of the public's vote to be enacted.

Legislative Initiative Amendment

Whenever the Legislature proposes to amend a law that was previously enacted through the initiative process, the Legislature is required to present the amendment to the voters for passage. The Legislature may amend the previously-adopted initiative measure if the measure permits legislative amendment or repeal without voter approval. This type of amendment requires a simple majority of the public's vote to be enacted.

Initiatives

Often referred to as "direct democracy," the initiative process is the power of the people to place measures on the ballot. These measures can either create or change statutes (including general obligation bonds) and amend the California Constitution. If the initiative proposes to amend California statute, signatures of registered voters gathered must equal in number to 5% of the votes cast for all candidates for Governor in the previous gubernatorial election. If the initiative proposes to amend the California Constitution, signatures of registered voters gathered must equal in number to 8% of the votes cast for all candidates for Governor in the previous gubernatorial election. An initiative requires a simple majority of the public's vote to be enacted.

Referendum

Referendum is the power of the people to approve or reject statutes adopted by the Legislature. However, referenda cannot be used to approve or reject urgency measures or statutes that call for elections or provide for tax levies or appropriations for current expenses of the state. Voters wishing to block implementation of a legislatively-adopted statute must gather signatures of registered voters equal in number to 5% of the votes cast for all candidates for Governor in the previous gubernatorial election within 90 days of enactment of the bill. Once on the ballot, the law is defeated if voters cast more NO votes than YES votes on the referendum question.

OFFICIAL TITLE AND SUMMARY ★ ★ ★

Prepared by the Attorney General

**TRANSPORTATION FUNDING PROTECTION.
LEGISLATIVE CONSTITUTIONAL AMENDMENT.**

- Protects transportation funding for traffic congestion relief projects, safety improvements, and local streets and roads.
- Prohibits the state sales tax on motor vehicle fuels from being used for any purpose other than transportation improvements.
- Authorizes loans of these funds only in the case of severe state fiscal hardship. Requires loans of revenues from states sales tax on motor vehicle fuels to be fully repaid within the three years. Restricts loans to no more than twice in any 10-year period.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- No direct revenue or cost effects. Increases stability of funding for state and local transportation uses in 2007 and thereafter; reduces somewhat the state's authority to use these funds for other, nontransportation priorities.

FINAL VOTES CAST BY THE LEGISLATURE ON SCA 7 (PROPOSITION 1A)

Senate:	Ayes 38	Noes 0
Assembly:	Ayes 58	Noes 11

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

California spends about \$20 billion a year to maintain, operate, and improve its highways, streets and roads, passenger rail, and transit systems. About one-half of the funding comes from various local sources, including local sales and property taxes, as well as transit fares. The remainder comes from the state and federal levels, largely from gasoline and diesel fuel taxes, and truck weight fees.

Currently, the state levies two types of taxes on motor fuels:

- An excise tax of 18 cents per gallon on gasoline and diesel fuel. (This is generally referred to as the gas tax.)
- A statewide 6 percent tax on the sale of gasoline and diesel fuel ("sales tax").

Gas Tax. Revenues from the state excise tax on gasoline and diesel fuel used on public roads total about \$3.4 billion per year. The State Constitution

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

restricts the use of these revenues to specific transportation purposes. These include constructing, maintaining, and operating public streets and highways, acquiring right of way and constructing public transit systems, as well as mitigating the environmental effects of these facilities.

Sales Tax. The state's sales tax on gasoline and diesel fuel currently provides about \$2 billion a year. Until 2002, most of the revenues from the state sales tax on gasoline were not used for transportation purposes. Instead, these revenues were used for various general purposes including education, health, social services, and corrections. Proposition 42, which was approved by voters in 2002, amended the State Constitution to dedicate most of the revenue from the sales tax on gasoline to transportation uses. Specifically, Proposition 42 requires those revenues that previously went to the General Fund be transferred to the Transportation Investment Fund to provide for improvements to highways, streets and roads, and transit systems. Proposition 42, however, allows the transfer to be suspended when the state faces fiscal difficulties. Proposition 42 is silent as to whether suspended transfer amounts are to be repaid to transportation.

Since 2002, the state has suspended the Proposition 42 transfer twice because of the state's fiscal condition. In 2003–04, the transfer was suspended partially, and in 2004–05, the full amount of the transfer was suspended. Existing law requires that these suspended amounts, with interest, be repaid to transportation by 2008–09 and 2007–08, respectively.

PROPOSAL

This measure amends the State Constitution to further limit the conditions under which the Proposition 42 transfer of gasoline sales tax revenues for transportation uses can be suspended. Specifically, the measure requires Proposition 42 suspensions to be treated as loans to the General Fund that must be repaid in full, including interest, within three years of suspension. Furthermore, the measure only allows suspension to occur twice in ten consecutive fiscal years. No suspension could occur unless prior suspensions (excluding those made prior to 2007–08) have been repaid in full.

In addition, the measure lays out a new schedule to repay the Proposition 42 suspensions that occurred in 2003–04 and 2004–05. Specifically, the suspended amounts must be repaid and dedicated to transportation uses no later than June 30, 2016, at a specified minimum annual rate of repayment.

FISCAL EFFECTS

This measure would have no direct revenue or cost effect. By limiting the frequency and the conditions under which Proposition 42 transfers may be suspended in a ten-year period, the measure would make it more difficult to use Proposition 42 gasoline sales tax revenues for nontransportation purposes when the state experiences fiscal difficulties. As a result, the measure would increase the stability of funding to state and local transportation in 2007 and thereafter. However, the state's authority to direct available funds to meet other nontransportation priorities in the event the state faces fiscal difficulties would be somewhat reduced.

ARGUMENT IN FAVOR OF PROPOSITION 1A

YES ON PROPOSITION 1A: USE EXISTING GAS TAXES FOR ROADS AND TRANSPORTATION PROJECTS

In 2002, California voters made their commitment to California roads a priority by passing Proposition 42. Voters said they wanted their gas taxes spent on making roads and highways safer and less congested. But a loophole in the law has made it easy—too easy—for the politicians to use those funds for other purposes. In the last three years, nearly \$2.5 billion has been siphoned away from road and highway projects—bringing critical safety and congestion relief projects to a halt.

YES ON 1A STOPS OUR EXISTING GAS TAXES FROM BEING USED FOR OTHER PROJECTS

Proposition 1A closes the loophole in the law and ensures that the gas taxes you *already* pay are spent only on transportation projects benefiting California's 20 million drivers.

YES ON 1A BUILDS NEW ROADS AND HIGHWAYS

California currently has the most congested roads in the nation and our streets and highways are in major disrepair. Drivers spend \$20.7 billion in extra fuel each year and 500,000 hours stuck in traffic every day because of our overcrowded roads. Prop. 1A ensures a stable source of long-term funding to get urgently needed transportation improvement projects off the drawing board, allowing engineers to:

- Make traffic safety improvements
- Repair the most dangerous sections of state highways
- Reduce congestion on major freeways
- Widen freeways to prevent bottlenecks
- Complete our network of carpool lanes
- Fix neglected streets and roads
- Improve public transit

YES ON 1A MEANS A STRONGER ECONOMY

California's economy depends on a first-rate transportation system (something we used to have). Without a major emphasis on improving our infrastructure so we can move people and goods throughout the state, our economic future will suffer.

YES ON 1A: PART OF A LONG-TERM PLAN TO REBUILD CALIFORNIA

Proposition 1A is part of the Rebuild California Plan, the first comprehensive infrastructure plan in 40 years. The plan uses the taxes we're already paying to build the roads, housing, schools, and water systems we need to sustain our economy and our quality of life for the long-term.

REBUILD CALIFORNIA: YES ON 1A, 1B, 1C, 1D, and 1E

California's population will reach 50 million in the next 20 years—twice what our current infrastructure was designed for—and it can't be rebuilt overnight. That's why we've got to start now.

To learn more about how this infrastructure plan will benefit you and your community, visit www.ReadForYourself.org.

YES ON 1A: ENSURE EXISTING GAS TAX DOLLARS ARE USED TO IMPROVE CALIFORNIA'S ROADS, HIGHWAYS AND MASS TRANSIT SYSTEMS

THOMAS V. MCKERNAN, President
Automobile Club of Southern California (AAA)

MICHAEL BROWN, Commissioner
California Highway Patrol

MARIAN BERGESON, Chair
California Transportation Commission

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 1A

Excellent public schools and universities have made California the "Golden State." Education is the engine that drives California's economy.

Proposition 1A removes Education from being the top budget priority!

The People passed Proposition 42 with *exceptions* for drastic times. *It currently takes 2/3 of the Legislature and the Governor to agree to borrow gasoline taxes.*

Some say \$2.5 billion has been "siphoned off" the gasoline taxes. The borrowed money is being repaid *with interest*. *And, the "Rebuild California Plan" will not be affected if Proposition 1A is defeated.*

You must *Vote "NO" on Proposition 1A* unless you believe there will never again be a recession in California.

You must *Vote "NO" on Proposition 1A* unless you know there will never again be a sizeable earthquake, flood, levee break, or fire in California that requires a quick response to save lives and property.

You must *Vote "NO" on Proposition 1A* unless you think that emergency rooms, hospitals, and trauma centers will never again need to have funding priority.

And, you must *Vote "NO" on Proposition 1A* unless you think it was OK to *withhold \$2 billion* from the minimum guarantee to our K-12 schools and to continue to *raise student fees* at our state colleges and universities. *These terrible cuts to education would have been much worse if Proposition 1A had been in effect.*

For our children, for our economy, and to make sure that we can continue to deal with the aftermath of disasters, *Vote "NO" on Proposition 1A.*

JACKIE GOLDBERG, Chair
Assembly Education Committee

ARGUMENT AGAINST PROPOSITION 1A

When the next recession hits, the Legislature and the Governor must be able to prioritize both cuts and expenditures.

Proposition 1A would put still more of California’s budget on “automatic pilot.” That means that the Governor and the Legislature won’t be able to set priorities. If education, healthcare, public safety, or childcare funds are in need of money, during any recession, the *first priority* for gasoline taxes will be potholes and highways. Highways and potholes are very important. But on this ballot Proposition 1B will provide almost \$20 billion dollars for Transportation.

Proposition 42 of 2002 already has strong protections for highway and pothole funds. Money can only be borrowed by a 2/3 vote of both houses and the signature of the Governor. It must be repaid and with interest for the full time it was borrowed. Proposition 1A tightens the restrictions, and makes borrowing almost impossible.

Everyone seems to agree in California that our number one priority is Public Education! But, if Proposition 1A were to pass, that would no longer be true. We only have to look at recent history to understand the impact of Proposition 1A.

In 2003–04, the Legislature and the Governor borrowed \$868 million from the sales tax revenue on gasoline. And in 2004–05, we again borrowed \$1.258 billion from the same funds. Without the ability to borrow money internally, the choices would have been to borrow from Wall Street, make massive cuts to health and education, or raise taxes.

Even with about \$2 billion in borrowing from gasoline tax funds, K–12 public schools still were cut \$2 billion from what they were guaranteed. We also cut funds for textbooks and maintenance of classrooms and school buildings. Community college students saw their fees more than double, rising from \$11 per unit to \$26 per unit, and hundreds of thousands of community college students had to quit college as a result. University of California and California State University students saw their undergraduate fees rise a whopping 30% in three years time.

We have not repaid the \$2 billion cut made to K–12 education in 2004–05. And, if Proposition 1A had been in effect, the cut to K–12 public education could have been \$4 billion!

In bad years, the Legislature and the Governor need the flexibility to shift funds temporarily to ensure that education receives at least its minimum guarantee. The Legislature and the Governor need to be able to set priorities as they come up. If there is an earthquake, flood, or major fires, or if trauma centers and emergency rooms continue to close, we need to be able to address those emergencies. Don’t tie the hands of those whose job it is to reflect your priorities in the State budget. **VOTE “NO” ON PROPOSITION 1A!**

JACKIE GOLDBERG, Chair
 Assembly Education Committee

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 1A

Proposition 1A is about upholding the will of voters and setting priorities. In 2002, nearly 70% of voters approved a measure that was supposed to dedicate our gas taxes to transportation improvements. The voters said building new roads, relieving congestion, and improving highway safety are priorities.

Unfortunately, as the opponent points out, politicians have been exploiting a loophole in that law. They’ve diverted nearly \$2.5 billion in gas taxes that were supposed to go to transportation and spent that money on other programs. As a result, our transportation system is badly neglected and the backlog of congestion relief, highway safety, and road repair projects has grown larger.

IT’S TIME TO UPHOLD THE WILL OF VOTERS AND CLOSE THE GAS TAX LOOPHOLE ONCE AND FOR ALL.

YES ON 1A simply makes sure the gas taxes we pay at the pump are actually used to build new roads and improve our transportation system.

Prop. 1A *will not* reduce funding for education or any other state program. Education funding is constitutionally protected and Proposition 1A does not change that.

- That’s why educators leading taxpayer, environmental, business, and public safety groups support Prop. 1A.

Proposition 1A is part of the Rebuild California Plan, the first comprehensive infrastructure plan in 40 years.

VOTE YES ON 1A. Ensure our existing gas tax dollars are used to improve California’s roads, highways, and mass transit systems.

STEVE KRULL, President
 California Police Chiefs Association

MARK WATTS, Interim Executive Director
 Transportation California

ALLAN ZAREMBERG, President
 California Chamber of Commerce

OFFICIAL TITLE AND SUMMARY ★ ★ ★

Prepared by the Attorney General

1B

**HIGHWAY SAFETY, TRAFFIC REDUCTION,
AIR QUALITY, AND PORT SECURITY BOND ACT OF 2006.**

- Makes safety improvements and repairs to state highways; upgrades freeways to reduce congestion; repairs local streets and roads; upgrades highways along major transportation corridors.
- Improves seismic safety of local bridges.
- Expands public transit.
- Helps complete the state’s network of car pool lanes.
- Reduces air pollution.
- Improves anti-terrorism security at shipping ports.
- Provides for a bond issue not to exceed nineteen billion nine hundred twenty-five million dollars (\$19,925,000,000).
- Appropriates money from the General Fund to pay off bonds.

Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:

- State costs of about \$38.9 billion over 30 years to pay off both the principal (\$19.9 billion) and interest (\$19.0 billion) costs of the bonds. Payments of about \$1.3 billion per year.
- Additional unknown state and local government costs to operate and maintain transportation infrastructure (such as roads, bridges, and buses and railcars) funded with bonds. A portion of these costs would be offset by revenues generated by the improvements, such as fares and tolls.

FINAL VOTES CAST BY THE LEGISLATURE ON SB 1266 (PROPOSITION 1B)

Senate:	Ayes 37	Noes 1
Assembly:	Ayes 61	Noes 10

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

California spends about \$20 billion a year from a combination of state, federal, and local funds to maintain, operate, and improve its highways, streets and roads, passenger rail, and transit systems. These expenditures are primarily funded on a pay-as-you-go basis from taxes and user fees.

There are two primary state tax sources that fund state transportation programs. First, the state’s 18 cent per gallon excise tax on gasoline and diesel fuel (generally referred to as the gas tax) generates about \$3.4 billion annually. Second, revenues from the state sales tax on gasoline and diesel fuel currently provide about \$2 billion a year. Additionally, the state imposes weight fees on commercial vehicles

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

(trucks), which generate roughly \$900 million a year. Generally, these revenues must be used for specific transportation purposes, including improvements to highways, streets and roads, passenger rail, and transit systems. These funds may also be used to mitigate the environmental impacts of various transportation projects. Under specified conditions, these revenues may be loaned or used for nontransportation uses.

Since 1990, voters have approved roughly \$5 billion in state general obligation bonds to fund transportation. These bond proceeds have been dedicated primarily to passenger rail and transit improvements, as well as to retrofit highways and bridges for earthquake safety. As of June 2006, all but about \$355 million of the authorized bonds have been spent on projects.

In addition to state funds, California’s transportation system receives federal and local money. The state receives about \$4.5 billion a year in federal gasoline and diesel fuel tax revenues for various transportation purposes. Collectively, local governments invest roughly \$9.5 billion annually into California’s highways, streets and roads, passenger rail, and transit systems. This funding comes mainly from a mix of local sales and property taxes, as well as transit fares. Local governments have also issued bonds backed mainly by local sales tax revenues to fund transportation projects.

PROPOSAL

This measure authorizes the state to sell about \$20 billion of general obligation bonds to fund transportation projects to relieve congestion, improve the movement of goods, improve air quality, and enhance the safety and security of the transportation system. (See “An Overview of State Bond Debt” on page 96 for basic information on state general obligation bonds.)

Figure 1 (see next page) summarizes the purposes for which the bond money would be used. The bond money would be available for expenditure by various state agencies and for grants to local agencies and transit operators upon appropriation by the Legislature:

- **Congestion Reduction, Highway and Local Road Improvements**—\$11.3 billion—for capital improvements to reduce congestion and increase capacity on state highways, local roads, and public transit for grants available to locally funded transportation projects, as well as for projects to rehabilitate state highways and local roads.
- **Public Transportation**—\$4 billion—to make capital improvements to local transit services and the state’s intercity rail service. These improvements would include purchasing buses and railcars, as well as making safety enhancements to existing transit facilities.
- **Goods Movement and Air Quality**—\$3.2 billion—for projects to improve the movement of goods—through the ports, on the state highway and rail systems, and between California and Mexico—and for projects to improve air quality by reducing emissions related to goods movement and replacing or retrofitting school buses.
- **Safety and Security**—\$1.5 billion—for projects to increase protection against a security threat or improve disaster response capabilities on transit systems; as well as for grants to improve the safety of rail crossings to seismically retrofit local bridges, ramps, and overpasses; and to improve security and disaster planning in publicly owned ports, harbors, and ferry terminals.

FISCAL EFFECTS

Bond Costs. The costs of these bonds would depend on interest rates in effect at the time they are sold and the time period over which they are repaid. The state would likely make principal and

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

1B

FIGURE 1

Proposition 1B: Uses of Bond Funds

	Amount (In Millions)
Congestion Reduction, Highway and Local Road Improvements	\$11,250
Reduce congestion on state highways and major access routes	\$4,500
Increase highways, roads, and transit capacity	2,000
Improve local roads	2,000
Enhance State Route 99 capacity, safety, and operations	1,000
Provide grants for locally funded transportation projects	1,000
Rehabilitate and improve operation of state highways and local roads	750
Public Transportation	\$4,000
Improve local rail and transit services, including purchasing vehicles and right of way	\$3,600
Improve intercity rail, including purchasing railcars and locomotives	400
Goods Movement and Air Quality	\$3,200
Improve movement of goods on state highways and rail system, and in ports	\$2,000
Reduce emissions from goods movement activities	1,000
Retrofit and replace school buses	200
Safety and Security	\$1,475
Improve security and facilitate disaster response of transit systems	\$1,000
Provide grants to improve railroad crossing safety	250
Provide grants to seismically retrofit local bridges and overpasses	125
Provide grants to improve security and disaster planning in publicly owned ports, harbors, and ferry facilities	100
Total	\$19,925

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

interest payments from the state's General Fund over a period of about 30 years. If the bonds are sold at an average interest rate of 5 percent, the cost would be about \$38.9 billion to pay off both the principal (\$19.9 billion) and interest (\$19.0 billion). The average repayment for principal and interest would be about \$1.3 billion per year.

Operational Costs. The state and local governments that construct or improve transportation infrastructure with these bond funds (by, for example, building roads and bridges or purchasing buses or railcars) will incur unknown additional costs to operate and maintain them. A portion of these costs would be offset by revenues generated by the improvements, such as transit fares and tolls.

1B

ARGUMENT IN FAVOR OF PROPOSITION 1B

1B

YES ON PROPOSITION 1B: BUILD NEW ROADS AND HIGHWAYS NOW

California has the most congested highways in the nation—we spend 500,000 hours stuck in traffic every day. It's clear that the time to rebuild California's roads, highways, and transportation systems is now.

Proposition 1B puts backlogged transportation projects on the fast track, reducing congestion and improving highway safety.

While Prop. 1A protects the gas tax funds we already pay at the pump, Prop. 1B is just as important because it provides funding now to jump-start repairs of our aging highways and to start building the transportation projects we know we'll need in the future.

YES ON 1B IMPROVES SAFETY, REDUCES CONGESTION, AND EXPANDS PUBLIC TRANSPORTATION

Proposition 1B will fund projects in every corner of the state. Prop. 1B invests in:

- Making safety improvements to the most dangerous highways and corridors
- Reducing congestion and travel delays
- Adding more lanes to congested highways
- Fixing local streets, roads, and intersections
- Building and expanding public transportation
- Making bridges seismically safe
- Expanding carpool lanes
- Providing matching funds for communities that have approved local transportation measures

YES ON 1B WILL REDUCE AIR POLLUTION AND IMPROVE AIR QUALITY

Prop. 1B includes funding to reduce air pollution by replacing old polluting school buses, expanding mass transit, and expanding carpool and HOV lanes. And, by reducing congestion on our freeways and roads, Prop. 1B will also

help reduce car emissions—one of the leading sources of air pollution.

YES ON 1B: STRICT ACCOUNTABILITY AND NO NEW TAXES

- Prop. 1B includes important accountability measures like annual audits and reports to ensure funds are spent on intended projects.
- Prop. 1B lets us begin building roads now and pay for them as we use them—with current tax revenues and without raising taxes. It is like a mortgage on a house that lets you live in your home while you pay for it.

YES ON 1B: PART OF A LONG-TERM PLAN TO REBUILD CALIFORNIA

Proposition 1B is part of the Rebuild California Plan, which uses the taxes we're already paying to build the roads, housing, schools, and water systems we need to sustain our economy and our quality of life for the long term.

REBUILD CALIFORNIA: YES ON 1A, 1B, 1C, 1D, AND 1E

California's population will reach 50 million in the next 20 years—twice what our current infrastructure was designed for—and it can't be rebuilt overnight. That's why we've got to start now.

To learn more about how this infrastructure plan will benefit you and your community, visit www.ReadForYourself.org.

YES ON 1B: SAFER ROADS, LESS POLLUTION, AND REDUCED TRAFFIC CONGESTION

MARIAN BERGESON, Chair
California Transportation Commission

ALAN C. LLOYD, Former Chair
California Air Resources Board

ALLAN ZAREMBERG, President
California Chamber of Commerce

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 1B

We've all heard, "some things are too good to be true." The argument in support of Proposition 1B is clearly one of those times.

Instead of envisioning a home mortgage being paid for while you live in it, as the proponents would have you imagine, envision instead drowning in a sea of credit card debt. That's where California is headed.

We all want better roads and less traffic congestion. However, if the Legislature turned its attention to streamlining construction projects and easing overburdensome regulations, we wouldn't need to borrow billions of dollars. Instead, we would use an annual portion of our general fund tax dollars with limited borrowing to complete these projects. This balanced approach would significantly reduce our need to borrow billions of dollars.

What about accountability and audits?

When was the last time an audit of state government spending showed that its programs were cost effective and timely? Quite the opposite is true. A well thought out plan for our transportation needs is the only sensible way to improve California's roadways. A hastily developed bond, with "after the fact" oversight, containing billions of dollars in borrowing is a recipe for failure.

Make no mistake; a bond is not free money. You will pay for the considerable borrowing with substantial interest. NO on 1B will force the Legislature to develop a responsible bond package by including "pay as you go," environmental permitting reform, design-build efficiencies, and other common sense reforms.

MICHAEL N. VILLINES, California State Assemblyman
29th District

ARGUMENT AGAINST PROPOSITION 1B

1B

\$32 billion. That is what our children and grandchildren will pay to settle the debt associated with this bond. All this for funding costly programs at the expense of desperately needed highway construction.

Make no mistake: every Member of the Legislature who voted against this bond measure supports restoring our state’s crumbling transportation system. We support dedicating every dollar you pay in gas taxes to our highways. And, we support building for California’s future wisely. However, this measure fails to achieve these important goals in a fiscally responsible manner.

Improved transportation is a critical issue for our state, but equally important is that each additional borrowed dollar we spend worsens our budget deficit and could cause significant consequences for hard-working California families.

A fiscally responsible solution would be a “pay as you go” approach to funding much-needed transportation projects. This approach will pay for infrastructure improvements from the general fund (taxes you already pay) and allow California to borrow less money to meet its annual obligations.

By setting aside a portion of the budget each year for infrastructure, we will be able to better meet our state’s complex needs and not saddle our children and grandchildren with backbreaking debt.

Of further concern in this measure is the rush to spend our tax dollars. In hastily passing this bond measure, the Legislature failed to include time and cost saving opportunities such as “Design-Build” and environmental permitting reforms that would have streamlined the construction process, completing more projects with the same amount of money. Additionally, within 3 weeks after

voter approval of this measure, the California Transportation Commission is required to “develop and adopt guidelines” to fund all outlined transportation programs and spend billions of your hard-earned tax dollars. Then CALTRANS and your regional and county transportation agencies must submit all potential transportation projects to the California Transportation Commission. Just think: A state government agency must put rules in place to spend billions of dollars in just 3 weeks on projects across California without allowing enough time for public oversight and review. Is this the best way to spend your tax dollars?

Significant fiscal decisions in Government should not be made without adequate time for due diligence and analysis.

Governor Schwarzenegger is right; California state government has neglected the transportation needs of our State for three decades and something needs to be done. But let’s do this right. Let’s go back to the drawing board and find a responsible way to focus on critically needed projects while at the same time developing a financially accountable plan that includes a “pay as you go” element, without any wasteful spending to pay for these important projects.

We should demand that our children and grandchildren have a transportation system that meets the needs of the 21st Century. That’s why you need to vote “no” on this bond and force the Legislature to produce a transportation infrastructure plan for our future that is responsible, realistic, and result driven.

MICHAEL N. VILLINES, California State Assemblyman
 29th District

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 1B

Even the opponent agrees we have to start *now* to improve our state’s crumbling transportation system, build new roads, and relieve traffic congestion. That’s exactly what Proposition 1B will do.

YES ON 1B will finally make our transportation system a priority and provide funds we need to begin addressing the backlog of projects throughout the state to reduce congestion, improve air quality, expand mass transit, make road safety improvements, and repair local streets and roads. The longer we neglect our transportation system, the more costly and serious the problems become. We can’t afford to wait any longer.

PROPOSITION 1B IS FISCALLY RESPONSIBLE

- 1B contains strict fiscal safeguards to protect taxpayers, like annual audits and public reports to show how and where funds are spent.
- By issuing bonds, Prop. 1B will provide immediate funding to jump-start transportation projects and allow us to pay for them over the next 20 years, with existing state revenues and *without raising taxes*.

- Just like a mortgage on a home, Prop. 1B allows us to improve our transportation system now and pay for it as we use it over the long term.
- That’s why THE CALIFORNIA TAXPAYERS’ ASSOCIATION SUPPORTS 1B.

Yes on 1B is part of the Rebuild California Plan. Our economic future and our quality of life depend on a reliable transportation system that moves goods and people efficiently.

We’ve got to start now.

YES on 1B. Build new roads and highways, invest in traffic safety, relieve congestion, and improve mass transit.

LARRY McCARTHY, President
 California Taxpayers’ Association

THOMAS V. MCKERNAN, President
 Automobile Club of Southern California (AAA)

MICHAEL BROWN, Commissioner
 California Highway Patrol

HOUSING AND EMERGENCY SHELTER TRUST FUND ACT OF 2006.

1C

- Funds may be used for the purpose of providing shelters for battered women and their children, clean and safe housing for low-income senior citizens; homeownership assistance for the disabled, military veterans, and working families; and repairs and accessibility improvements to apartment for families and disabled citizens.
- The state shall issue bonds totaling two billion eight hundred fifty million dollars (\$2,850,000,000) paid from existing state funds at an average annual cost of two hundred and four million dollars (\$204,000,000) per year over the 30 year life of the bonds.
- Requires reporting and publication of annual independent audited reports showing use of funds, and limits administration and overhead costs.
- Appropriates money from the General Fund to pay off bonds.

Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:

- State cost of about \$6.1 billion over 30 years to pay off both the principal (\$2.85 billion) and interest costs (\$3.3 billion) on the bonds. Payments of about \$204 million per year.

FINAL VOTES CAST BY THE LEGISLATURE ON SB 1689 (PROPOSITION 1C)

Senate:	Ayes 27	Noes 11
Assembly:	Ayes 54	Noes 16

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

About 200,000 houses and apartments are built in California each year. Most of these housing units are built entirely with private dollars. Some units, however, receive subsidies from federal, state, and local governments. For instance, the state provides low-interest loans or grants to developers (private, nonprofit, and governmental) to subsidize housing construction costs. Typically, the housing must be sold or rented to Californians with low incomes. Other state programs provide homebuyers with direct financial assistance to help with the costs of a downpayment.

While the state provides financial assistance through these programs, cities and counties are responsible for the zoning and approval of new housing. In addition, cities, counties, and other local governments are responsible for providing infrastructure-related services to new housing—such as water, sewer, roads, and parks.

In 2002, voters approved Proposition 46, which provided a total of \$2.1 billion of general obligation bonds to fund state housing programs. We estimate that about \$350 million of the Proposition 46 funds will be unspent as of November 1, 2006.

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

PROPOSAL

This measure authorizes the state to sell \$2.85 billion of general obligation bonds to fund 13 new and existing housing and development programs. (See “An Overview of State Bond Debt” on page 96 for basic information on state general obligation bonds.) Figure 1 (see next page) describes the programs and the amount of funding that each would receive under the measure. About one-half of the funds would go to existing state housing programs. The development programs, however, are new—with details to be established by the Legislature. The major allocations of the bond proceeds are as follows:

- **Development Programs (\$1.35 Billion).** The measure would fund three new programs aimed at increasing development. Most of the funds would be targeted for development projects in existing urban areas and near public transportation. The programs would provide loans and grants for a wide variety of projects, such as parks, water, sewage, transportation, and housing.
- **Homeownership Programs (\$625 Million).** A number of the programs funded by this measure would encourage homeownership for low- and moderate-income homebuyers. The funds would be used to provide downpayment assistance to homebuyers through low-interest loans or grants. Typically, eligibility for this assistance would be based on the household’s income, the cost of the home being purchased, and whether it is the household’s first home purchase.
- **Multifamily Housing Programs (\$590 Million).** The measure also would fund programs aimed at the construction or renovation of rental housing projects, such as apartment buildings. These programs generally provide local governments, nonprofit organizations, and private developers with low-interest (3 percent) loans to fund part of the construction cost. In exchange, a project

must reserve a portion of its units for low-income households for a period of 55 years. This measure gives funding priority to projects in already developed areas and near existing public services (such as public transportation).

- **Other Housing Programs (\$285 Million).** These funds would be used to provide loans and grants to the developers of homeless shelters and housing for farmworkers. In addition, funds would be allocated to pilot projects aimed at reducing the costs of affordable housing.

The funds would be allocated over a number of years. The measure provides the Legislature broad authority to make future changes to these programs to ensure their effectiveness.

FISCAL EFFECT

Bond Costs. The cost to pay off these bonds would depend primarily on the following two factors:

- **Payment Period.** The state would likely make principal and interest payments on the bonds from the state’s General Fund over a period of about 30 years.
- **Interest Rate.** Usually, the interest on bonds issued is exempt from both state and federal taxes because the bonds are for public purposes. This results in lower debt service payments for the state. Some programs proposed by this measure, however, would not be eligible for the federal tax exemption—resulting in a higher interest rate. This is because the housing programs provide funds for private purposes. (We estimate this would be the case for about 60 percent of the bonds.)

If the federally taxable bonds were sold at an average rate of 6.5 percent and the remaining bonds at an average rate of 5 percent, the cost to the state would be about \$6.1 billion to pay off both the principal (\$2.85 billion) and the interest

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

FIGURE 1

Proposition 1C: Uses of Bond Funds

		Amount (In Millions)
Development Programs		
Development in urban areas ^a	Grants for various projects—including parks, water, sewer, transportation, and environmental cleanup—to facilitate urban “infill” development.	\$850
Development near public transportation ^a	Grants and loans to local governments and developers to encourage more dense development near public transportation.	300
Parks ^a	Grant funding for parks throughout the state.	200
		\$1,350
Homeownership Programs		
Low-income households	Variety of homeownership programs for low-income households.	\$290
Downpayment assistance	Deferred low-interest loans up to 6 percent of home purchase price for first-time low- or moderate-income homebuyers.	200
Local governments	Grants to local governments which reduce barriers to affordable housing. Funds would be used for homebuyer assistance.	125
Self-help construction	Grants to organizations which assist low- or moderate-income households in building or renovating their own homes.	10
		\$625
Multifamily Housing Programs		
Multifamily housing	Low-interest loans for housing developments for low-income renters.	\$345
Supportive housing	Low-interest loans for housing projects which also provide health and social services to low-income renters.	195
Homeless youth	Low-interest loans for housing projects which provide housing for homeless young people.	50
		\$590
Other Housing Programs		
Farmworker housing	Low-interest loans and grants for developing housing for farmworkers.	\$135
Pilot programs ^a	Grants and loans for pilot projects to develop housing at reduced costs.	100
Homeless shelters	Grants for developing homeless shelters.	50
		\$285
Total		\$2,850
^a New program.		

1C

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

(\$3.3 billion). The average payment would be about \$204 million each year.

Administrative Costs. The Department of Housing and Community Development and the California Housing Finance Agency would experience increased costs to administer the

various housing and urban development programs. A portion of the programs' allocations—probably between \$100 million and \$150 million of the total bond funds—would be used to pay these administrative costs over time.

1C

ARGUMENT IN FAVOR OF PROPOSITION 1C

1C

YES on Proposition 1C will provide emergency shelters for battered women, affordable homes for seniors and low-income families, and shelters with social services for homeless families with kids. That is why Habitat for Humanity, AARP, and California Partnership to End Domestic Violence strongly urge you to vote YES on Proposition 1C.

Importantly, this measure will be funded out of existing state resources without raising taxes.

Many of our communities face severe problems of housing affordability, homelessness, and domestic violence. Over 360,000 Californians are homeless every night.

Last year, 5,108 women and children were turned away from domestic violence shelters because they were full. Housing affordability for working families in California is at historic lows.

Safe shelter is fundamental to a decent life. YES on Proposition 1C will:

- Expand the number of shelter beds for battered women and homeless families with children.
- Provide housing for homeless foster youths.
- Make security improvements and repairs to existing shelters.
- Provide clean and safe homes for senior citizens and low-income families.

Additionally, Proposition 1C helps working families afford homes and provides accessibility improvements to apartments for disabled Californians.

Proposition 1C also creates 87,000 jobs and helps improve the state's economy.

Allows Seniors to Live Independently: This measure allows seniors to live at home without the fear of being institutionalized in a nursing home.

Helps Battered Women: “Most cities in California don’t have adequate shelters for women and children who have been beaten and abused. Proposition 1C begins to fix this bad situation.” —California State Sheriffs Association

Independent Audits and Accountability:

“This measure requires independent audits, limits administrative expenses, and contains strict accountability provisions to ensure the funds are used as promised.” —California Chamber of Commerce

Helps Foster Youth: “Tragically, 65% of foster youth are homeless on the day they leave foster care. Proposition 1C will help them find stable homes.” —Homes 4 California

Critical Need for Housing and Emergency Shelters:

“Proposition 1C provides shelter for those who need help the most—battered women, homeless families with children, and disabled seniors.” —Habitat for Humanity, Sacramento

Yes on 1C: Part of a Long-Term Plan to Rebuild California

Proposition 1C is part of the Rebuild California Plan, which uses the taxes we’re already paying to build the roads, housing, schools, and water systems we need to sustain our economy and our quality of life for the long term. Please support the long-term plan to rebuild California by voting Yes on 1A, 1B, 1C, 1D, and 1E.

To learn more about how this plan will benefit you and your community, visit www.ReadForYourself.org.

Proposition 1C provides shelters for our most vulnerable Californians: the elderly, disabled, homeless families, battered women and children. Please vote Yes on 1C for emergency shelter and housing relief without raising taxes.

CHERYL KEENAN, Executive Director
San Diego Habitat for Humanity

MARIVIC MABANAG, Executive Director
California Partnership to End Domestic Violence

TOM PORTER, State Director
AARP

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 1C

Proposition 1C is fiscally irresponsible. 1C grows bureaucracy with almost \$3 billion in borrowed money, burdening everyone with debt to benefit a small number of people selected by government, including financially eligible illegal immigrants.

In their “yes” argument, 1C’s backers claim the bond would be “funded out of existing state resources without raising taxes.” Sadly, there is no such thing as free money.

When California sells bonds, what is really happening is that the state is going into debt in your name. This debt gets repaid at about two dollars of principal and interest for every dollar borrowed.

Debt repayment has the top priority in government spending. So, money spent to repay bonds means budget cuts for education, roads, Medi-Cal, levee repair, prisons, and water projects. Or, even less money for tax cuts.

More debt = less money for priorities. And, less money for priorities = pressure to raise taxes on all Californians.

Debt should be used sparingly to build long lasting projects such as roads, bridges, dams, schools, and universities.

Builders build homes, not government. Fees, regulations, and government interference make homes unaffordable in California. Freeing builders to build is the best affordable housing program—and, *it costs nothing!*

Adding more debt to our state’s credit card hurts ALL Californians. Proposition 1C would add \$600 of debt and interest payment obligations on every California family of four. That’s \$600 that could be returned to the people in lower taxes, or spent on roads and schools.

Be responsible: vote “no.”

ASSEMBLYMAN CHUCK DeVORE, Member
Assembly Budget Committee

BILL LEONARD, Member
California State Board of Equalization

MIKE SPENCE, President
California Taxpayer Protection Committee

ARGUMENT AGAINST PROPOSITION 1C

Proposition 1C would add almost \$3 billion in new government debt and expand bureaucracy, but it won't make housing affordable in California.

Sacramento politicians placed Proposition 1C on the ballot at 3 in the morning. Why did they vote in the middle of the night with little debate and no oversight? What were they trying to hide?

Proposition 1C won't make housing more affordable for the average Californian. What it will do is grow government and force the average California family of four to pay over \$600 in debt and interest while INCREASING PRESSURE TO RAISE TAXES.

What will \$2.85 billion of new government borrowing buy? In a state of 37 million people with over 12.2 million housing units, not even a drop in the bucket. Instead, Proposition 1C will empower bureaucrats to dispense cash to a select few who meet the government rules and are lucky enough to be chosen to get the money borrowed in your name.

It's true that only 14 percent of families in California can now afford the median-priced home. But, government itself is to blame for this problem. More than half the cost of a home or apartment rent in California is due to high taxes, overregulation, environmental lawsuits, fees, and government interference in the free market—all of which doubles the high cost of housing.

So, what do the politicians propose? Their solution: another government program that allows affordable housing

only for the lucky few who can get their hands on your money.

The true way to make housing affordable again in California is to allow builders to build homes and condominiums and apartments and then allow people to pay to live in them—without the government telling everyone what to do and how to do it.

Instead, the text of Proposition 1C reads like the failed government housing programs of the past, with references to, "target population," "Housing Finance Committee," "supportive housing," "operating subsidies," and "pilot programs." Along with millions of dollars for bureaucracy and even \$400 million for parks that house no one at all!

One last reason to vote "no" on Proposition 1C: we can't afford more debt. For every dollar we borrow, we and our children will have to repay that dollar plus a dollar in interest costs. That means the average California family will have to pay more than \$600 in additional taxes over the life of this bond, half of which will be to pay the roughly \$3 billion in interest fees alone.

Vote "no" on Proposition 1C. We can't afford it, and it won't make housing more affordable in California.

For more information, please visit Assemblyman Chuck DeVore's website at: www.NoProp1C.com or email him at NoProp1C@aol.com.

ASSEMBLYMAN CHUCK DEVORE, Member
 California State Assembly

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 1C

Yes on Proposition 1C makes shelters and homes available to battered women, seniors, homeless children, low-income families, and former foster youths. It won't solve all of these problems overnight, but it is an important step forward.

Proposition 1C will not raise taxes. The measure will be paid for out of existing state resources. Just as important, Proposition 1C requires independent audits to protect taxpayers and ensure shelters and homes are built as promised.

This measure is the result of years of planning by experts in the problems of homelessness and domestic violence, as well as the housing crisis facing the elderly, families with children, people with mental illness, and veterans.

That is why leading California organizations have endorsed Proposition 1C, including:

- Habitat for Humanity, San Diego, Greater Los Angeles, and Sacramento
- AARP
- Congress of California Seniors
- California Partnership to End Domestic Violence
- California Chamber of Commerce

- Orange County Business Council
- League of Women Voters
- Foster Youth Alliance
- Vietnam Veterans of California

Proposition 1C is a fiscally responsible part of the Rebuild California Plan, a long-term plan to build the roads, housing, schools, and flood-control systems we need for California's future.

Yes on Proposition 1C addresses problems we can't afford to ignore. It will provide clean and safe accommodations for seniors, shelters for homeless families, and secure homes for battered women. Please help California take a positive step forward by voting Yes on Proposition 1C.

HANK LACAYO, President
 Congress of California Seniors

PETER CAMERON, President
 Vietnam Veterans of California

MARIVIC MABANAG, Executive Director
 California Partnership to End Domestic Violence

KINDERGARTEN–UNIVERSITY PUBLIC EDUCATION FACILITIES BOND ACT OF 2006.

- This ten billion four hundred sixteen million dollar (\$10,416,000,000) bond issue will provide needed funding to relieve public school overcrowding and to repair older schools.
- It will improve earthquake safety and fund vocational educational facilities in public schools. Bond funds must be spent according to strict accountability measures.
- Funds will also be used to repair and upgrade existing public college and university buildings and to build new classrooms to accommodate the growing student enrollment in the California Community Colleges, the University of California, and the California State University.
- Appropriates money from the General Fund to pay off bonds.

Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:

- State costs of about \$20.3 billion to pay off both the principal (\$10.4 billion) and interest (\$9.9 billion) on the bonds. Payments of about \$680 million per year.

FINAL VOTES CAST BY THE LEGISLATURE ON AB 127 (PROPOSITION 1D)

Senate:	Ayes 29	Noes 8
Assembly:	Ayes 58	Noes 12

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Public education in California consists of two systems. One system includes about 1,000 local school districts that provide education from kindergarten through grade 12 (“K–12”) to about 6.3 million students. The other system (commonly referred to as “higher education”) includes the California Community Colleges (CCC), the California State University (CSU), and the University of California (UC). These three higher education segments provide education beyond grade 12 to a total of about 2.1 million students.

K–12 School Facilities

Through the School Facility Program (SFP), K–12 school districts apply for funding to buy land, construct new buildings, and modernize (that

is, renovate) existing buildings. A school district’s allocation is based on a formula. The formula considers the number of students a district expects to enroll that cannot be served in existing facility space. The SFP requires the state and school districts to share the cost of facilities. For new construction projects, the cost is shared equally by the state and school districts. For modernization projects, the state pays 60 percent and school districts pay 40 percent of the cost. If a school district faces unusual circumstances, however, it may apply for “hardship” funding from the state to offset its local share of costs.

Major Funding Sources. As described below, funding for school facilities comes mostly from state and local general obligation bonds. (See “An Overview of State Bond Debt” on page 96 for more information on these bonds.)

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

- **State General Obligation Bonds.** The state has funded the SFP by issuing general obligation bonds. Over the past decade, voters have approved a total of \$28.1 billion in state bonds for K–12 school facilities. Approximately \$3 billion of these funds remain available for new construction projects.
- **Local General Obligation Bonds.** At the local level, school districts typically meet most of their matching requirement and other construction needs by issuing local general obligation bonds. These local bonds can be authorized with the approval of 55 percent of the voters in the district. The bonds are repaid using local property tax revenue. Over the past ten years, school districts have received voter approval to issue more than \$41 billion in local facility bonds.

Although school facilities currently are funded mostly from state and local general obligation bonds, school districts also receive funds from:

- **Developer Fees.** State law allows school districts to impose developer fees on new construction. These fees are levied on new residential, commercial, and industrial developments. Although they contribute a moderate amount statewide compared to general obligation bond proceeds, developer fees vary significantly by community depending on the amount of local development. In fast-growing areas, they can make notable contributions to K–12 school construction.
- **Special Local Bonds (Known as “Mello-Roos” Bonds).** School districts also may form special districts to sell bonds for school construction projects. (A special district generally does not encompass the entire school district.) The bonds, which require two-thirds voter approval, are paid off by property owners located within the special district. Over the past decade, Mello-Roos bonds have provided school districts with a total of \$3.7 billion in facility funding.

Higher Education Facilities

California’s system of public higher education includes 142 campuses in the three segments listed below:

- The CCCs provide instruction to about 1.5 million students at 109 campuses operated by 72 locally governed districts throughout the state. The community colleges grant associate degrees, offer a variety of technical career courses, and provide general education coursework that is transferable to four-year universities.
- The CSU has 23 campuses, with an enrollment of about 420,000 students. The system grants bachelor degrees, master degrees, and a small number of specified doctoral degrees.
- The UC has nine general campuses, one health sciences campus, and various affiliated institutions, with total enrollment of about 210,000 students. This system offers bachelor, master, and doctoral degrees, and is the primary state-supported agency for conducting research.

Over the past decade, the voters have approved \$6.5 billion in state general obligation bonds for capital improvements at public higher education campuses. Virtually all of these funds have been committed to specific projects. The state also has provided about \$1.6 billion in lease-revenue bonds (authorized by the Legislature) for this same purpose.

In addition to these state bonds, the higher education segments have three other sources of funding for capital projects.

- **Local General Obligation Bonds.** Like K–12 school districts, community college districts are authorized to sell general obligation bonds to finance construction projects with the approval of 55 percent of the voters in the district. Over the past decade, community college districts have received voter approval to issue more than \$15 billion in local facility bonds.



ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

- **Gifts and Grants.** In recent years, CSU and UC together have received more than \$100 million annually in gifts and grants for construction of facilities.
- **UC Research Revenue.** The UC finances the construction of some new research facilities by selling bonds and pledging future research revenue for their repayment. Currently, UC uses about \$130 million a year of research revenue to pay off these bonds.

1D

PROPOSAL

This measure allows the state to sell \$10.4 billion of general obligation bonds for K–12 school facilities (\$7.3 billion) and higher education facilities (\$3.1 billion).

K–12 School Facilities

As shown in Figure 1, the \$7.3 billion for K–12 school facilities is designated for seven types of projects. The underlying requirements and funding formulas for four of these project types (modernization, new construction, charter school facilities, and joint-use projects) would be based on the existing SFP. The other three types of projects (overcrowded schools, career technical facilities, and environment-friendly projects) would be new components of the SFP.

Modernization (\$3.3 Billion). These monies would be for the modernization of existing school facilities. School districts would be required to pay 40 percent of project costs (unless they qualify for state hardship funding).

New Construction (\$1.9 Billion). These monies would cover various costs associated with building new facilities, including site acquisition, project design, engineering, construction, and inspection. Up to \$200 million of the \$1.9 billion would be

FIGURE 1	
Proposition 1D: Uses of Bond Funds	
	Amount (In Millions)
K–12	
Modernization projects	\$3,300 ^a
New construction projects	1,900 ^{a,b}
Severely overcrowded schools	1,000
Charter schools facilities	500
Career technical facilities	500
Environment-friendly projects	100
Joint-use projects	29
Subtotal, K–12	(\$7,329)
Higher Education	
Community Colleges	\$1,507
University of California	890 ^c
California State University	690
Subtotal, Higher Education	(\$3,087)
Total	\$10,416

^a A total of up to \$200 million is available from these two amounts combined as incentive funding to promote the creation of small high schools.

^b Up to \$200 million is available for earthquake-related retrofitting.

^c \$200 million is available for medical education programs.

available to retrofit facilities likely to be unsafe during an earthquake. Districts would be required to pay 50 percent of new construction and earthquake-safety projects (unless they qualify for state hardship funding).

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

Relief Grants for Overcrowded Schools (\$1 Billion). As a condition of receiving one of these grants, school districts would be required to replace portable classrooms with newly constructed permanent classrooms, remove portable classrooms from overcrowded school sites, and reduce the total number of portable classrooms within the district. As with other new construction projects, districts would be required to pay 50 percent of project costs. Under the program definition of overcrowded, roughly 1,800 schools (or 20 percent of all schools) would be eligible for funding.

Career Technical Education Facilities (\$500 Million). The measure also funds a new facility program designed to enhance educational opportunities for students interested in technical careers. Grants would be provided to high schools and local agencies that have career technical programs. The grants would be allocated on a per square foot basis, with a maximum of \$3 million for each new construction project and \$1.5 million for each modernization project. For both types of grants, the required local contribution would be 50 percent of project costs. Given the program’s requirements, approximately 500 school districts (or one-half of all districts) would be eligible for new construction and modernization grants. In addition, about 25 local agencies would be eligible for modernization grants.

Charter School Facilities (\$500 Million). These monies would be for new construction and modernization of charter school facilities. (Charter schools are public schools that are exempt from certain state requirements in exchange for adhering to a local- or state-approved charter.) A 50 percent local contribution would be required.

Environment-Friendly Projects (\$100 Million). These monies would be provided as special incentive grants to promote certain types of environment-friendly facilities. For example, districts could

receive grant funding if their facilities included designs and materials that promoted the efficient use of energy and water, the maximum use of natural lighting, the use of recycled materials, or the use of acoustics conducive to teaching and learning. The same local contributions would be required as for other new construction and modernization projects.

Joint-Use Projects (\$29 Million). These monies would be available for both constructing new facilities and reconfiguring existing facilities for a joint-use purpose. Joint-use projects include gymnasiums, libraries, child care facilities, and teacher preparation facilities that are located at a school but used for joint school/community or K–12/higher education purposes. Under such arrangements, the school district and joint-use partner share the 50 percent local matching requirement.

Higher Education Facilities

The measure includes \$3.1 billion to construct new buildings and related infrastructure, alter existing buildings, and purchase equipment for use in these buildings for the state higher education segments. As Figure 1 shows, the measure allocates \$1.5 billion to CCC, \$890 million to UC, and \$690 million to CSU. The Governor and Legislature would select the specific projects to be funded by the bond monies.

FISCAL EFFECTS

The costs of these bonds would depend on interest rates in effect at the time they are sold and the time period over which they are repaid. The state would likely make principal and interest payments from the state’s General Fund over a period of about 30 years. If the bonds were sold at an average interest rate of 5 percent, the cost would be about \$20.3 billion to pay off both principal (\$10.4 billion) and interest (\$9.9 billion). The average payment would be about \$680 million per year.

1D

ARGUMENT IN FAVOR OF PROPOSITION 1D

VOTE YES ON 1D: WE NEED TO INVEST IN OUR CHILDREN'S EDUCATION BECAUSE PROVIDING A QUALITY EDUCATION IS THE BEST THING WE CAN DO TO INVEST IN THEIR FUTURE

1D provides the funding to make our schools earthquake safe, reduce overcrowding, update our schools for the latest technology, build new facilities for vocational education, and build college labs that make the discoveries which fuel California's economy.

VOTE YES ON 1D: MAKE OUR SCHOOLS EARTHQUAKE SAFE

Our children's safety should be our top priority! The State Architect has determined that over 7,000 school buildings and many others on college campuses need structural upgrades to be earthquake safe.

VOTE YES ON 1D: REDUCE OVERCROWDING IN OUR SCHOOLS

Over a million students are trying to learn in schools with at least 75% more students than they were designed for. 1D will begin building enough schools so that our children can receive the quality education they deserve.

PROP. 1D INVESTS IN:

- Construction of approximately 6,500 new K–12 classrooms and 3,000 community college classrooms
- Repairing 31,000 classrooms
- Building science, engineering labs, and classrooms
- Providing 3,000 vocational education facilities

Visit ReadForYourself.org for a list of 1D projects.

1D IS SUPPORTED BY BOTH GOVERNOR SCHWARZENEGGER AND BY DEMOCRATIC CANDIDATE FOR GOVERNOR PHIL ANGELIDES. Leaders of both parties along with education and civic organizations all agree investing in our kids' education is the most important thing we can do to invest in their future.

VOTE YES ON 1D: NEW FACILITIES FOR VOCATIONAL AND TECHNICAL EDUCATION

Many students need vocational training instead of college, but our schools do not have up-to-date facilities to provide it. 1D will enable schools to provide the career and technical training many students need to get jobs.

VOTE YES ON 1D: STRICT ACCOUNTABILITY PROVISIONS

Every dollar must be strictly accounted for on a project-by-project basis with independent state and local audits. Misuse of funds is a crime, punishable by imprisonment.

VOTE YES ON 1D: FOR OUR ECONOMIC FUTURE

California's future cannot wait. The best way to grow our economy and create good paying jobs is to make sure our schools, community colleges, and universities have the facilities to train our kids. 1D provides necessary funding to build the community college and university labs and facilities they need.

Parents, teachers, and California's leaders agree that we need 1D to provide a quality public education, to make our schoolchildren safer in the event of an earthquake, and to allow community colleges and universities to improve their facilities.

YES ON 1D: PART OF A LONG-TERM PLAN TO REBUILD CALIFORNIA

Proposition 1D is part of the Rebuild California Plan, which uses the taxes we're already paying to build the roads, housing, schools, and water systems we need to sustain our economy and our quality of life for the long term.

THE REBUILD CALIFORNIA PLAN: YES ON 1A, 1B, 1C, 1D, AND 1E

BARBARA E. KERR, President
California Teachers Association

GEORGE T. CAPLAN, President
California Community College Board of Governors

PAMELA T. JOHNSON, Chair
Coalition for Adequate School Housing

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 1D

Please don't be fooled into voting for this bond because your local school needs help. Most schools got nothing from the last statewide bond, and they will get nothing from this one! This bond requires 50% matching funds from local districts. Unless you live in a wealthy district with surplus cash to supply the matching funds, your schools will never see a penny from this bond—but you will be required to pay higher taxes for the next 30 years! Is this fair?

California is facing the most severe financial crisis in its history. Our credit rating is the worst in the nation. The Legislature has squandered the opportunity to build new schools with the astounding 23 percent growth in tax revenues over the past three years.

The results of this financial mismanagement are staggering. For decades, we will be forced to pay higher taxes just to pay back current debt. Today's schoolchildren

will still be paying for this bond long after their own children have graduated!

At a time when the Governor and the Legislature are struggling to repay the \$100,388,000,000 in previously-approved debt, this \$10,416,000,000 bond would dig us much deeper into a financial hole. Taxpayers will be forced to pay back more than twice the amount borrowed, due to compound interest and the cost of lawyers, Wall Street bond traders, and state bureaucrats.

Please VOTE NO on Proposition 1D. Tell Sacramento politicians to make school construction a top priority for existing tax revenues.

THOMAS N. HUDSON, Executive Director
California Taxpayer Protection Committee

ARGUMENT AGAINST PROPOSITION 1D

We Don't Need More Education Spending Now

Proposition 1D is too big. Rather than limiting this bond measure to the essential needs of building new schools and rehabilitating older ones, this bond funds a variety of new, untested programs such as Career and Technical Education facilities, Overcrowding Relief Grants, seismic safety upgrades, energy efficiency incentives, small learning communities, and a medical education expansion with some new “telemedicine” program. We need to stick to the essentials and drop the fluff.

Proposition 1D is short-sighted. Governor Schwarzenegger’s 10-year infrastructure plan gave the state a perfect opportunity to do some long-term planning. But what happened? We get another short-term bond proposal. Proposition 1D is only designed to fund the next two years of need. Even though many school districts are facing declining enrollment today, by the end of the decade enrollment in schools all over the state will begin growing again. How are schools supposed to plan if all they get are a series of short-term fixes?

Proposition 1D is more borrowing. Why do we have to incur more debt to build and modernize schools? We can expand year-round school and better utilize our existing school facilities. Why can't we fund school construction on a pay-as-you-go basis?

Proposition 1D is too costly. It is a \$10.4 billion education bond. The interest costs will push the total cost of the bond well above \$10.4 billion. Can we really afford this?

While education is important, it is not the only priority we need to worry about. We need to deal with other problems including holding down California’s debt and borrowing. And, there are more important things to spend money on than new vocational education facilities, energy efficiency, and seismic safety upgrades. It’s about time we said No to more and more education spending.

Vote NO on Proposition 1D.

WILLIAM SARACINO, Member
 Editorial Board, California Political Review



REBUTTAL TO ARGUMENT AGAINST PROPOSITION 1D

VOTE YES ON 1D. HOW CAN WE AFFORD NOT TO INVEST IN OUR SCHOOLS?

Few things are more important for our children and our economy than to invest in education.

1D is the right solution to make our schools earthquake safe and build more classrooms to relieve overcrowding for our children. It will also help our state economy grow. It doesn't bite off more than we can afford to do right now, and it allows planning for the future that is vitally important.

1D will provide real results for our kids.

Our community colleges also give a rapidly growing student population the skills they need to succeed in the workforce. We cannot afford to shortchange them—California’s future depends on their success.

That’s why 1D has gained the support from parents, teachers, seniors, business and taxpayer groups, and a bipartisan group of the Legislature.

The California Taxpayers’ Association says, “Proposition 1D is a fiscally responsible way to finance school repair and construction.”

Prop. 1D invests in:

- Construction of approximately 6,500 new K–12 classrooms and 3,000 community college classrooms
- Repair of 31,000 classrooms
- Building science, engineering labs, and classrooms
- Providing 3,000 vocational education facilities

Vote Yes on 1D. Invest in our children’s future by investing in our schools today. A bright, highly skilled student population makes California a stronger, better place to live for all of us.

BRENDA DAVIS, President
 California State PTA

LARRY McCARTHY, President
 California Taxpayers’ Association

WILLIAM HAUCK, President
 California Business Roundtable

1E

OFFICIAL TITLE AND SUMMARY ★ ★ ★

Prepared by the Attorney General

DISASTER PREPAREDNESS AND FLOOD PREVENTION BOND ACT OF 2006.

- This act rebuilds and repairs California’s most vulnerable flood control structures to protect homes and prevent loss of life from flood-related disasters, including levee failures, flash floods, and mudslides.
- Protects California’s drinking water supply system by rebuilding delta levees that are vulnerable to earthquakes and storms.
- Authorizes a \$4.09 billion dollar bond act.
- Appropriates money from the General Fund to pay off bonds.

1E

Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:

- State cost of about \$8 billion over 30 years to pay off both the principal (\$4.1 billion) and interest (\$3.9 billion) costs on the bonds. Payments of about \$266 million per year.
- Reduction in local property tax revenues of potentially up to several million dollars annually.
- Additional unknown state and local government costs to operate or maintain properties or projects acquired or developed with these bond funds.

FINAL VOTES CAST BY THE LEGISLATURE ON AB 140 (PROPOSITION 1E)

Senate:	Ayes 36	Noes 1
Assembly:	Ayes 62	Noes 9

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

State Role. Multiple agencies at each level of government (state, federal, and local) have some responsibilities for flood management. In addition, private entities own and operate some flood control facilities. The state carries out a number of programs designed to provide flood management. Some of these programs are operated directly by the state, while others provide grants to local agencies for similar purposes.

The state is primarily responsible for flood control in the Central Valley. As shown in Figure 1, the state Central Valley flood control system includes about 1,600 miles of levees, as well as

other flood control infrastructure such as overflow weirs and channels. The state directly funds the construction and repair of flood management structures such as levees, typically with a federal and local cost share. For approximately 80 percent of the levees in the Central Valley flood control system, the state has turned over the operations and maintenance to local governments (primarily local flood control districts), although the state retains ultimate responsibility for these levees and the system as a whole.

Outside the Central Valley system, the state’s role in flood management generally consists of providing financial assistance to local governments

★★★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

for flood control projects located throughout the state. For example, the state has provided funding for the Santa Ana River Mainstem flood control project that spans Orange, Riverside, and San Bernardino Counties. In the Sacramento-San Joaquin River Delta region (Delta), as another example, the state has no oversight role with respect to local levee construction or maintenance (a majority of Delta levees—about 700 miles—are located outside the state system). Because a significant portion of the state’s population depends on water supplies that come through the Delta, there is a state interest in the continued operation of the Delta levee system. Given this, the state has provided financial assistance over many years to local flood control districts in the Delta region to rehabilitate and maintain levees.

Funding. In general, state flood management programs have been funded from the General Fund, with some use of bond funds. Since 1996, the voters have authorized a number of state general obligation bonds, of which about \$400 million has been allocated specifically for flood management purposes. Most of these bond funds for flood management have already been spent.

State funding levels for flood management have varied substantially on a year-to-year basis, largely depending on the availability of General Fund and bond monies for this purpose. For example, since 2000–01, annual state funding for flood management has varied from a low of about \$60 million (2002–03) to a high of about \$270 million (2000–01). In addition to state flood management programs, local governments, including flood control districts and other public water agencies, operate their own flood management programs and projects. Funding for these local programs comes from various sources, including property assessments



1E

and, in some cases, financial assistance from the state.

A law passed earlier this year provides \$500 million from the General Fund for emergency levee repairs and other flood management-related costs.

The Department of Water Resources (DWR) has made rough estimates of the cost to repair and upgrade the Central Valley flood control system and levees in the Delta of between \$7 billion and \$12 billion.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

PROPOSAL

This measure authorizes the state to sell about \$4.1 billion in general obligation bonds for various flood management programs. (See “An Overview of State Bond Debt” on page 96 for basic information on state general obligation bonds.) Figure 2 summarizes the purposes for which the bond money would be available to be spent by DWR and for grants to local agencies. In order to spend these bond funds, the measure requires the Legislature to appropriate them in the annual budget act or another law.

Specifically, the bond includes about \$4.1 billion for various flood management activities, allocated as follows:

- **State Central Valley Flood Control System and Delta Levees—\$3 Billion.** To evaluate, repair, and restore existing levees in the state’s Central Valley flood control system; to improve or add facilities in order to increase flood protection for urban areas in the state’s Central Valley flood control system; and to reduce the risk of levee failure in the Delta region through grants to local agencies and direct spending by the state.
- **Flood Control Subventions—\$500 Million.** To provide funds to local governments for the state’s share of costs for locally sponsored, federally authorized flood control projects outside the Central Valley system.
- **Stormwater Flood Management—\$300 Million.** For grants to local agencies outside of the Central Valley system for projects to manage stormwater.
- **Statewide Flood Protection Corridors and Bypasses—\$290 Million.** To protect, create, and enhance flood protection corridors, including flood control bypasses and setback levees; as well as for floodplain mapping.

FIGURE 2

Proposition 1E: Uses of Bond Funds

	Amount (In Millions)
State Central Valley flood control system repairs and improvements; Delta levee repairs and maintenance.	\$3,000
Flood control subventions (local projects outside the Central Valley).	500
Stormwater flood management (grants for projects outside the Central Valley).	300
Flood protection corridors and bypasses; floodplain mapping.	290
Total	\$4,090

FISCAL EFFECTS

Bond Costs. The costs of these bonds would depend on interest rates in effect at the time they are sold and the time period over which they are repaid. The state would likely make principal and interest payments from the state’s General Fund over a period of about 30 years. If the bonds were sold at an average interest rate of 5 percent, the cost would be about \$8 billion to pay off both the principal (\$4.1 billion) and interest (\$3.9 billion). The average payment would be about \$266 million per year.

Property Tax-Related Impacts. The measure provides funds for land acquisition by the state for flood management, including the development of bypasses and setback levees. Under state law, property owned by government entities is exempt from property taxation. To the extent that this

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

measure results in property being exempted from taxation due to acquisitions by governments, local governments would receive reduced property tax revenues. Because the measure does not specify what portion of the bond funds will be used for acquisitions, the impact on local property tax revenues statewide is unknown, but is potentially up to several million dollars annually.

Operational Costs. To the extent that bond funds are used by state and local governments to purchase property or develop a new flood control project, these governments would incur unknown additional costs to operate or maintain the properties or projects.

ARGUMENT IN FAVOR OF PROPOSITION 1E

YES ON PROPOSITION 1E: PROTECT AGAINST FLOODS, PREVENT OCEAN POLLUTION, SAFEGUARD CLEAN DRINKING WATER

California continually faces natural disasters—from earthquakes and fires to floods and mudslides. Proposition 1E is critical to prepare for these natural disasters and ensure we always have enough clean water to meet our needs.

YES ON 1E: PROTECT HOMES, PREVENT LOSS OF LIFE

Our nation learned a tragic lesson from Hurricane Katrina—we cannot continue to neglect our unsafe levees and flood control systems. One catastrophic flood would impact the entire state and disrupt the supply of clean drinking water to major cities.

Proposition 1E expedites urgent projects to protect homes and lives across the state:

- Urgent repairs and essential improvements to levees and flood control facilities
- Increased flood protection for urban areas
- Evaluation and repair of the current flood control system

“Californians deserve to know that their homes and families are protected from flooding, caused by levee failure in the Central Valley, or flash flooding in Southern California or coastal areas. Proposition 1E is vital to the state’s ability to ensure flood safety throughout the state.”—Lester Snow, Director, California Department of Water Resources

YES ON 1E: PROTECT OUR OCEANS AND OUR SUPPLY OF CLEAN, SAFE DRINKING WATER

Outdated flood control systems can threaten drinking water supplies, pollute streams, and foul beaches.

- Some cities rely on water mains and sewers more than a century old that can fail at any time. Experts say that water pressure inside the pipes is often the only thing keeping them from collapsing.
- In 2001, sewer spills and overflows forced officials to issue over 2,000 beach closings and health advisories. Spills

and overflows are generally caused by overused and antiquated wastewater systems.

Proposition 1E helps ensure that clean water is available for all Californians all the time by providing funds to rebuild out-of-date systems to prevent pollution and safeguard water sources.

YES ON 1E: STRICT ACCOUNTABILITY AND NO NEW TAXES

Proposition 1E won’t raise taxes to pay for these important infrastructure improvements. By building safeguards now, with current revenues, we can limit the impact of disasters when they do hit. And, Prop. 1E includes annual audits and tough fiscal safeguards to ensure the money is spent wisely.

YES ON 1E: PART OF A LONG-TERM PLAN TO REBUILD CALIFORNIA

Proposition 1E is part of the Rebuild California Plan, which uses the taxes we’re already paying to build the roads, housing, schools, and water systems we need to sustain our economy and our quality of life for the long-term.

The Rebuild California Plan: YES ON 1A, 1B, 1C, 1D, and 1E

California’s population will reach 50 million in the next 20 years—twice what our current infrastructure was designed for—and it can’t be rebuilt overnight. That’s why we’ve got to start now.

To learn more about how this infrastructure plan will benefit you and your community, visit www.ReadForYourself.org.

YES on 1E: Clean Water, Flood Protection, and Disaster Preparedness.

HENRY RENTERIA, Director
California Office of Emergency Services

MICHAEL L. WARREN, President
California Fire Chiefs Association

LINDA ADAMS, Secretary
California Environmental Protection Agency

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 1E

After reading Prop. 1E, it won’t surprise you to learn that the Legislature adopted it after 3 a.m. when they got tired of arguing. They couldn’t agree on a list of projects or even a list of priorities; they could only agree that **THEY WANT MORE OF YOUR MONEY** right away. How typical! That’s what this \$4,090,000,000.00 bond is all about: raising taxes to give Sacramento politicians a blank check based on vague promises that they won’t waste our money this time. It’s like giving a drunk one more drink for the drive home.

Our legislators have been ignoring public levees for years. Now, instead of allocating a small portion of our record-breaking revenues for levees, they want to borrow money for thirty years for repairs that will need to be repaired again long before this bond is paid off. What will we do then?

This is a **TAX INCREASE**. Taxpayers will be forced to spend over \$8,200,000,000 to pay back this bond with interest!

At recent prices, this proposal contains funding for about 25 miles of levees, but California has far more than 2,000 miles of levees to maintain. Since this measure does nothing to reform our crazy spending practices and policies, we might not even get 25 miles of repairs. What is worse, with politicians in charge of selecting the projects (not hydrologists, scientists, and engineers), funding will be based on political influence rather than critical need. This is a recipe for disaster.

Please Vote “NO” on 1E.

THOMAS N. HUDSON, Executive Director
The California Taxpayer Protection Committee

ARGUMENT AGAINST PROPOSITION 1E

We need strong levees and clean water, but Proposition 1E is the wrong solution. This measure is full of misguided priorities and doesn't have any controls on funds. The most important thing we can do is to make sure we have enough water for our growing population, but 1E doesn't spend a cent on that.

Prop. 1E sounds good, but it means higher taxes for projects that local and federal governments should already be doing.

—Proposition 1E won't provide "Clean Water" to drink:

California's population is expected to grow to fifty million people in the next decade. This will place an enormous strain on our water supply. However, this bond will not provide a single drop of drinking water for California's growing population. It will not build a single water storage reservoir or water treatment facility. Yet it will give hundreds of millions to private organizations to spend on their pet projects and lets them use these funds for their own "administrative costs."

—Benefits local urban projects:

Rural California loses under Proposition 1E. State taxpayers' money from these bonds will go to protecting cities and their water supplies. These communities and their local governments should be paying for their own water supply improvements. Local tax dollars should be used to fund these projects, not state funds.

—Federal responsibility:

Instead of putting the state in more debt to pay for these levee repair projects, our state should be demanding more

federal funding. This is a federal responsibility. California taxes are already high, and we shouldn't have to pay more taxes to protect ourselves because the federal government won't plan for disasters.

—Fiscally irresponsible:

By taking on what are really local and federal responsibilities, we are encouraging mismanagement from all levels of government. And, they will expect taxpayers to foot the bill down the road rather than refocusing their priorities.

—Californians must focus on our priorities:

While our economy is slowly recovering, approving Proposition 1E would be like taking out a loan to buy new patio furniture when you can't afford to pay your mortgage or rent. At the same time, this measure means less money for other important priorities like education, health care, or public safety.

The state can't take responsibility for every project in the state. These projects should be paid for by the local and federal agencies responsible for these public safety issues. If we don't make them reprioritize their spending, our children will continue to foot the bill for their short-sighted planning and mismanagement.

Proposition 1E is bad for families, bad for taxpayers, and bad for California. Vote NO on 1E.

THOMAS N. HUDSON, Executive Director
 The California Taxpayer Protection Committee

1E

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 1E

Proposition 1E is vital to California's disaster preparedness—protecting lives and water supplies. It is our responsibility to ensure that all Californians have access to safe, clean drinking water at all times. Yes on 1E does that without raising taxes, and it leverages additional federal and local funding.

WE CANNOT AFFORD TO NEGLECT OUR WATER SUPPLY AND FLOOD PROTECTION SYSTEMS

If we wait for others to fix our unsafe levees and flood control systems, we are putting our homes, drinking water supplies, and children at risk in every corner of the state. By building safeguards now, we can limit the impact of disasters when they do hit. Yes on 1E provides:

- Increased flood protection for urban and rural areas, meaning a stable, clean water supply.
- Repaired and improved levees.
- Updated flood control systems—to prevent failures that can pollute our streams and oceans.

FISCALLY RESPONSIBLE

Proposition 1E uses the taxes we are already paying to make these important infrastructure improvements. Utilizing

federal and local matching funds means we can complete more of these important projects in communities across the state. And, 1E has important accountability standards, including independent audits, to ensure money is spent wisely.

Proposition 1E is part of the Rebuild California Plan. It will provide the flood protection vital to sustaining our economy, protecting our supply of drinking water, and preserving our quality of life for the long term.

YES on 1E: Clean Water, Flood Protection, and Disaster Preparedness for Our Future.

THOMAS A. NASSIF, President
 Western Growers

LINDA ADAMS, Secretary
 California Environmental Protection Agency

PETER SILVA, Former Vice Chair
 State Water Resources Control Board

**SEX OFFENDERS. SEXUALLY VIOLENT PREDATORS.
PUNISHMENT, RESIDENCE RESTRICTIONS AND MONITORING.
INITIATIVE STATUTE.**

- Increases penalties for violent and habitual sex offenders and child molesters.
- Prohibits registered sex offenders from residing within 2,000 feet of any school or park.
- Requires lifetime Global Positioning System monitoring of felony registered sex offenders.
- Expands definition of a sexually violent predator.
- Changes current two-year involuntary civil commitment for a sexually violent predator to an indeterminate commitment, subject to annual review by the Director of Mental Health and subsequent ability of sexually violent predator to petition court for sexually violent predator's conditional release or unconditional discharge.

83

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Net state prison, parole, and mental health program costs of several tens of millions of dollars initially, growing to a couple hundred million dollars annually within ten years.
- Potential one-time state mental hospital and prison capital outlay costs eventually reaching several hundred million dollars.
- Net state and local costs for court and jail operations are unknown.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Definition of Sex Offenses. Sex offenses are crimes of a sexual nature. They vary in type and can be misdemeanors or felonies. For example, distribution of obscene material is a misdemeanor and rape is a felony sex offense. Felony offenses are more serious crimes than misdemeanors.

Punishment for Committing Sex Offenses. Current law defines the penalties for conviction of sex-related crimes. The punishment depends primarily on the type and severity of the specific offense. Conviction of a misdemeanor sex offense is punishable by up to a year in county jail, probation, fines, or a combination of the three. Conviction of a felony sex offense can result in the same penalties as a misdemeanor or a sentence to state prison for up to a life term. The penalty assigned by the court for a felony conviction depends on the specific crime committed, as well as other factors such as the specific circumstances of the offense and the criminal

history of the offender. There are about 8,000 persons convicted of a felony sex offense in California each year. Of these, about 39 percent are sent to state prison. Most of the rest are supervised on probation in the community (5 percent), sentenced to county jail (1 percent), or both (53 percent).

Sex Offender Registration, Residency Requirements, and Monitoring. Current law requires offenders convicted of specified felony or misdemeanor sex crimes to register with local law enforcement officials. There are approximately 90,000 registered sex offenders in California.

Current law bars parolees convicted of specified sex offenses against a child from residing within one-quarter or one-half mile (1,320 or 2,640 feet, respectively) of a school. The longer distance is for those parolees identified as high risk to reoffend by the California Department of Corrections and Rehabilitation (CDCR).

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

The CDCR utilizes Global Positioning System (GPS) monitoring devices to track the location of some sex offenders on parole. Currently, this monitoring is limited to about 1,000 sex offenders who have been identified as high risk to reoffend. Some county probation departments also use GPS to monitor some sex offenders on probation.

Sexually Violent Predators (SVP). Specified sex offenders who are completing their prison sentences are referred by CDCR to the Department of Mental Health (DMH) for screening and evaluation to determine whether they meet the criteria for an SVP. Under current law, an SVP is defined as “a person who has been convicted of a sexually violent offense against two or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.” Those offenders who are found to meet the criteria are referred to district attorneys. District attorneys then determine whether to pursue their commitment by the courts to treatment in a state mental hospital as an SVP.

Offenders subject to SVP proceedings are often represented by public defenders. While these court proceedings are pending, offenders who have not completed their prison sentences continue to be held in prison. However, if an offender’s prison sentence has been completed, he or she may be held either in county custody or in a state mental hospital. Offenders designated as SVPs by the courts are committed to a state mental hospital for up to two years. An offender can be recommitted by the courts in subsequent court proceedings.

As noted above, state mental hospitals hold sex offenders who have been committed as SVPs. State mental hospitals also hold some sex offenders who have completed their prison sentences, but are still undergoing SVP evaluations or commitment proceedings. As of June 2006, 456 sex offenders were being held in state hospitals with a commitment by a court as an SVP. In addition, 188 sex offenders were being held in state mental hospitals, and 81 were in county custody pending the completion of commitment proceedings.

PROPOSAL

Increase Penalties for Sex Offenses. This measure increases the penalties for specified sex offenses. It does this in several ways. In some cases:

- **It broadens the definition** of certain sex offenses. For example, the measure expands the definition of aggravated sexual assault of a child to include offenders who are at least seven years older than the victim, rather than the ten years required under current law.
- **It provides for longer penalties** for specified sex offenses. For example, it expands the list of crimes that qualify for life sentences in prison to include assault to commit rape during the commission of a first degree burglary.
- **It prohibits probation** in lieu of prison for some sex offenses, including spousal rape and lewd or lascivious acts.
- **It eliminates early release credits** for some inmates convicted of certain sex offenses (for example, habitual sex offenders who have multiple convictions for specified felony sex offenses such as rape).
- **It extends parole** for specified sex offenders, including habitual sex offenders.

These changes would result in longer prison and parole terms for the affected offenders.

Finally, this measure increases court-imposed fees currently charged to offenders who are required to register as sex offenders.

Require GPS Devices for Registered Sex Offenders. Generally under this measure, individuals who have been convicted of a felony sex offense that requires registration and have been sent to prison would be monitored by GPS devices while on parole and for the remainder of their lives.

The CDCR would be authorized to collect fees from affected sex offenders to cover the costs of GPS monitoring. The amount of fees collected from individual offenders would vary depending on their ability to pay.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

Limit Where Registered Sex Offenders May Live.

This measure bars any person required to register as a sex offender from living within 2,000 feet (about two-fifths of a mile) of any school or park. A violation of this provision would be a misdemeanor offense, as well as a parole violation for parolees. The longer current law restriction of one-half mile (2,640 feet) for specified high-risk sex offenders on parole would remain in effect. In addition, the measure authorizes local governments to further expand these residency restrictions.

Change SVP Law. This measure generally makes more sex offenders eligible for an SVP commitment. It does this by (1) reducing from two to one the number of prior victims of sexually violent offenses that qualify an offender for an SVP commitment and (2) making additional prior offenses—such as certain crimes committed by a person while a juvenile—“countable” for purposes of an SVP commitment. The measure also requires that SVPs be committed by the court to a state mental hospital for an undetermined period of time rather than the renewable two-year commitment provided for under existing law. As under current law, once an offender had received a commitment as an SVP, he or she could later be released from a state hospital by the courts if (1) DMH determined the individual should no longer be held or (2) the offender successfully petitioned a court for release.

The measure also changes the standard for release of SVPs from a state mental hospital. For example, current law generally requires DMH to examine the mental condition of a sex offender each year. This measure specifically requires DMH, as part of this annual review, to examine whether a person being held in a state hospital as an SVP still meets the definition of an SVP, whether release is in the best interest of the person, and whether conditions could be imposed at time of release that would adequately protect the community. The impact of these changes on the number of SVPs is unknown.

FISCAL EFFECTS

This measure would have a number of significant fiscal effects on state and local agencies. The major fiscal effects are discussed below.

State Prison Costs. This measure would increase the prison population, resulting in a significant increase in prison operating costs. In particular, increasing sentences for sex offenders would result in some sex offenders being sentenced to and remaining in prison for longer periods, resulting in a larger prison population over time. This would result in costs of unknown magnitude, but likely to be in the tens of millions of dollars annually once fully implemented in less than ten years. It is also possible that this measure could eventually result in significant additional capital outlay costs to accommodate the increase in the inmate population.

The impact on the prison population of requiring sex offenders to wear GPS devices is unclear. On the one hand, GPS monitoring could increase the number of offenders who are identified and returned to prison for violating the conditions of their parole or committing new crimes. On the other hand, GPS monitoring could act as a deterrent for some offenders from committing new violations or crimes, hence reducing the likelihood that they return to prison. Whatever net impact GPS does have on returns to prison will also affect parole, court, and local law enforcement workloads and associated costs.

State Parole and GPS Monitoring Costs. The initiative’s provisions requiring specified registered sex offenders to wear GPS devices while on parole and for the remainder of their lives would result in additional costs for GPS equipment, as well as for supervision staff to track offenders in the community. These costs are likely to be in the several tens of millions of dollars annually within a few years. These costs would grow to about \$100 million annually after ten years, with costs continuing to increase significantly in subsequent years.

Because the measure does not specify whether the state or local governments would be responsible for monitoring sex offenders who have been discharged from state parole supervision, it is unclear whether local governments would bear some of these long-term costs. These costs likely would be partially offset by several million dollars annually in court and parolee fees authorized by the measure, though the exact amount would largely depend on offenders’ ability to pay.

★★★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

State SVP Program Costs. By making more sex offenders eligible for SVP commitments, this measure would result in increased state costs generally in the following categories:

- **Referral and Commitment Costs.** These costs are mainly associated with screening sex offenders referred by CDCR to DMH to determine if they merit a full evaluation, performing such evaluations, and providing expert testimony at court commitment hearings. This measure would increase these state costs probably by the low tens of millions of dollars annually. These costs would begin to occur in the initial year of implementation.
- **State Hospital Costs.** State costs to staff, maintain, and operate the mental hospitals could reach \$100 million annually within a decade and would continue to grow significantly thereafter. These costs would result from additional SVP commitments to state mental hospitals, as well as holding some sex offenders—who have completed their prison sentences—in state mental hospitals while they are being evaluated to determine whether they should receive an SVP commitment. (Some of the sex offenders undergoing evaluation as SVPs might also be held in county jails.)

Additional SVP commitments could eventually result in one-time capital outlay costs of up to several hundred million dollars for the construction of additional state hospital beds.

The additional operational and capital outlay costs would be partly offset in the long term. This is because the longer prison sentences for certain sex crimes required by this measure would delay SVP referrals and commitments to state mental hospitals. These costs would also be partly offset because the change from two-year commitments to commitments for an undetermined period of time is likely to reduce DMH's costs for SVP evaluations and court testimony. However, our analysis indicates that on balance the operating and capital outlay costs to the

state are likely to be substantially greater than the savings.

Court and Jail Fiscal Impacts. This measure would also affect state and local costs associated with court and jail operations. For example, the additional SVP commitment petitions resulting from this measure would increase court costs for hearing these civil cases. Also, county jail operating costs would increase to the extent that offenders who have court decisions pending on their SVP cases were held in county jail facilities. The provision making it unlawful for sex offenders to reside within 2,000 feet of a school or park could result in additional court and jail costs to prosecute violations of this provision.

Other provisions of this measure could result in savings for court and jail operations. The measure's provisions providing for the indeterminate commitment of SVPs, instead of the current two-year recommitment process, would reduce county costs for SVP commitment proceedings. Provisions of this measure would increase the length of time that some sex offenders spend in prison or mental hospitals. To the extent that this occurs, these offenders would likely commit fewer crimes in the community, resulting in some court and local criminal justice savings.

Given the potential for the factors identified above to offset each other, the net fiscal impact of this measure on state and local costs for the court and jail operations cannot be determined at this time.

Other Impacts on State and Local Governments. There could be other savings to the extent that offenders imprisoned for longer periods require fewer government services, or commit fewer crimes that result in victim-related government costs. Alternatively, there could be an offsetting loss of revenue to the extent that offenders serving longer prison terms would have become taxpaying citizens under current law. The extent and magnitude of these impacts is unknown.

ARGUMENT IN FAVOR OF PROPOSITION 83

Proposition 83—JESSICA’S LAW—will protect our children by keeping child molesters in prison longer; keeping them away from schools and parks; and monitoring their movements after they are released.

A rape or sexual assault occurs every two minutes. A child is abused or neglected every 35 seconds.

Over 85,000 registered sex offenders live in California. Current law does not provide Law Enforcement with the tools they need to keep track of these dangerous criminals. *Secrecy is the child molester’s biggest tool.* How can we protect our children if we don’t even know where the sex offenders are?

Proposition 83 is named after Jessica Lunsford, a 9-year-old girl who was kidnapped, assaulted, and buried alive by a convicted sex offender who had failed to report where he lived.

Proposition 83 will:

Electronically monitor, through GPS tracking, dangerous sex offenders for life once they finish their prison terms.

Require dangerous sex offenders to *serve their entire sentence* and not be released early for any reason.

Create PREDATOR FREE ZONES *around schools and parks* to prevent sex offenders from living near where our children learn and play.

Protect children from INTERNET PREDATORS by cracking down on people who use the Internet to sexually victimize children.

Require MANDATORY MINIMUM PRISON SENTENCES for dangerous child molesters and sex criminals.

Allow prosecutors to charge criminals who possess *child pornography with a felony.* (Current law treats child porn like trespassing or driving on a suspended license!)

Crime Victims and Law Enforcement leaders urge you to pass this much needed reform. Jessica’s Law is supported by:

- California State Sheriffs Association • California District Attorneys Association • California Organization of Police and Sheriffs • California Police Chiefs Association • Crime Victims United of California • California Women’s Leadership Association • California Sexual Assault Investigators Association • Women Prosecutors of California • Mothers Against Predators • Mark Lunsford, father of Jessica Lunsford • Numerous cities, counties, and local sheriffs, police chiefs, and elected officials.

Law enforcement professionals know there is a high risk that a sexual predator will commit additional sex crimes after being released from prison. Prop. 83 keeps these dangerous criminals in prison longer and keeps track of them once they are released.

Proposition 83 means *safer schools, safer parks, and safer neighborhoods.*

Proposition 83 means *dangerous child molesters will be kept away from our children* and monitored for life.

Proposition 83 means *predatory sex criminals will be punished* and serve their full sentence in every case.

Our families deserve the protection of a tough sex offender punishment and control law. The State Legislature has failed to pass Jessica’s Law time and time again. WE CANNOT WAIT ANOTHER DAY TO PROTECT OUR KIDS.

Vote YES on Proposition 83—JESSICA’S LAW—to protect our families and make California a safer place for all of us.

For more information, please visit www.JessicasLaw2006.com.

GOVERNOR ARNOLD SCHWARZENEGGER

DISTRICT ATTORNEY BONNIE DUMANIS

San Diego County

HARRIET SALARNO, President

Crime Victims United of California

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 83

The argument in favor of Proposition 83 ignores the sad lessons learned by other states. For example, the leading prosecutors’ association in Iowa, which once urged the adoption of laws similar to Proposition 83, now argues that those laws be repealed because they have proven to be *ineffective, a drain on crucial law enforcement resources, and far too costly to taxpayers.* California cannot afford to repeat that mistake.

The Proponents claim that the law is directed at “child molesters” and “dangerous sex offenders,” but *its most punitive and restrictive measures would apply far more broadly: even to those convicted of misdemeanor, nonviolent offenses.* They would also apply to people who have long led law-abiding lives for years after completing their sentences. More specifically, the Proposition would:

— Prohibit thousands of *misdemeanor offenders* from living near a school or park for the rest of their lives.

— Impose lifetime GPS monitoring on first-time offenders convicted of nonviolent offenses. *For example, a 19-year-old boy could be subjected to lifetime monitoring after a conviction for having sexual contact with his 17-year-old girlfriend.*

— Impose both lifetime residence restrictions and lifetime GPS monitoring on thousands of people who have lived law abiding lives for years or even decades.

These results are simply wrong.

Here’s the bottom line. California has laws that protect us from Sexually Violent Predators, and this Initiative could have focused on such dangerous persons. But, it does not! *Don’t be fooled.* VOTE NO ON PROPOSITION 83.

CARLEEN R. ARLIDGE, President

California Attorneys for Criminal Justice

ARGUMENT AGAINST PROPOSITION 83

Proposition 83 would cost taxpayers an estimated \$500 million but would not increase our children’s safety. Instead, by diluting law enforcement resources, the initiative would actually reduce most children’s security while increasing the danger for those most at risk:

—First, the initiative proposes to “monitor” every registered sex offender, on the misguided theory that each is likely to reoffend against “strangers.” But law enforcement experience shows that when sex registrants reoffend, their targets are usually members of their own household. *This Proposition would do nothing to safeguard children in their own homes, even though they are most at risk.*

—Second, the Proposition would not focus on the real problem—dangerous sex offenders—but would instead waste limited resources tracking persons who pose no risk. *The new law would create an expensive tracking system for thousands of registrants who were convicted of minor, nonviolent offenses, perhaps years or decades ago.* Law enforcement’s resources should be directed toward high risk individuals living in our neighborhoods.

Proposition 83 would have other dangerous, unintended consequences. The Proposition’s monitoring provisions would be least effective against those posing the greatest danger. Obviously, dangerous offenders would be the least likely to comply, so the proposed law would push the more serious offenders underground, where they would be *less effectively monitored by police.* In addition, by prohibiting sex offenders from living within 2,000 feet of a park or school, the initiative would force many offenders from urban to rural areas with smaller police forces. *A high concentration of sex offenders in rural neighborhoods will not serve public safety.*

Prosecutors in the State of Iowa know from sad experience that this type of residency restriction does not work. In 2001, Iowa adopted a similar law, but the association of county prosecutors that once advocated for that law now say that it “*does not provide the protection that was originally intended and that the cost of enforcing the requirement and unintended effects on families of offenders warrant replacing the restriction with more effective protective measures.*” (February 14, 2006, “Statement on Sex Offender Residency Restrictions in Iowa,” Iowa County Attorneys Association.) (To see the full Statement, go to: www.iowa-icaa.com/index.htm or www.cacj.org.)

A summary of the Iowa prosecutors’ findings shows why the Iowa law was a disaster and why Proposition 83 must be rejected:

- Residency restrictions do not reduce sex offenses against children or improve children’s safety.
- Residency restrictions will not be effective against 80 to 90% of sex crimes against children, because those crimes are committed by a relative or acquaintance of the child.
- Residency restrictions cause sex registrants to disappear from the registration system, harming the interest of public safety.
- Enforcing the residency restrictions is expensive and ineffective.
- The law also caused unwarranted disruption to the innocent families of ex-offenders.

For all of these reasons, vote “No” on Proposition 83!

CARLEEN R. ARLIDGE, President
 California Attorneys for Criminal Justice

83

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 83

Don’t be fooled by the false arguments the group of lawyers against Proposition 83 is making. They represent criminal defense attorneys who make their living defending criminals. Of course they don’t want tougher laws!

Let’s consider the FACTS:

- EVERY major POLICE, SHERIFF, and DISTRICT ATTORNEY organization in California strongly supports Jessica’s Law.
- EVERY major CRIME VICTIM organization in California strongly supports Jessica’s Law.
- Thousands of dangerous sexual predators are living in our communities and neighborhoods, and police do not have the tools they need to track them down.
- Jessica’s Law will KEEP TRACK OF FELONY SEX OFFENDERS after their release from prison by requiring them to wear a GPS tracking device at all times.
- Jessica’s Law will STOP dangerous sex offenders from living near schools and parks where they can stalk and prey on our children.

Your YES vote on Proposition 83—Jessica’s Law—will

give law enforcement the tools they need to stop sexual predators before they strike again.

The man who confessed to murdering nine-year-old Jessica Lunsford was a convicted sex offender who failed to register with local police. He took Jessica from her bedroom window, assaulted her for three days, and buried her alive only a few doors from her home.

GPS MONITORING COULD HAVE SAVED JESSICA’S LIFE! Tragically, it’s too late to save Jessica Lunsford. But it’s not too late to prevent countless other children from being attacked and murdered by sexual predators.

Vote YES on 83—Jessica’s Law.

MONTY HOLDEN, Executive Director
 California Organization of Police and Sheriffs (COPS)

STEVE IPSEN, President
 California Deputy District Attorneys Association

SHERIFF GARY PENROD, President
 California State Sheriffs Association

**WATER QUALITY, SAFETY AND SUPPLY.
 FLOOD CONTROL. NATURAL RESOURCE PROTECTION.
 PARK IMPROVEMENTS. BONDS. INITIATIVE STATUTE.**

- Funds projects relating to safe drinking water, water quality and supply, flood control, waterway and natural resource protection, water pollution and contamination control, state and local park improvements, public access to natural resources, and water conservation efforts.
- Provides funding for emergency drinking water, and exempts such expenditures from public contract and procurement requirements to ensure immediate action for public safety.
- Authorizes \$5,388,000,000 in general obligation bonds to fund projects and expenditures, to be repaid from the state's General Fund.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- State cost of about \$10.5 billion over 30 years to pay off both the principal (\$5.4 billion) and interest (\$5.1 billion) costs on the bonds. Payments of about \$350 million per year.
- Reduction in local property tax revenues of several million dollars annually.
- Unknown costs, potentially tens of millions of dollars per year, to state and local governments to operate or maintain properties or projects acquired or developed with these bond funds.

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

State Spending on Resources Programs. The state operates a variety of programs to conserve natural resources, protect the environment, provide flood control, and offer recreational opportunities for the public. The state also operates a program to plan for future water supplies, flood control, and other water-related requirements of a growing population. In addition to direct state expenditures, the state also provides grants and loans to local governments and nonprofit organizations for similar purposes. These programs support a variety of specific purposes, including:

- **Natural Resource Conservation.** The state has provided funds to purchase, protect, and improve natural areas—including wilderness and open-space areas; wildlife habitat; coastal wetlands; forests; and rivers, lakes, streams, and their watersheds.
- **Safe Drinking Water.** The state has made loans and grants to public water systems for facility improvements to meet state and federal safe drinking water standards.
- **Flood Control.** The state has funded the construction and repair of flood control projects in the state Central Valley flood control system. The state has also provided financial assistance to local agencies for local flood control projects in the Sacramento-San Joaquin River Delta and in other areas outside the Central Valley.
- **Other Water Quality and Water Supply Projects.** The state has made available funds for various other projects throughout the state that improve water quality and/or the reliability of water supplies. For example, the state has provided loans and grants to local agencies for the construction and implementation of wastewater treatment, water conservation, and water pollution reduction projects.

- **State and Local Parks.** The state operates the state park system and has provided funds to local governments for the acquisition, maintenance, and operation of local and regional parks.

Funding for Resources Programs. Funding for these various programs has traditionally come from General Fund revenues, federal funds, and general obligation bonds. Since 1996, voters have authorized approximately \$11 billion in general obligation bonds for various resources purposes. Of this amount, approximately \$1.4 billion is projected to remain available for new projects as of June 30, 2006, primarily for water-related purposes. Legislation enacted earlier this year provides \$500 million from the General Fund for emergency levee repairs and other flood control-related expenditures.

PROPOSAL

This initiative allows the state to sell \$5.4 billion in general obligation bonds for safe drinking water, water quality, and water supply; flood control; natural resource protection; and park improvements. (See “An Overview of State Bond Debt” on page 96 for basic information on state general obligation bonds.) Figure 1 (see next page) summarizes the purposes for which the bond money would be available for expenditure by various state agencies and for loans and grants, primarily to local agencies and nonprofit organizations. In order to spend most of these bond funds, the measure requires the Legislature to appropriate them in the annual budget act or other legislation.

FISCAL EFFECTS

Bond Costs. The cost of these bonds would depend on interest rates in effect at the time they

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

FIGURE 1

Proposition 84: Uses of Bond Funds

	Amount (In Millions)
Water Quality	\$1,525
<ul style="list-style-type: none"> • Integrated regional water management. 1,000 • Safe drinking water. 380 • Delta and agriculture water quality. 145 	
Protection of Rivers, Lakes, and Streams	\$928
<ul style="list-style-type: none"> • Regional conservancies. 279 • Other projects—public access, river parkways, urban stream restoration, California Conservation Corps. 189 • Delta and coastal fisheries restoration. 180 • Restoration of the San Joaquin River. 100 • Restoration projects related to the Colorado River. 90 • Stormwater pollution prevention. 90 	
Flood Control	\$800
<ul style="list-style-type: none"> • State flood control projects—evaluation, system improvements, flood corridor program. 315 • Flood control projects in the Delta. 275 • Local flood control subventions (outside the Central Valley flood control system). 180 • Floodplain mapping and assistance for local land use planning. 30 	
Sustainable Communities and Climate Change Reduction	\$580
<ul style="list-style-type: none"> • Local and regional parks. 400 • Urban water and energy conservation projects. 90 • Incentives for conservation in local planning. 90 	
Protection of Beaches, Bays, and Coastal Waters	\$540
<ul style="list-style-type: none"> • Protection of various coastal areas and watersheds. 360 • Clean Beaches Program. 90 • California Ocean Protection Trust Fund—marine resources, sustainable fisheries, and marine wildlife conservation. 90 	
Parks and Natural Education Facilities	\$500
<ul style="list-style-type: none"> • State park system—acquisition, development, and restoration. 400 • Nature education and research facilities. 100 	
Forest and Wildlife Conservation	\$450
<ul style="list-style-type: none"> • Wildlife habitat protection. 225 • Forest conservation. 180 • Protection of ranches, farms, and oak woodlands. 45 	
Statewide Water Planning	\$65
<ul style="list-style-type: none"> • Planning for future water needs, water conveyance systems, and flood control projects. 65 	
Total	\$5,388

★★★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

are sold and the time period over which they are repaid. The state would likely make principal and interest payments from the state's General Fund over a period of about 30 years. If the bonds were sold at an average interest rate of 5 percent, the cost would be about \$10.5 billion to pay off both the principal (\$5.4 billion) and interest (\$5.1 billion). The average payment would be about \$350 million per year.

Property Tax-Related Impacts. The initiative provides funds for land acquisition by governments and nonprofit organizations for various purposes. Under state law, property owned by government entities and by nonprofit organizations (under specified conditions) is exempt from property

taxation. To the extent that this initiative results in property being exempted from taxation due to acquisitions by governments and nonprofit organizations, local governments would receive reduced property tax revenues. We estimate these reduced property tax revenues would be several million dollars annually.

Operational Costs. State and local governments may incur additional costs to operate or maintain the properties or projects, such as new park facilities, that are purchased or developed with these bond funds. The amount of these potential additional costs is unknown, but could be tens of millions of dollars per year.

ARGUMENT IN FAVOR OF PROPOSITION 84

PROP. 84 PROTECTS CALIFORNIA'S WATER, LAND, AND COASTLINE.

California is growing rapidly, putting new pressure each year on our water resources, land, coast, and ocean. Prop. 84 protects these vital natural resources, which are essential to our health, our economy, and our quality of life.

YES on 84 PROTECTS DRINKING WATER QUALITY.

The water we drink and use to grow our food is vulnerable to contamination. Prop. 84 will:

- Remove dangerous chemicals from our water supply.
- Prevent future groundwater contamination.
- Prevent toxic runoff from flowing into our water.

Prop. 84 is essential to assure our communities **CLEAN, SAFE DRINKING WATER.**

Last year, there were more than 1,200 beach closing or advisory days in California. Prop. 84 will help prevent toxic pollution from storm drains from contaminating coastal waters and endangering public health.

YES on 84 ASSURES A RELIABLE WATER SUPPLY.

Prop. 84 will increase the reliability of California's water supply, through conservation and other programs. Every region in the state will benefit from this measure, while being given local control over specific projects to improve local water supply and water quality.

YES on 84 PROTECTS OUR COASTLINE AND CALIFORNIA'S NATURAL BEAUTY.

The measure will help clean and safeguard the ocean and beaches all along California's coastline, including the San Diego, Santa Monica, Monterey, and San Francisco Bays. It will also provide for safe neighborhood parks and protect the rivers and lakes in which we swim and fish.

YES on 84 PROTECTS AGAINST FLOODING.

An earthquake or a series of major storms could damage our state's levees, causing dangerous flooding and potentially leaving up to 23 million Californians without safe drinking water.

Efforts are underway to address this urgent threat to public safety and our water supply, but much more needs to be done. Flood control experts agree that Prop. 84 is an important step forward and complements ongoing efforts to improve flood control in California.

YES on PROP. 84 PROTECTS CALIFORNIA'S ECONOMY.

Clean beaches, rivers, and lakes are crucial to tourism, which contributes more than \$88 billion to the state economy each year and directly supports more than 900,000 jobs. An adequate supply of clean, safe water is also needed for California's farms and cities. Prop. 84 protects the water that our economy needs to thrive.

YES on 84 WILL NOT RAISE TAXES—AND INCLUDES TOUGH FISCAL SAFEGUARDS. Prop. 84:

- Is funded entirely from existing revenues and will *not* raise taxes.
- Will bring federal matching funds into California.
- Includes strict accountability provisions, including yearly independent audits and a citizen's oversight committee.

PLEASE JOIN US IN VOTING YES on 84.

Conservation groups, business organizations, and water districts across California support Prop. 84. For more information about the measure, please visit www.CleanWater2006.com. Your YES vote will help protect our health, economy, and quality of life now and in the years to come.

PROTECT CALIFORNIA'S DRINKING WATER, LAND, COAST, AND OCEAN. Vote YES on 84.

MARK BURGET, Executive Director
The Nature Conservancy

LARRY WILSON, Chair
Board of Directors, Santa Clara Valley Water District

E. RICHARD BROWN, Ph.D., Professor, School of Public Health, University of California, Los Angeles

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 84

PROPOSITION 84 CANNOT DELIVER ON ITS PROMISES

It will not benefit everyone, but everyone will pay for it through higher taxes or budget cuts for education, law enforcement, and health services.

NO on 84 PROTECTS THE PUBLIC TREASURY

Prop. 84 gives state bureaucrats the power to spend your money without effective oversight. This proposal eliminates protections against corruption and favoritism in current law and it bypasses our competitive bidding system. It prevents audits by the State Controller, the State Auditor, and even the Legislative Analyst. It exempts itself from the Administrative Procedures Act. Ask yourself why the proponents fear routine audits.

NO on 84 SENDS SACRAMENTO THE RIGHT MESSAGE: WE NEED A RELIABLE WATER SUPPLY

This water bond does not contain ANY funds for new reservoirs, aqueducts, or water storage! The water diversions mandated by this bond will actually take away drinking water from current sources.

NO on 84 PROTECTS YOU FROM SPECIAL INTERESTS

Bond funds can be awarded to the same private organizations that placed this initiative on the ballot, campaigned for it, and bought advertising to promote it. This is a perversion of the initiative process.

NO on 84 SAVES MONEY FOR REAL FLOOD CONTROL

Flood control is vital, but less than 15% of bond funds are dedicated to that purpose—and that money could be chewed up for studies, environmental planning, environmental mitigation, and bureaucratic administration. If bureaucratic reports could stop flooding, we'd no longer have a problem.

PLEASE JOIN US IN VOTING NO on 84.

BILL LEONARD, Member
California State Board of Equalization

RON NEHRING, Senior Consultant
Americans for Tax Reform

LEWIS K. UHLER, President
National Tax Limitation Committee

ARGUMENT AGAINST PROPOSITION 84

This measure should have been titled the “Special-Interest-Hidden-Agenda Bond” because it was placed on the ballot by special interests who don’t really want you to know where all your money is going to be squandered. Every special interest that helped get this boondoggle on the ballot will get a share of the taxpayers’ money, but ordinary taxpayers will get nothing from this bond but higher taxes for the next three decades.

This so-called “water bond” has no funding for dams or water storage! The authors set aside billions for bureaucratic studies, unnecessary protections for rats and weeds, and other frivolous projects, but they couldn’t find a single penny to build freshwater storage for our state’s growing population. You have to read the text to believe it.

Only a very small portion of the funds from this enormous bond would be available for repair and maintenance of our levees, but Proposition 1E was placed on the ballot by the Legislature to provide \$4,090,000,000 for these same levees. Common sense dictates that we should wait to see how that money is spent before we authorize another \$5,388,000,000 in new spending. It would be foolish to lock permanent spending formulas in place, as this initiative seeks to do, when we have no idea what our future needs will be once the funds from Proposition 1E are spent.

This bond represents a huge tax increase. The proponents seem eager to avoid this unpleasant fact, but voters need to understand that bond repayment takes priority over all

other government spending. Once issued, bonds cannot be cancelled, repudiated, or discharged in bankruptcy; they can only be repaid with tax revenues. Our state already has a \$7 billion budget deficit, and there is no way to pay for this gigantic bond without higher taxes.

Local projects should be funded at the local level. This statewide bond is designed to force people in one part of the state to pay for local projects on the other side of the state. Why should people in Redding pay for urban parks in San Diego? Why tax people in Los Angeles to pay for beetle habitat restoration in Sutter County? This is poor tax policy, and it was clearly designed to benefit the special interests that put this measure on the ballot. We should expect local communities to fund their own local parks and improvements; statewide bonds should be reserved for state parks, colleges, and other capital projects that benefit the whole state.

What is worse, this bond allows unelected, unaccountable state bureaucrats to spend billions of dollars, with little or no real public oversight. Sacramento bureaucrats and special interests will love having a slush fund that they can spend without the need for public hearings and public votes in the Legislature—but we cannot allow that to happen.

Please join me in voting NO on Proposition 84.

BILL LEONARD, Member
California State Board of Equalization

84

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 84

The opponent’s argument is simply wrong.

Proposition 84 provides clean water and protects our coast *without raising taxes*. It is supported by a broad, bipartisan coalition of public interest and business groups including the League of Women Voters of California, Los Angeles Area Chamber of Commerce, and The Nature Conservancy.

Here are the facts.

- Prop. 84 funds crucial projects needed to assure reliable supplies of clean, safe drinking water.
- Prop. 84 protects all of California’s waters: our rivers, lakes, streams, beaches, and bays.
- Prop. 84 includes strict financial accountability, including a citizen oversight committee, annual independent audits, and full public disclosure.
- Prop. 84 protects our families from toxic pollution, floods, and other hazards through critical public safety projects not funded by other measures.

YES on 84: BENEFITS ALL CALIFORNIANS

Prop. 84 funds local priorities to improve water quality and supply in every region of the state.

YES on 84: SUPPORTED BY CALIFORNIA’S LOCAL WATER DISTRICTS

Proposition 84 is so important that water districts that provide drinking water to more than 23 million Californians all urge YES on 84.

YES on 84: PROTECTS PUBLIC HEALTH

Prop. 84 removes dangerous contaminants from drinking water, cleans up toxic chemicals that contaminate the fish we eat, and keeps dangerous polluted runoff from flowing onto our beaches and into our coastal waters.

YES on 84 protects our land, water, *and* public health, for our families and for future generations.

Join local water districts, conservation organizations, business groups, and public health experts in voting YES on 84.

ERICH PFUEHLER, California Director
Clean Water Action

JEFF KIGHTLINGER, General Manager
Metropolitan Water District of Southern California

KAITILIN GAFFNEY, Conservation Director
The Ocean Conservancy

**WAITING PERIOD AND PARENTAL NOTIFICATION BEFORE
TERMINATION OF MINOR'S PREGNANCY.
INITIATIVE CONSTITUTIONAL AMENDMENT.**

- Amends California Constitution to prohibit abortion for unemancipated minor until 48 hours after physician notifies minor's parent or legal guardian, except in medical emergency or with parental waiver.
- Permits minor to obtain court order waiving notice based on clear and convincing evidence of minor's maturity or best interests.
- Mandates various reporting requirements, including reports from physicians regarding abortions performed on minors.
- Authorizes monetary damages against physicians for violation.
- Requires minor's consent to abortion, with certain exceptions.
- Permits judicial relief if minor's consent coerced.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Potential unknown net state costs of several million dollars annually for health and social services programs, court administration, and state health agency administration combined.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

In 1953, a state law was enacted that allowed minors to receive, without parental consent or notification, the same types of medical care for a pregnancy that are available to an adult. Based on this law and later legal developments related to abortion, minors were able to obtain abortions without parental consent or notification.

In 1987, the Legislature amended this law to require minors to obtain the consent of either a parent or a court before obtaining an abortion. However, due to legal challenges, the law was never implemented, and the California Supreme Court ultimately struck it down in 1997. Consequently, minors in the state currently receive abortion services to the same extent as adults. This includes minors in various state health care programs, such as the Medi-Cal health care program for low-income individuals.

PROPOSAL**Notification Requirements**

This proposition amends the California Constitution to require, with certain exceptions, a physician (or his or her representative) to *notify* the parent or legal guardian of a pregnant minor at least 48 hours before performing an abortion involving that minor. (This measure does not require a physician or a minor to obtain the consent of a parent or guardian.) This measure applies only to cases involving an "unemancipated" minor. The proposition identifies an unemancipated minor as being a female under the age of 18 who has not entered into a valid marriage, is not on active duty in the armed services of the United States, and has not been declared free from her parents' or guardians' custody and control under state law.

A physician would provide the required notification in either of the following two ways:

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

Personal Written Notification. Written notice could be provided to the parent or guardian personally—for example, when a parent accompanied the minor to an office examination.

Mail Notification. A parent or guardian could be sent a written notice by certified mail so long as a return receipt was requested by the physician and delivery of the notice was restricted to the parent or guardian who must be notified. An additional copy of the written notice would have to be sent at the same time to the parent or guardian by first-class mail. Under this method, notification would be presumed to have occurred as of noon on the second day after the written notice was mailed.

Exceptions to Notification Requirements

The measure provides the following exceptions to the notification requirements:

Medical Emergencies. The notification requirements would not apply if the physician certifies in the minor's medical record that the abortion is necessary to prevent the mother's death or that a delay would "create serious risk of substantial and irreversible impairment of a major bodily function."

Waivers Approved by Parent or Guardian. A minor's parent or guardian could waive the notification requirements and the waiting period by completing and signing a written waiver form for the physician. The parent or guardian must specify on this form that the waiver would be valid either (1) for 30 days, (2) until a specified date, or (3) until the minor's 18th birthday. The form would need to be notarized unless the parent or guardian delivered it personally to the physician.

Waivers Approved by Courts. The pregnant minor could ask a juvenile court to waive the

notification requirements. A court could do so if it finds that the minor is sufficiently mature and well-informed to decide whether to have an abortion or that notification would not be in the minor's best interest. If the waiver request is denied, the minor could appeal that decision to an appellate court.

A minor seeking a waiver would not have to pay court fees, would be appointed a temporary guardian and provided other assistance in the case by the court, and would be entitled to an attorney appointed by the court. The identity of the minor would be kept confidential. The court would generally have to hear and issue a ruling within three business days of receiving the waiver request. The appellate court would generally have to hear and decide any appeal within four business days.

The proposition also requires that, in any case in which the court finds evidence of physical, sexual, or emotional abuse, the court must refer the evidence to the county child protection agency.

State Reporting Requirements

Physicians are required by this proposition to file a form reporting certain information to the state Department of Health Services (DHS) within one month after performing an abortion on a minor. The DHS form would include the date and facility where the abortion was performed, the minor's month and year of birth, and certain other information about the minor and the circumstances under which the abortion was performed. The forms that physicians would file would not identify the minor or any parent or guardian by name. Based on these forms, DHS would compile certain statistical information relating to abortions performed on minors in an annual report that would be available to the public.

The courts are required by the measure to report annually to the state Judicial Council the number

PROP 85 WAITING PERIOD AND PARENTAL NOTIFICATION BEFORE TERMINATION OF MINOR'S PREGNANCY. INITIATIVE CONSTITUTIONAL AMENDMENT.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

of petitions filed and granted or denied. The reports would be publicly available. The measure also requires the Judicial Council to prescribe a manner of reporting that ensures the confidentiality of any minor who files a petition.

Penalties

Any person who performs an abortion on a minor and who fails to comply with the provisions of the measure would be liable for damages in a civil action brought by the minor, her legal representative, or by a parent or guardian wrongfully denied notification. Any person, other than the minor or her physician, who knowingly provides false information that notice of an abortion has been provided to a parent or guardian would be guilty of a misdemeanor punishable by a fine.

Relief From Coercion

The measure allows a minor to seek help from the juvenile court if anyone attempts to coerce her to have an abortion. A court would be required to consider such cases quickly and could take whatever action it found necessary to prevent coercion.

FISCAL EFFECTS

The fiscal effects of this measure on state government would depend mainly upon how these new requirements affect the behavior of minors regarding abortion and childbearing. Studies of similar laws in other states suggest that the effect of this measure on the birthrate for California minors would be limited, if any. If it were to increase the birthrate for California minors, the net cost to the state would probably not exceed several million dollars annually for health and social services programs, the courts, and state administration combined. We discuss the potential major fiscal effects of the measure below.

Savings and Costs for State Health Care Programs

Studies of other states with laws similar to the one proposed in this measure suggest that it could result in a reduction in the number of abortions obtained by minors within California. This reduction in abortions performed in California might be offset to an unknown extent by an increase in the number of out-of-state abortions obtained by California minors. Some minors might also avoid pregnancy as a result of this measure, further reducing the number of abortions for this group. If, for either reason, this proposition reduces the overall number of minors obtaining abortions in California, it is also likely that fewer abortions would be performed under the Medi-Cal Program and other state health care programs that provide medical services for minors. This would result in unknown state savings for these programs.

This measure could also result in some unknown additional costs for state health care programs. If this measure results in a decrease in minors' abortions and an increase in the birthrate of children in low-income families eligible for publicly funded health care, the state would incur additional costs. These could include costs for medical services provided during pregnancy, deliveries, and follow-up care.

The net fiscal effect, if any, of these or other related cost and savings factors would probably not exceed costs of a few million dollars annually to the state. These costs would not be significant compared to total state spending for programs that provide health care services. The Medi-Cal Program alone is estimated to cost the state \$13.8 billion in 2006–07.

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

State Health Agency Administrative Costs

The DHS would incur first-year state costs of up to \$350,000 to develop the new forms needed to implement this measure, establish the physician reporting system, and prepare the initial annual report containing statistical information on abortions obtained by minors. The ongoing state costs for DHS to implement this measure could be as much as \$150,000 annually.

Juvenile and Appellate Court Administrative Costs

The measure would result in increased state costs for the courts, primarily as a result of the provisions allowing minors to request a court waiver of the notification requirements. The magnitude of these costs is unknown, but could reach several million dollars annually, depending primarily on the number of minors that sought waivers. These costs would not be significant compared to total state expenditures for the courts, which are estimated to be \$2 billion in 2006–07.

Social Services Program Costs

If this measure discourages some minors from obtaining abortions and increases the birthrate among low-income minors, expenditures for cash assistance and services to needy families would increase under the California Work Opportunity and Responsibility to Kids (CalWORKs) program. The magnitude of these costs, if any, would probably not exceed a few million dollars annually. The CalWORKs program is supported with both state and federal funds, but because all CalWORKs federal funds are capped, these additional costs would probably be borne by the state. These costs would not be significant compared to total state spending for CalWORKs, which is estimated to cost about \$5 billion in state and federal funds in 2006–07. Under these circumstances, there could also be a minor increase in child welfare and foster care costs for the state and counties.

ARGUMENT IN FAVOR OF PROPOSITION 85

IN CALIFORNIA, a daughter under 18 can't get aspirin from the school nurse, get a flu shot, or have a tooth pulled without a parent knowing.

BUT, UNBELIEVABLY, surgical or chemical abortions can be secretly performed on minor girls—even 12-year-olds—without parents' knowledge.

PARENTS are then not prepared to help young daughters with the serious physical, emotional, or psychological complications which may result from an abortion or to protect their daughters from further sexual abuse, exploitation, and pregnancies.

A study of over 46,000 pregnancies of SCHOOL-AGE GIRLS in California found that over two-thirds were impregnated by ADULT MEN whose mean age was 22.6 years.

Investigations have shown that secret abortions on minors in California are RARELY REPORTED to child protective services although these pregnancies are evidence of statutory rape and sexual abuse. This leaves these girls vulnerable to further SEXUAL ABUSE, RAPES, pregnancies, abortions, and sexually transmitted diseases.

That's why more than ONE MILLION SIGNATURES were submitted to allow Californians to vote on the "Parents' Right to Know and Child Protection" / Proposition 85.

PROP. 85 will require that doctors notify a parent or guardian at least 48 hours before performing abortions on minor daughters.

PARENTS AND DAUGHTERS in more than 30 other states have benefited for years from laws like Prop. 85. Many times, after such laws pass, there have been substantial reductions in pregnancies and abortions among minors.

When parents are involved and minors cannot anticipate secret access to free abortions they more often avoid the reckless behavior which leads to pregnancies. Older men, including Internet predators, are deterred from impregnating minors when secret abortions are not available to conceal their crimes.

If she chooses, a minor may petition juvenile court to permit an abortion without notifying a parent. She can request a lawyer to help her. If the evidence shows she is mature enough to decide for herself or that notifying a parent is not in her best interests, the judge will grant her petition. The proceedings must be confidential, prompt, and free. She may also seek help from juvenile court if she is being coerced by anyone to consent to an abortion.

POLLS SHOW most people support parental notification laws. They know that a minor girl—pregnant, scared, and possibly abandoned or pressured by an older boyfriend—NEEDS the advice and support of a parent.

PARENTS have invested more attention and love in raising their daughter, know her personal and medical history better, and care more about her future than STRANGERS employed by abortion clinics PROFITING from performing many abortions on minors.

A minor still has a legal right to obtain or refuse an abortion, but a parent can help her understand all options, obtain competent care, and provide medical records and history.

An informed parent can also get PROMPT CARE for hemorrhage, infections, and other possibly fatal complications.

VOTE "YES" on PROPOSITION 85 TO ALLOW PARENTS TO CARE FOR AND PROTECT THEIR MINOR DAUGHTERS' WELL-BEING, HEALTH, and SAFETY!

www.YESon85.net

WILLIAM P. CLARK, California Supreme Court Justice (Ret.)
MARY L. DAVENPORT, M.D., Fellow
American College of Obstetricians and Gynecologists
PROFESSOR JOSEPH R. ZANGA, M.D., FAAP, Past President
American Academy of Pediatrics

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 85

NO LAW CAN FORCE FAMILIES TO COMMUNICATE.

Of course, parents rightfully want to be involved in their teenagers' lives, but in the REAL WORLD, some teenagers live in dangerous homes. Some parents are violent or sexually abuse their daughters.

IN THE REAL WORLD, Proposition 85:

- WON'T STOP CHILD PREDATORS. Backers are exploiting our fear of predators to advance their own political agenda.
- WON'T REDUCE TEEN PREGNANCY.
- PUTS TEENS AT RISK. Scared, pregnant teens from abusive families won't go to court . . . but they may resort to dangerous back-alley abortions—or even consider suicide.
- MEANS DANGEROUS DELAYS IN CRITICAL MEDICAL CARE. *The New England Journal of Medicine* reported that, after a law like this took effect, some pregnant teens waited months to seek care, getting riskier second trimester abortions.

The California Supreme Court found "overwhelming" evidence that similar laws in other states cause real harm to teenagers and families.

Don't be misled.

For ninety years, Planned Parenthood has been a trusted provider of quality healthcare. Caring staff counsel pregnant teens to talk to parents—and most do.

Planned Parenthood and other family planning clinics COMPLY WITH ALL CALIFORNIA LAWS ON CHILD ABUSE REPORTING. To charge NOW that they protect criminals is ridiculous. DHHS's Office of Inspector General's recent investigation didn't find evidence of a single reporting violation.

The *San Jose Mercury News* says Proposition 85 is "PART OF A LARGER STRATEGY TO CHIP AWAY AT LEGALIZED ABORTION IN THE UNITED STATES."

Prop. 85 threatens teens . . . and a whole lot more.

VOTE NO.

DONNA W. CHIPPS, Executive Vice President
League of Women Voters of California
BO GREAVES, M.D., President
California Academy of Family Physicians
JEANNE A. CONRY, M.D., Vice Chair
The American College of Obstetricians and Gynecologists,
District IX California

WAITING PERIOD AND PARENTAL NOTIFICATION BEFORE TERMINATION OF MINOR'S PREGNANCY.

★★★ INITIATIVE CONSTITUTIONAL AMENDMENT.

PROP
85

ARGUMENT AGAINST PROPOSITION 85

DOCTORS AND NURSES, including the California Medical Association, the California Nurses Association, American Academy of Pediatrics-California District, California Academy of Family Physicians, and the American College of Obstetricians and Gynecologists-District IX California, STRONGLY OPPOSE PROPOSITION 85.

They understand that while PARENTS RIGHTFULLY WANT TO BE INVOLVED IN THEIR TEENAGERS' LIVES, *in the real world*, SOME California TEENAGERS COME FROM HOMES where they can't talk to their parents, *where there is violence*, or WHERE A FAMILY MEMBER HAS SEXUALLY ABUSED THEM.

THESE TEENS CAN'T GO TO THEIR PARENTS. They fear being kicked out of their homes, beaten, or worse. *Proposition 85 forces these teens to delay critical medical care or turn to self-induced or illegal back-alley abortions.* Some will go across the border; some will suffer serious injuries or even consider suicide.

PROPOSITION 85 PUTS THE HEALTH AND SAFETY OF TEENAGERS AT RISK.

No law can mandate *good* family communication. *The real answer to teen pregnancy and abortion is strong, caring families and comprehensive sex education, including abstinence.* But sadly, not all California teens live in homes with strong, caring families.

For OUR MOST VULNERABLE TEENAGERS—*those who most need protection*—PROPOSITION 85 PUTS THEM IN HARM'S WAY OR FORCES THEM TO GO TO COURT.

FORCING A SCARED, PREGNANT TEENAGER who can't go to her parents INTO CALIFORNIA'S OVERCROWDED COURT SYSTEM WON'T WORK—AND COULD CAUSE TEENS MORE HARM. Courts are already backlogged, there's a lot of red tape, and they are hard to navigate, even for adults.

Think about it. The teen is scared, pregnant, her family might be abusive. SHE DOESN'T NEED A JUDGE. SHE NEEDS A COUNSELOR AND GOOD MEDICAL CARE—WITHOUT DELAY.

Proposition 85's new bureaucratic rules WON'T GUARANTEE that parents are notified. Who will sign for the mail? What happens when the mail is delayed, or the parents aren't home, or the teen intercepts the letter?

The real answer to teen pregnancy is prevention and caring families—NOT NEW LAWS THAT ENDANGER OUR DAUGHTERS.

AND PROPOSITION 85 IS NOT ABOUT PROTECTING TEENS FROM OLDER MEN AND SEXUAL PREDATORS. *Clinics already provide counseling about responsible behavior and report illegal activities.*

Proposition 85 won't reduce teen pregnancy rates, can't force families to communicate, is complicated and unworkable . . . and is not about predators—BUT IT WILL PUT GENERATIONS OF CALIFORNIA'S TEENAGERS AT RISK.

WE ALL MUST CARE *enough* about Proposition 85 to VOTE NO because DEFEATING Prop. 85 is about KEEPING OUR DAUGHTERS SAFE *and* PROTECTING THE RIGHT TO CHOOSE.

SUPPORTERS of Proposition 85—including the Traditional Values Coalition, Evangelicals for Social Action, and Right to Life of Central California—ARE THE SAME PEOPLE WHO WANT TO OVERTURN *ROE v. WADE* and BAN ALL ABORTIONS. Despite what they say, Proposition 85 ISN'T ABOUT PARENTAL RIGHTS; IT'S ABOUT *THEIR* POLITICAL AGENDA.

Join PARENTS, DOCTORS, NURSES, PLANNED PARENTHOOD, and THE LEAGUE OF WOMEN VOTERS OF CALIFORNIA and VOTE NO on 85. For more information about REAL TEEN SAFETY, VISIT OUR WEBSITE, www.noon85.com. VOTE NO ON PROP. 85.

JACK LEWIN, M.D., CEO, California Medical Association

ROBERT L. BLACK, M.D.
American Academy of Pediatrics, California District

KATHY KNEER, CEO
Planned Parenthood Affiliates of California

85

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 85

When parents learn their daughter is pregnant, *ALMOST ALL RESPOND WITH LOVE AND SUPPORT.*

PROPOSITION 85 OFFERS CLEAR BENEFITS TO YOUNG GIRLS:

- The parent can assist her daughter in selecting a doctor. Many abortion clinics employ doctors who have been *disciplined by the medical board* for *INCOMPETENCE, NEGLIGENCE, CRIMINAL CONVICTIONS, OR SEXUAL MISCONDUCT.* Many have been *cited by health officials for UNSAFE CONDITIONS.*
- An informed parent can *respond quickly* to post-abortion complications. Abortion complications can result in permanent injury, even death. Teens who have *secret abortions* often *delay seeking treatment.* *PARENTS WHO DON'T KNOW, CAN'T HELP.*
- Parents who learn their daughters are *victims of sexual assaults* can *intervene to protect them.* Many abortion providers *CHOOSE NOT TO REPORT SEXUAL ABUSE, abandoning these girls to FURTHER SEXUAL ABUSE.* www.ChildPredators.com

In the rare case of familial abuse, a court will permit a minor to obtain an abortion without notifying a parent—then *notify child protective services* so she can be helped, *NOT*

LEFT VULNERABLE TO FURTHER HARM.

A parent of two young teenage daughters, GOVERNOR ARNOLD SCHWARZENEGGER said it would be “. . . *THE ULTIMATE OF BEING OUTRAGED . . .*” if someone took *his* daughter for a *secret abortion.*

OVER THIRTY STATES already have laws like *PROPOSITION 85*, and THEIR EXPERIENCE SHOWS *THESE LAWS REDUCE MINORS' PREGNANCY AND ABORTION RATES WITHOUT DANGER AND HARM TO MINORS.*

Currently, the state *PAYS FOR SECRET ABORTIONS FOR MINOR GIRLS. PUT PARENTS IN CHARGE, NOT THE GOVERNMENT!*

VOTE “YES” on PROPOSITION 85! PROTECT OUR DAUGHTERS! See: www.YESon85.net

PROFESSOR TERESA STANTON COLLETT, J.D.
National Authority on Parental Notification and Involvement Laws

JANE E. ANDERSON, M.D., FAAP, Clinical Professor of Pediatrics

PROFESSOR JOSEPH R. ZANGA, M.D., FAAP, Past President American Academy of Pediatrics

OFFICIAL TITLE AND SUMMARY ★ ★ ★

Prepared by the Attorney General

**TAX ON CIGARETTES.
INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.**

- Imposes additional 13 cent tax on each cigarette distributed (\$2.60 per pack), and indirectly increases tax on other tobacco products.
- Provides funding to qualified hospitals for emergency services, nursing education and health insurance to eligible children.
- Revenue also allocated to specified purposes including tobacco-use-prevention programs, enforcement of tobacco-related laws, and research, prevention, treatment of various conditions including cancers (breast, cervical, prostate, colorectal), heart disease, stroke, asthma and obesity.
- Exempts recipient hospitals from antitrust laws in certain circumstances.
- Revenue excluded from appropriation limits and minimum education funding (Proposition 98) calculations.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Increase in new state tobacco excise tax revenues of about \$2.1 billion annually by 2007–08, declining slightly annually thereafter. Those revenues would be spent for various health programs, children's health coverage, and tobacco-related programs.
- Unknown net state costs potentially exceeding \$100 million annually after a few years due to provisions simplifying state health program enrollment rules and creating a new pilot program for children's health coverage.
- Unknown, but potentially significant, savings to the state Medi-Cal Program and counties from a shift of children from other health care coverage to the Healthy Families Program (HFP); potential state costs that could be significant in the long term for ongoing support of expanded HFP enrollment.
- Unknown, but potentially significant, savings in state and local government public health care costs over time due to various factors, including an expected reduction in consumption of tobacco products.

86

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND**Tobacco Taxes**

Current state law imposes certain taxes directly on cigarettes and other tobacco products that are known as excise taxes. Excise taxes are taxes collected on selected goods or services. Currently, the excise taxes total 87 cents per pack of cigarettes (with a similar tax on other types of tobacco products). The total tax of 87 cents per pack consists of:

- 50 cents to support early childhood development programs, enacted by the voters as Proposition 10 in 1998.
- 25 cents to support tobacco education and prevention efforts, tobacco-related disease research programs, health care services for low-income uninsured persons, and environmental protection and recreational programs, enacted by the voters as Proposition 99 in 1988.
- 10 cents for the state General Fund.
- 2 cents to support research related to breast cancer and breast cancer screening programs for uninsured women.

Current taxes on cigarettes and other tobacco products are estimated to raise about \$1.1 billion in 2006–07.

★★★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

Children’s Health Care Coverage

Medi-Cal. The Medi-Cal Program (the federal Medicaid Program in California) provides health care services to low-income persons, including eligible children (depending on the age of the child). Families with incomes up to 133 percent of the federal poverty level (FPL) (about \$27,000 per year for a family of four) are generally eligible for coverage. The program is administered by the state Department of Health Services (DHS).

Under the Medicaid Program, matching federal funds are available for the support of comprehensive medical services for United States citizens and to “qualified aliens”—that is, immigrants who are permanent residents, refugees, or a member of certain other groups granted the legal right to remain in the United States. Federal matching funds are also available for nonqualified aliens, but only for emergency medical services.

The Medi-Cal Program currently serves about 3.2 million adults and 3.2 million children.

Healthy Families. The Healthy Families Program (HFP) offers health insurance to eligible children in families who generally have incomes below 250 percent of FPL (about \$50,000 per year for a family of four) who do not qualify for Medi-Cal. (Children in some families with higher incomes are also eligible.) Funding is generally on a two-to-one federal/state matching basis. Children in HFP must be eligible United States citizens or qualified aliens. The HFP is administered by the Managed Risk Medical Insurance Board (MRMIB).

The HFP provides medical coverage for about 781,000 children.

Local Health Coverage Programs. The County Health Initiative Matching (CHIM) Fund program, which is administered by MRMIB and counties, provides health coverage for children in families with an income between 250 percent and 300 percent of FPL (between \$50,000 and \$60,000 per year for a family of four). The CHIM program relies on county funds as the match required to draw down federal

funds to pay for this health coverage. This program has a caseload of about 3,000 children.

In addition to the CHIM program, some counties have established their own health coverage programs for children that are ineligible for Medi-Cal or HFP. These programs are primarily supported with local funding. These programs serve about 69,000 children.

PROPOSAL

This measure increases excise taxes on cigarettes (and, as discussed below, indirectly on other tobacco products) to provide funding for hospitals for emergency services as well as programs to increase access to health insurance for children, expand nursing education, support various new and existing health and education activities, curb tobacco use and regulate tobacco sales. Major provisions of the measure are described below.

New State Tobacco Tax Revenues

A pack of cigarettes now costs roughly \$4.00 in California, including 87 cents in excise taxes. This measure increases the existing excise tax on cigarettes by \$2.60 per pack effective January 2007. Existing state law requires the Board of Equalization (BOE) to increase taxes on other tobacco products—such as loose tobacco and snuff—in an amount equivalent to any increase in the tax on cigarettes. Thus, this measure would also result in a comparable increase in the excise tax on other tobacco products. All of the additional tobacco revenues (including those on other tobacco products) would be used to support various new and existing programs specified in this measure.

How Additional Tobacco Revenues Would Be Spent

Revenues from the excise tax increase would generally be deposited in a new fund called the Tobacco Tax of 2006 Trust Fund and would be allocated for various specified purposes, as shown in Figure 1 later in this analysis.

86

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

Backfill of Proposition 10 Programs. An unspecified amount of the additional excise tax revenues would be used to fully backfill Proposition 10 programs for early childhood development for a loss of funding that would result from the enactment of the new tax measure. This is because the tax increases contained in this measure are (1) likely to result in reduced sales of tobacco products and (2) could result in more sales of tobacco products for which taxes would not be collected, such as for smuggled products and out-of-state sales. This, in turn, would reduce the amount of revenues collected through the excise taxes imposed under Proposition 10. The amount of backfill payments needed to offset any loss of funding for the Proposition 10 program would be determined by BOE.

Health Treatment and Services Account. Under the measure, 52.75 percent of the funds that remain after providing the Proposition 10 backfill funding would be allocated to a Health Treatment and Services Account. This funding would be used for the purposes outlined below:

- **Hospital Funding.** Nearly three-fourths of the funds in this account would be allocated to hospitals to pay their unreimbursed costs for emergency services and to improve or expand emergency services, facilities, or equipment. Allocations would be based largely on the number of persons that hospitals treat in their emergency departments and their costs for providing health care for patients who are poor. Private hospitals and certain public hospitals, including those licensed to the University of California (UC), would be eligible to receive funding. Hospitals licensed to other state agencies or the federal government would not be eligible for funding.
- **Nursing Education Programs.** These funds would be used to expand nursing education programs in UC, California State University, community college, and privately operated nursing education programs.

- **Additional Allocations.** Funding would be allocated for the support of nonprofit community clinics; to help pay for uncompensated health care for uninsured persons provided by physicians; for college loan repayments to encourage physicians to provide medical services to low-income persons in communities with insufficient physicians; to provide prostate cancer treatment services; and for services to assist individuals to quit smoking.

Health Maintenance and Disease Prevention Account. Under the measure, 42.25 percent of the funds that remained after providing the Proposition 10 backfill funding would be allocated to a Health Maintenance and Disease Prevention Account. This funding would be used for the purposes outlined below:

- **Children's Health Coverage Expansion.** Almost one-half of these funds would be allocated to expand the HFP to provide health coverage to include (1) children from families with incomes between 250 percent and 300 percent of the FPL and (2) children from families with incomes up to 300 percent of the FPL who are undocumented immigrants or legal immigrants not now eligible for HFP. This measure requires MRMIB and DHS to simplify the procedures for enrolling and keeping children in HFP and Medi-Cal coverage and creates a pilot project to provide coverage for uninsured children in families with incomes above 300 percent of the FPL.
- **Tobacco-Related Programs.** These funds would support media advertising and public relations campaigns, grants to local health departments and other local organizations, and education programs for school children to prevent and reduce smoking. Funding would also go to state and local agencies for enforcing laws and court settlements which regulate and tax the sale of tobacco products. Also, some funds would be used to evaluate the effectiveness of these tobacco control programs.
- **Health and Education Programs.** Part of these funds would be set aside for various new or

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

existing health programs related to certain diseases or conditions, including colorectal, breast, and cervical cancer; heart disease and stroke; obesity; and asthma.

Health and Disease Research Account. Under the measure, 5 percent of the funds that remained after providing the backfill funding discussed above would be allocated to a Health and Disease Research Account. This funding would be used to support medical research relating to cancer in general and breast and lung cancer in particular. In addition, it would support research into tobacco-related diseases, as well as the effectiveness of tobacco control efforts. Part of these funds would be used to support a statewide cancer registry, a state program that collects data on cancer cases.

Other Major Provisions

In addition to the provisions that raise tobacco excise taxes and spend these same revenues, this measure contains a number of other significant provisions, which are described below.

Existing Funding for Physician Payments Continued. In recent years, the state has spent almost \$25 million per year in Proposition 99 funds for allocations to counties to reimburse physicians for uncompensated medical care for persons who are poor. This measure requires that this same level of Proposition 99 funds be allocated annually in the future for this purpose.

Expenditure Rules. The funds allocated under this measure would not be appropriated through the annual state budget act and thus would not be subject to change by actions of the Legislature and Governor. The additional revenues would generally have to be used for the services noted above and could not take the place of existing state or local spending. The state and counties could not borrow these new revenues to use for other purposes, but they could be used to draw down additional federal funds. Contracts to implement

some of the new programs funded by this measure would be exempted from state contracting rules for the first five years.

Oversight Provisions. This measure requires DHS to prepare an annual report describing the programs that received additional excise tax funding and how that funding was used. This information would be made available to the public by DHS on its Web site. Programs receiving these funds would be subject to audit. New state committees would be established to oversee the expansion of children’s health coverage and antiobesity programs.

Hospital Charges and Bill Collections. Hospitals that are allocated funds under this measure for emergency and trauma care services would be subject to limits on what they could charge to certain patients in families with incomes at or below 350 percent of the FPL. These hospitals would also have to adopt written policies on their bill collection practices and, under certain circumstances, could not send unpaid bills to collection agencies, garnish wages, or place liens on the homes of patients as a means of collecting unpaid hospital bills.

Coordination of Medical Services by Hospitals. Subject to the approval of certain local officials, hospitals receiving funding under this measure would be allowed to coordinate certain medical services, including emergency services, with other hospitals. For example, hospitals would be permitted to jointly share the costs of ensuring the availability of on-call physicians who provide emergency services. The measure seeks to exempt such coordination of emergency services from antitrust laws that might limit or prohibit such coordination efforts.

FISCAL EFFECTS

This measure would have a number of fiscal effects on state and local governments. The major fiscal effects we have identified are discussed below.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

Impacts on State and Local Revenues

Revenues Affected by Consumer Response. Our revenue estimates assume that the excise tax increase of \$2.60 per pack is passed along to consumers by the distributors of tobacco products who actually pay the excise tax. In other words, we assume that the prices of tobacco products would be raised to include the excise tax increase. This would result in various consumer responses. The price increase is likely to result in consumers reducing the quantity of taxable tobacco products that they purchase. Consumers could also shift their purchases so that taxes would not be collected on tobacco products, such as through Internet purchases or purchases of smuggled products.

The magnitude of these consumer responses is uncertain given the size of the proposed tax increase. There is substantial evidence regarding the response of consumers to small and moderate tax increases on tobacco products in terms of reduced tobacco consumption. As a result, for small-to-moderate increases in price, the revenue impacts can be estimated with a reasonable degree of confidence. However, the increase in taxes proposed in this measure is substantially greater than that experienced previously. As a result, we believe that revenue estimates based on traditional assumptions regarding this consumer response would likely be overstated. Therefore, our revenue estimates below assume a greater consumer response in terms of reduced tobacco consumption to this tax increase than has traditionally been the case. These estimates are subject to uncertainty, however, given a variety of factors, including the large tax changes involved.

Revenues From Tax Increase on Tobacco Products. We estimate that the increase in excise taxes would raise about \$1.2 billion in 2006–07 (one-half year effect from January through June 2007). It would raise about \$2.1 billion in 2007–08 (first full-year impact). This excise tax increase would raise slightly declining amounts of revenues thereafter.

Effects on State General Fund Revenues. The measure's increase in the excise tax would have offsetting effects on state General Fund revenues. On the one hand, the higher price and the ensuing decline in consumption of tobacco products would reduce state General Fund revenues from the existing excise taxes. On the other hand, the state's General Fund sales tax revenues would increase because the sales tax is based on the price of the tobacco product *plus* the excise tax. The decreases in revenues would approximately equal the increases in revenues.

Effects on Local Revenues. Local governments would likely experience an annual increase in sales tax revenues of as much as \$10 million.

Effects on Existing Tobacco Excise Tax Revenues. The decline in consumption of tobacco products caused by this measure would similarly reduce the excise tax revenues that would be generated for Proposition 99 and 10 programs and for the Breast Cancer Fund. We estimate that the initial annual revenue losses are likely to be about \$180 million for Proposition 10, about \$90 million for Proposition 99, and less than \$10 million for the Breast Cancer Fund. However, these losses would be more than offset in most cases by additional tax revenues generated by this measure, as discussed below.

Impacts of New Programs on State and Local Expenditures

State and local government expenditures for the administration and operation of various programs supported through this measure would generally increase in line with the proposed increase in excise tax revenues. Figure 1 (see next page) shows the main purpose of the accounts established by the initiative, the percentage of funds allocated to each purpose, and our estimate of the funding that would be available for each account in the first full year of tax collection. These allocations would probably decline in subsequent years as excise tax revenues also declined, potentially resulting in a corresponding

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

FIGURE 1		
How Tobacco Tax Funds Would Be Allocated^a		
Purpose	Allocation	Estimate of 2007–08 Funding (Full Year in Millions)
Backfill of California Children and Families First Trust Fund—Proposition 10	Unspecified amount determined by Board of Equalization	\$180
Health Treatment and Services Account	52.75 percent of remaining funds	\$1,015
Hospital emergency and trauma care	74.50 percent of account	\$756
Nursing education programs	9.00 percent	91
Nonprofit community clinics	5.75 percent	58
California Healthcare for Indigents Program—reimbursement of emergency care physicians	5.75 percent	58
Tobacco cessation services	1.75 percent	18
Prostate cancer treatment	1.75 percent	18
Rural Health Services Program—reimbursement of emergency care physicians	0.75 percent	8
College loan repayment program to encourage physicians to serve low-income areas lacking physicians	0.75 percent	8
Health Maintenance and Disease Prevention Account	42.25 percent of remaining funds	\$810
Children's health coverage	45.50 percent of account	\$367
Heart disease and stroke program	8.50 percent	69
Breast and cervical cancer program	8.00 percent	65
Obesity, diabetes, and chronic diseases programs	7.75 percent	63
Tobacco control media campaign	6.75 percent	55
Tobacco control competitive grants program	4.50 percent	36
Local health department tobacco prevention program	4.25 percent	34
Asthma program	4.25 percent	34
Colorectal cancer program	4.25 percent	34
Tobacco prevention education programs	3.50 percent	28
Tobacco control enforcement activities	2.25 percent	18
Evaluation of tobacco control programs	0.50 percent	4
Health and Disease Research Account	5.00 percent of remaining funds	\$95
Tobacco control research	34.00 percent of account	\$32
Breast cancer research	25.75 percent	24
Cancer research	14.75 percent	14
Cancer registry	14.50 percent	14
Lung cancer research	11.00 percent	10
Total Allocations		\$2,100

^a Because the overall revenues from the tobacco tax increase are subject to uncertainty, the actual allocations to programs could be greater or less than the amounts shown here.
Totals may not add due to rounding.

86

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

decrease in state and local expenditures for these new programs.

The state administrative costs associated with the tax provisions of this measure would be minor.

Impacts on Other Tobacco Tax-Funded Programs

This measure would have a number of significant fiscal effects on the three existing programs supported by tobacco excise taxes—Proposition 99 (which supports various health and public resources programs), Proposition 10 (which supports early childhood development programs), and the Breast Cancer Fund (which supports breast and cervical cancer screening and breast cancer research programs).

Proposition 99. This measure does not directly backfill any Proposition 99 accounts for the loss of revenues that would be likely to occur as a result of the excise tax increase proposed in this measure. Specifically, we estimate that this measure would initially result in an annual funding reduction of about \$5 million for the public resources account and initially almost \$25 million for an account that can be used to support any program eligible for Proposition 99 funding.

However, while this measure would reduce revenues for other Proposition 99 accounts, it would also initially provide significant increases in funding in the new accounts created under this measure for activities comparable to those now funded through Proposition 99. This includes health education and tobacco research, hospital services, and physician services. In the aggregate, these activities could initially experience a net gain in funding of almost \$950 million if this measure were enacted.

Proposition 10. Proposition 10 would receive full backfill funding under the terms of this measure. We estimate that this backfill would initially amount to about \$180 million annually.

Breast Cancer Fund. No backfill funding would be provided for the Breast Cancer Fund to offset the loss of revenues resulting from the tax increases proposed in this measure. However, this measure would allocate a set portion of the new tax revenues for breast cancer research and breast cancer early detection services, with the result that these activities initially would likely experience a net gain of about \$80 million annually.

Revenues and Costs From Provisions Affecting Public Hospitals

Some of the hospital emergency services funding provided under this measure could be allocated to public hospitals licensed to state and local agencies, such as those run by UC, counties, cities, and health care districts. This and certain other provisions of the measure could potentially result in increased revenues and expenditures for support of these hospital operations. The magnitude of the fiscal effects of all of these provisions is unknown, but is likely to result in a net financial gain for hospitals operated by state and local government agencies up to the low hundreds of millions of dollars annually on a statewide basis.

Fiscal Impact on State and Counties From Children's Coverage Provisions

Long-Term Increase in State Costs for Increased HFP Enrollment. In the short term, the revenues allocated by this measure to expand HFP would probably exceed the costs to make additional children eligible for health coverage. This would particularly be the case in the early years as enrollment gradually increased. Any excess revenues for expanding children's health coverage would be reserved to support this same purpose in future years.

Over time, however, as the excise tax revenues allocated for this purpose declined (for the reasons mentioned above) and the number of children enrolled in HFP grew, the costs of the expanded HFP could eventually exceed the available revenues. Current state law would permit MRMIB to limit enrollment

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

in the program to prevent this from occurring. If actions were not taken to offset program costs at that point, however, additional state financial support for the program would be necessary. These potential long-term state costs are unknown but could be significant.

State and County Savings From Shift in Children’s Coverage. This measure allows some children now receiving health coverage in local health coverage programs, such as CHIM, to instead be enrolled in the expanded HFP. Also, some children in low-income families receiving health care from counties without local health initiatives would be likely to become enrolled in HFP. These changes would likely result in unknown, but potentially significant, savings on a statewide basis to local governments, particularly for counties.

The Medi-Cal Program could also experience some state savings for emergency services as some children would instead receive their coverage for these and other services through HFP. These savings to the state could reach the tens of millions of dollars annually unless the state decided, as this measure permits, to have these children continue to receive emergency services through Medi-Cal.

Net Increase in State Costs From Pilot Projects and Simplified Enrollment. This measure requires MRMIB and DHS to simplify the procedures for enrolling and keeping children in HFP and Medi-Cal coverage. For example, among other changes, these provisions could allow applicants to “self-certify” their income and assets on their applications for coverage without immediately providing employer or tax documents to verify their financial status. From an administrative perspective, some changes that simplified enrollment rules would reduce state costs, while others, such as changes in computer systems for enrollment activities, would likely increase state costs. As regards caseloads, these changes are likely to increase program enrollment and, therefore, costs for the state. This would occur because children who

are eligible for, but not enrolled in, Medi-Cal and HFP would be signed up for medical benefits and existing enrollees would continue to be served in these programs.

As noted earlier, this measure also directs the state to establish a pilot project to provide health coverage for uninsured children in families with incomes above 300 percent of the FPL. This would also increase state caseload costs.

The net fiscal effect of these provisions is an increase in state costs that could exceed \$100 million annually after a few years. Some of these costs could be paid for using the new excise tax revenues generated under this measure.

Potential State and Local Savings on Public Health Costs

Currently, the state and local governments incur costs for providing (1) health care for low-income persons and (2) health insurance coverage for state and local government employees. Consequently, changes in state law that affect the health of the general populace would affect publicly funded health care costs. Because this measure is likely to result in a decrease in the consumption of tobacco products which have been linked to various adverse health effects, it would probably reduce state and local health care costs over the long term.

Some of the health programs funded in this measure are intended to prevent individuals from experiencing serious health problems that could be costly to treat. To the extent that these prevention efforts are successful and affect publicly funded health care programs, they are likely to reduce state and local government health care costs over time. In addition, the proposed expansion of these state health programs could reduce county costs for providing health care for adults and children in low-income families.

The magnitude of state and local savings from these factors is unknown but would likely be significant.

ARGUMENT IN FAVOR OF PROPOSITION 86

Smoking Kills.

Public health experts agree: Taxing tobacco will save lives.

The Tobacco Control Section of the California Department of Health Services has issued an analysis of Proposition 86 titled “Economic and Health Effects of a State Cigarette Excise Tax Increase in California.”

The California Department of Health Services has determined that:

Proposition 86 Will Save Lives:

- Prevent nearly 180,000 deaths due to smoking among California kids now under the age of 17.
- Prevent approximately 120,000 additional deaths due to smoking among current California adult smokers who quit smoking.

Proposition 86 Will Reduce and Prevent Smoking:

- The tax increase alone would prevent more than 700,000 kids now under the age of 17 from becoming adult smokers.
- 120,000 high school students and 30,000 middle school students would either quit or not start smoking.
- More than half a million smokers in California would quit smoking.
- Californians would consume 312 million fewer packs of cigarettes each year.

Proposition 86 Saves Money:

- Nearly \$16.5 billion saved in healthcare costs.
- Increases state revenue by over \$2.2 billion per year.

[See the report for yourself at www.yesprop86.com.]

That’s why Proposition 86 is supported by a broad coalition, including:

- American Cancer Society
- American Heart Association
- American Lung Association of California
- American Academy of Pediatrics/California Chapter
- The Children’s Partnership
- American College of Emergency Physicians, California Chapter

- California Emergency Nurses Association
- Association of California Nurse Leaders
- California Hospital Association
- League of United Latin American Citizens
- California Black Health Network
- Children Now
- California Primary Care Association
- Tobacco-Free Kids Action Fund
- Los Angeles Chamber of Commerce

The initiative specifically raises the tax on a pack of cigarettes by \$2.60 to help fund some of California’s critical healthcare needs, including emergency care services; health insurance for children; nursing education; tobacco use prevention programs; enforcement of tobacco-related laws; and research, prevention, and treatment of serious health problems, including cancers, heart diseases, stroke, asthma, and obesity.

Proposition 86 includes tough financial safeguards, including annual detailed public reporting of the use of tax funds, independent audits, limits on administrative costs, and a strict prohibition against the Legislature raiding the trust funds for any other government program. This means the money will go exactly where voters intend.

This measure will save lives. With smoking-related illnesses driving up our healthcare costs and overloading our healthcare system, Proposition 86 will help discourage smoking and ease some of the problems caused by preventable, smoking-related illnesses.

SAVE LIVES. TAX TOBACCO. VOTE YES ON PROPOSITION 86.

CAROLYN RHEE, Chair
American Cancer Society, California Division

P.K. SHAH, M.D., President
American Heart Association, Western States Affiliate

TIMOTHY A. MORRIS, M.D., Board Member
American Lung Association of California

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 86

Helping people stop smoking and keeping kids from starting is important. Unfortunately, less than 10% of the \$2.1 billion in new tax money goes to programs that help smokers quit or keep kids from starting. Here’s what’s really in the initiative:

- Huge hospital corporations are spending millions promoting Prop. 86 because they will pocket hundreds of millions of dollars every year. HMOs will also get millions of dollars each year.
- Almost 40% of the \$2.1 billion in new tax money from Prop. 86 goes to hospitals—**THAT’S OVER \$800 MILLION A YEAR THAT HAS VIRTUALLY NOTHING TO DO WITH STOPPING SMOKING!**
- The \$2.1 billion comes from an unfair \$2.60 tax increase on each pack of cigarettes—an increase of almost 300%. Here’s what Prop. 86 is really all about:
- Section 9 gives hospitals an exemption to antitrust laws.
- There’s nothing in Prop. 86 that limits what hospitals can charge taxpayers for emergency services for the uninsured.

This amounts to an open taxpayer checkbook!

- There are no guarantees on how the money will be spent.
- Under California law approved by voters (Proposition 98), approximately 40% of any new taxes are dedicated to our schools. The huge hospital corporations don’t want to share with our schools and kids, so they included a **CONSTITUTIONAL EXEMPTION** (Section 15) so that **NONE** of these funds will go to our schools.

Check it out for yourself: www.86facts.org.

Prop. 86 is really about special interests amending our Constitution for their benefit.

No on 86.

MONICA WEISBRICH, RN, Operating Room Nurse

JAIME ROJAS, President
California Hispanic Chambers of Commerce

MALCOLM SIMPSON, Public School Teacher

ARGUMENT AGAINST PROPOSITION 86

VOTE “NO” ON PROPOSITION 86—STOP THE \$2.1 BILLION TAX HIKE!

We all want to improve our healthcare system, but Proposition 86 is the wrong solution. Prop. 86 is an unfair tax increase supported by special interests who are amending our Constitution to benefit themselves.

Prop. 86’s proponents say it’s about encouraging people not to smoke, but it isn’t. It’s really a money grab by huge hospital corporations who will reap hundreds of millions of taxpayer dollars each year!

- Less than 10% of the tax revenues go toward helping smokers quit or keeping kids from starting.
- The largest share—almost 40%—goes to hospitals, many of which are funding the campaign for the new tax.
- HMOs will pocket millions from Prop. 86.

WHY ARE HUGE HOSPITAL CORPORATIONS SPENDING MILLIONS TO PASS PROP. 86?

- Hospitals wrote Prop. 86 to give themselves an exemption to antitrust laws, giving them legal protection to *divvy up and limit* many medical services, and then *raise prices* without worrying about competition.
- Prop. 86 puts no limits on what hospitals can bill taxpayers for emergency services for the uninsured. Why should hospitals be allowed to charge taxpayers several times what they charge insurance companies for the same treatment?

PROP. 86: ANOTHER LOTTERY MESS

Like the state lottery, it will be nearly impossible for voters to know how the new taxes will be spent. Prop. 86 lists program after state program that gets a cut of the estimated \$2.1 billion in new tax revenue.

PROP. 86: NO ACCOUNTABILITY TO TAXPAYERS

Prop. 86 throws millions of dollars at new bureaucratic state programs without adequate legislative or governmental

oversight. There are NO GUARANTEES how the money will actually be spent or assurances the money won’t be wasted.

PROP. 86: INCREASES OUR DEFICIT

Prop. 86 contains 38 pages of spending mandates. But experts agree that the amount of money raised by this tobacco tax will decline over time. Declining revenues and demands to fund Prop. 86’s programs will only worsen our deficit. Other important programs like education, transportation, and law enforcement might have to be cut, or taxes raised further.

PROP. 86: INCREASES CRIME

Law enforcement groups oppose Prop. 86 because it will increase crime and smuggling. Stolen and smuggled cigarettes are already a big source of money for gangs and organized crime. If Prop. 86 passes, a single truckload of stolen cigarettes could be worth over \$2 million to criminals.

PROP. 86: UNFAIR

Prop. 86 taxes smokers to pay for programs that have nothing to do with smoking, like obesity programs. Less than 10% of the tax revenues go toward helping smokers quit or keeping kids from starting.

PROP. 86: LOCKED INTO OUR CONSTITUTION

Proposition 86 amends our Constitution and statutes. When problems and abuses are discovered, it will be nearly impossible for the Governor or the Legislature to fix them. The Constitution should not be changed for a special interest money-grab.

Please join health professionals, law enforcement, taxpayers, and small businesses in voting NO on Proposition 86.

LARRY McCARTHY, President
California Taxpayers’ Association

JAMES G. KNIGHT, M.D., Past President
San Diego County Medical Society

STEVEN REMIGE, President
Association for Los Angeles Deputy Sheriffs

86

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 86

Make no mistake; big tobacco corporations are bankrolling opposition to Prop. 86.

Raising cigarette taxes means fewer people will smoke—especially kids. That hurts tobacco company profits.

They’ve seen the report by the California Department of Health Services which says that Prop. 86 will reduce the number of cigarettes sold in California by 312 million packs each year.

The report also says that Prop. 86 will prevent 700,000 kids from starting to smoke and save 300,000 lives.

Tobacco companies invest over \$1 billion a year marketing cigarettes in California. This is a market they won’t give up without a fight.

When executives of the tobacco companies were called before Congress and put under oath, *incredibly*, each and every one of them lied by testifying that cigarettes are not addictive.

They lied to Congress under oath and now they’re lying to you.

Their arguments against Prop. 86 are outright distortions and untruths.

Read Prop. 86 for yourself. You’ll see that it includes specific and tough financial safeguards, independent audits, and strict limits on administrative costs. Funding is directed to proven, successful public health programs.

Californians pay more than \$8 billion each year in medical costs due to smoking—that’s \$700 per family per year—whether you smoke or not. The Department of Health Services report confirms that Prop. 86 will help reduce those costs.

Big tobacco will do, say, and spend anything to defeat Proposition 86. *Don’t believe it.*

Save Lives. Reduce Smoking.

Vote Yes on Proposition 86.

MILA GARCIA, R.N., Member
American Heart Association, Western States Affiliate

WILLIE GOFFNEY, M.D., FACS, President
American Cancer Society, California Division 2006–07

RICK DONALDSON, Ph.D., RCP, Chair
American Lung Association of California

**ALTERNATIVE ENERGY. RESEARCH, PRODUCTION,
INCENTIVES. TAX ON CALIFORNIA OIL PRODUCERS.
INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.**

- Establishes \$4 billion program with goal to reduce petroleum consumption by 25%, with research and production incentives for alternative energy, alternative energy vehicles, energy efficient technologies, and for education and training.
- Funded by tax of 1.5% to 6% (depending on oil price per barrel) on producers of oil extracted in California. Prohibits producers from passing tax to consumers.
- Program administered by new California Energy Alternatives Program Authority.
- Prohibits changing tax while indebtedness remains.
- Revenue excluded from appropriation limits and minimum education funding (Proposition 98) calculations.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- New state revenues—depending on the interpretation of the measure—from about \$225 million to \$485 million annually from the imposition of a severance tax on oil production, to be used to fund \$4 billion in new alternative energy programs over time.
- Potential reductions of state revenues from oil production on state lands of up to \$15 million annually; reductions of state corporate taxes paid by oil producers of up to \$10 million annually; local property tax reductions of a few million dollars annually; and potential reductions in fuel-related excise and sales taxes.

ANALYSIS BY THE LEGISLATIVE ANALYST**BACKGROUND**

California Oil Production. In 2005, California's estimated oil production (excluding federal offshore production) totaled 230 million barrels of oil—an average of 630,000 barrels per day. California's 2005 oil production represents approximately 12 percent of U.S. production, making California the third largest oil-producing state, behind Texas and Alaska. Oil production in California peaked in 1985 and has declined, on average, by 2 percent to 3 percent per year since then. In 2005, California oil production supplied approximately 37 percent of the state's oil demand, while Alaska production supplied approximately 21 percent, and foreign oil supplied about 42 percent.

Virtually all of the oil produced in California is delivered to California refineries. In 2005, the total supply of oil delivered to oil refineries in California

was 674 million barrels, including oil produced in California as well as outside the state. Of the total oil refined in California, approximately 67 percent goes to gasoline and diesel (transportation fuels) production.

Oil-Related Taxation in California. Oil producers pay the state corporate income tax on profits earned in California. Oil producers also pay a regulatory fee to the Department of Conservation (which regulates the production of oil in the state) that is assessed on production, with the exception of production in federal offshore waters. This regulatory fee is used to fund a program that, among other activities, oversees the drilling, operation, and maintenance of oil wells in California. Currently, producers pay a fee of 6.2 cents per barrel of oil produced, which will generate total revenues of \$14 million in 2006–07. Additionally, property owners in California pay local property taxes on the value of both oil extraction equipment (such as drills and pipelines) as well as the value of the recoverable oil in the ground.

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87

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

PROPOSAL

Severance Tax on Oil Production in California. Beginning in January 2007, the measure would impose a severance tax on oil production in California to generate revenues to fund \$4 billion in alternative energy programs over time. (The term “severance tax” is commonly used to describe a tax on the production of any mineral or product taken from the ground, including oil.) The measure defines “producers,” who are required to pay the tax, broadly to include any person who extracts oil from the ground or water, owns or manages an oil well, or owns a royalty interest in oil.

The severance tax would not apply to federal offshore production beyond three miles from the coast. The measure is unclear as to whether the severance tax would apply to oil production on state-owned lands (which includes offshore production within three miles of the coast) or production on federal lands in the state. Additionally, the severance tax would not apply to oil wells that produce less than ten barrels of oil per day, unless the price of oil at the well head was above \$50 per barrel. At current prices and levels of production, the tax would apply to about 230 million barrels of oil produced in the state annually if state and federal lands are included, or about 200 million barrels of oil production annually if they are not included.

Tax Rate Structure. The measure states that the tax would be “applied to all portions of the gross value of each barrel of oil severed as follows:”

- 1.5 percent of the gross value of oil from \$10 to \$25 per barrel;
- 3.0 percent of the gross value of oil from \$25.01 to \$40 per barrel;
- 4.5 percent of the gross value of oil from \$40.01 to \$60 per barrel; and
- 6.0 percent of the gross value of oil from \$60.01 per barrel and above.

The wording of the measure regarding the application of the tax rates could be interpreted in two different ways. On one hand, it could be interpreted such that the tax would be applied on a *single rate* basis on the *full* gross value of oil per barrel. For example, if the gross value is \$70 per barrel, the tax would be applied at a rate of 6.0 percent on

the full \$70—yielding a tax of \$4.20 per barrel. On the other hand, it could be interpreted to apply on a *marginal rate* basis similar to the income tax. For example, if the gross value is \$70 per barrel, the first \$10 is not taxed, the value from \$10 to \$25 is taxed at 1.5 percent, and so on—yielding a tax of \$2.17 per barrel.

In general, for a given period of time, the single rate interpretation would generate twice as much tax revenue as would the marginal rate interpretation. The issue of the application of the tax would presumably be resolved by regulations adopted by the California State Board of Equalization (BOE) and interpretation by the courts.

Passing Along the Cost of the Tax to Consumers. The measure states that producers would not be allowed to pass on the cost of this severance tax to consumers through increased costs for oil, gasoline, or diesel fuel. The BOE is charged with enforcing this prohibition against passing on the cost of the tax. While it may be difficult to *administratively* enforce this provision (due to the many factors that determine oil prices), economic factors may also limit the extent to which the severance tax is passed along to consumers. For example, the global market for oil means that California oil refiners have many options for purchasing crude oil. As a result, oil refiners facing higher-priced oil from California producers could, at some point, find it cost-effective to purchase additional oil from non-California suppliers, whose oil would not be subject to this severance tax.

Term of the Tax. The measure directs that the new California Energy Alternatives Program Authority (Authority), discussed below, shall spend \$4 billion for specified purposes within ten years of adopting strategic plans to implement the measure. The revenues are to be used for new spending (that is, they cannot be used to replace current spending). Under the measure, the Authority has the ability to raise program funds in advance of collecting severance tax revenues by selling bonds that would be paid back with future severance tax revenues.

The severance tax would expire once the Authority has spent \$4 billion and any bonds issued by the Authority are paid off. The length of time that the tax would be in effect will depend on several factors, including the interpretation of the tax rate, the future price and production of oil, and

87

PROP 87 ALTERNATIVE ENERGY. RESEARCH, PRODUCTION, INCENTIVES. TAX ON CALIFORNIA OIL PRODUCERS. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

decisions about using bonds. Because the measure directs the new authority to spend \$4 billion within ten years, the tax will be in effect at least long enough to generate this amount of revenue and longer if bonds are issued.

Depending on these variables, the term of the tax would range from less than ten years to several decades. For example, the shorter period would result under the single tax rate and/or higher oil prices and production levels. Alternatively, a longer period would result under the marginal tax rate and/or lower oil prices and production.

Tax Revenues to be Deposited in New Special Fund.

The proceeds of the severance tax would be deposited in a new fund created by the measure, the California Energy Independence Fund. These revenues would not be eligible for loan or transfer to the state's General Fund and would be continuously appropriated (and thus, not subject to the annual state budget appropriation process).

Reorganized State Entity to Spend the Tax Revenues.

The measure would reorganize an existing body in state government, the California Alternative Energy and Advanced Transportation Financing Authority, into a new California Energy Alternatives Program Authority (Authority). This reorganized authority would be governed by a board made up of nine members, including the Secretary for Environmental Protection, the Chair of the State Energy Resources Conservation and Development Commission, the Treasurer, and six members of the public who have specific program expertise, including: economics, public health, venture capital, energy efficiency, entrepreneurship, and consumer advocacy. The Authority is required to develop strategic plans and award funds to encourage the development and use of alternative energy technologies. The board would appoint a staff to administer various programs specified in the measure.

One of the stated *goals* of the measure, to be achieved through the various programs funded by it, is to reduce the use of petroleum in California by 25 percent from 2005 levels by 2017. The *actual* reduction would depend on the extent to which the measure was successful in developing and promoting—and consumers and producers used—new technologies and energy efficient practices.

Allocation of Funds. The funds generated from the severance tax, as well as any bonding against future

severance tax revenues, would be allocated as follows, after first covering debt-service costs and expenses to collect the severance tax:

- ***Gasoline and Diesel Use Reduction Account (57.50 Percent)***—for incentives (for example, consumer loans, grants, and subsidies) for the purchase of alternative fuel vehicles, incentives for producers to supply alternative fuels, incentives for the production of alternative fuel infrastructure (for example, fueling stations), and grants and loans for private research into alternative fuels and alternative fuel vehicles.

- ***Research and Innovation Acceleration Account (26.75 Percent)***—for grants to California universities to improve the economic viability and accelerate the commercialization of renewable energy technologies and energy efficiency technologies.

- ***Commercialization Acceleration Account (9.75 Percent)***—for incentives to fund the start-up costs and accelerate the production and distribution of petroleum reduction, renewable energy, energy efficiency, and alternative fuel technologies and products.

- ***Public Education and Administration Account (3.50 Percent)***—for public education campaigns, oil market monitoring, and general administration. Of the 3.5 percent, at least 28.5 percent must be spent for public education, leaving a maximum of 71.5 percent of the 3.5 percent (or roughly 2.5 percent of total revenues) for the Authority's administrative costs.

- ***Vocational Training Account (2.50 Percent)***—for job training at community colleges to train students to work with new alternative energy technologies.

FISCAL EFFECTS

New State Revenues to Be Used for Dedicated Purposes. Our estimates below are based on 2005 oil production levels and the average price of oil for the first six months of 2006. The severance tax would rise from about \$225 million to \$485 million annually. The level of revenue generated would depend both on (1) whether the tax was interpreted using the marginal rate interpretation or the single rate interpretation and (2) whether oil production on state and federal lands is taxed. However, *actual* revenues collected under the measure will depend

ALTERNATIVE ENERGY. RESEARCH, PRODUCTION,
INCENTIVES. TAX ON CALIFORNIA OIL PRODUCERS.
INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

PROP
87

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

on both future oil prices and oil production in the state. As these variables are difficult to predict, there is uncertainty as to the level of revenue collections.

State and Local Administrative Costs to Implement the Measure. Because programs of the size and type to be overseen by the Authority have not been undertaken before in the area of transportation fuels, the administrative costs to the Authority to carry out the measure are unknown. Under the provisions of the measure, up to 2.5 percent of revenues in the new fund would be available to the Authority for its general administration costs. This would on average set aside from about \$5 million to \$12 million annually for administration. The amount of administrative funds available would depend both on (1) whether the tax was interpreted using the marginal rate interpretation or the single rate interpretation and (2) whether oil production on state and federal lands is taxed.

Costs to BOE to collect the severance tax and administrative costs associated with the issuance and repayment of bonds by the Treasurer's Office are not counted as part of the Authority's administration budget and are to be paid from the severance tax revenues. Additionally, in oil-producing counties, local administrative costs would increase by an unknown but probably minor amount, due to increased reassessment activity by local property tax assessors to account for the effects of the severance tax on oil-related property values.

Reduction in Local Property Tax Revenues. Local property taxes paid on oil reserves would decline under the measure relative to what they otherwise would have been, to the extent that the imposition of the severance tax reduces the value of oil reserves in the ground and its assessed property value for tax purposes. Although the exact size of this impact would depend on future oil prices, which determine both the severance tax rate and the value of oil reserves, it would likely not exceed a few million dollars statewide annually.

Reduction in State Income Tax Revenues. Oil producers would be able to deduct the severance tax from earned income, thus reducing their state income tax liability under the personal income tax or corporation tax. The extent to which the measure would reduce state income taxes paid by oil producers would depend on

various factors, including whether or not an oil producer has taxable income in any given year, the amount of such income that is apportioned to California, and the tax rate applied to such income. We estimate that the reduction would likely not exceed \$10 million statewide annually.

Potential Reduction in State Revenues From Oil Production on State Lands. The state receives a portion of the revenues from oil production on state lands, including oil produced within three miles of the coast. If the measure is interpreted to apply to production on these state lands, then the severance tax would reduce state General Fund revenues by \$7 million to \$15 million annually, depending on whether the measure is interpreted using the marginal rate or the single rate.

Potential Reductions in Fuel Excise Tax and Sales Tax Revenues. The measure could change both the amount and mix of fuels used in California, and thus excise and sales tax revenues associated with them. For example, to the extent that the programs funded by the measure are successful in reducing the use of oil for transportation fuels, it would reduce to an unknown extent the amount of gasoline and diesel excise taxes paid to the state and the sales and use taxes paid to the state and local governments. These reductions would be partially offset by increased taxes paid on alternative fuels, such as ethanol, to the extent that the measure results in their increased use.

Potential Indirect Impacts on the Economy. In addition to the direct impacts of the measure, there are potential indirect effects of the measure that could affect the level of economic activity in the state.

On one hand, by increasing the cost of oil production, the severance tax could reduce production, reduce investment in new technologies to expand production, and/or modestly increase the cost of oil products to Californians. This could have a negative impact on the state's economy.

On the other hand, using revenues from the severance tax to invest in new technologies may spur economic development in California. This would occur to the extent that new technologies supported by the measure are developed and/or manufactured in the state. This could have a positive impact on the state's economy.

Taken together, these economic factors could have mixed impacts on state and local tax revenues.

ARGUMENT IN FAVOR OF PROPOSITION 87

YES ON 87: MAKE OIL COMPANIES PAY THEIR FAIR SHARE—FOR CLEANER ENERGY.

Had enough of oil companies charging outrageous prices and making obscene profits?

Had enough polluted air, asthma, lung disease, and cancer?

Had enough of oil companies funding opposition to Cleaner, Cheaper Energy? Enough is enough.

It's time to make oil companies pay their fair share so we can use cheaper alternative fuels and reduce air pollution that causes lung disease and cancer.

VOTING YES ON PROPOSITION 87 WILL MAKE OIL COMPANIES PAY THEIR FAIR SHARE.

In Louisiana, Alaska, and even Texas, oil companies pay billions in oil drilling fees, but they pay almost nothing in California. California takes in more revenue from *hunting and fishing licenses* than it does from oil drilling fees.

Under Prop. 87, the oil companies will finally pay us the same level of fees they pay in other states.

They can afford it. The oil companies opposing this initiative made \$78 billion in profits last year. Their profits are so high that EXXON gave its CEO Lee Raymond a \$400 million retirement payout. Enough is enough.

PROP. 87: NO COST TO CONSUMERS. OIL COMPANIES PAY.

California's Attorney General has confirmed that Prop. 87 makes it illegal for oil companies to raise gas prices to pass along the cost to us.

If they do, they'll break the law and could be prosecuted.

The U.S. Supreme Court has already ruled that states can prohibit oil companies from passing fees like this on to consumers. Just look at the other states that have oil drilling fees. They all pay less for gas than California.

That's why oil companies are spending millions to defeat Prop. 87: because they know it's illegal to pass the cost on to us.

PROP. 87: CLEANER ENERGY AND CLEANER AIR.

Prop. 87 makes oil companies pay for cleaner energy.

It provides for cash rebates to consumers who buy cleaner, alternative fuel vehicles and incentives for more renewable energy like solar and wind power.

It will create thousands of new jobs and economic growth.

It will reduce our dependence on oil from Saudi Arabia and Iraq—which provide 47% of California's imported oil.

Voting YES on Prop. 87 will reduce air pollution in California.

Pollution from cars and trucks is making us sick. Every year, cars put tons of lung-damaging smog and soot into the air that send children to the hospital and cause asthma attacks.

That's why the Coalition for Clean Air and California doctors and nurses ALL SUPPORT Proposition 87.

PROP. 87: NO NEW BUREAUCRACY.

Prop. 87 uses an existing state agency and requires strict enforcement and accountability through independent audits, public hearings, and annual progress reports.

Nobel-prize-winning scientists, California environmental and consumer groups, educators, labor and agriculture groups all agree. It's time we take control of our future.

For Cleaner Air—For Alternative Energy Choices—For Less Dependence on Foreign Oil . . . Finally, Fairness.

MAKE OIL COMPANIES PAY THEIR FAIR SHARE.

VOTE YES ON 87. FOR CLEANER ENERGY.

www.YESon87.com

LAURA KEEGAN BOUDREAU, CEO
American Lung Association of California

WINSTON HICKOX, Former Secretary
California Environmental Protection Agency

JAMIE COURT, President
Foundation for Taxpayer and Consumer Rights

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 87

87

"The sponsors' contention that Proposition 87 would not cause higher gas prices is incorrect."—William Hamm, Ph.D.
Former Legislative Analyst, State of California

"Proposition 87 attempts a worthy goal, but does so in a counterproductive and costly manner. It would shrink California's oil supply, increase dependence on foreign oil, and result in higher gasoline prices."—Professor Philip Romero, Ph.D., Former Chief Economist, California Governor's Office

Proposition 87 is *not* a tax on oil company profits—as proponents would like you to believe. It's a \$4 BILLION TAX on California oil production. It would make California's oil the *highest taxed in the nation*, by far. Analysts report it would decrease state oil production. Replacement oil would have to be imported from the Middle East and elsewhere. The added costs of transporting and refining imported oil would be lawfully passed on to consumers at the gas pump. *Do we really want higher gas prices?*

And, did proponents really claim Proposition 87 is not new bureaucracy? *It's the very definition of bureaucracy, with an appalling lack of accountability:*

- 50 political appointees.
 - Unlimited staff.
 - The power to spend \$4 billion outside the state budget review process.
 - No requirement they spend all those new taxes in California, or even in the U.S.
 - Special exemptions from laws designed to protect taxpayers.
 - Special exemption from California's education funding guarantee, robbing schools of *their* fair share.
- Proposition 87 also reduces revenues available for fire protection and public safety.
- Organizations representing 85,000 public safety officials urge Californians to: VOTE NO on 87.

KEVIN R. NIDA, President
California State Firefighters' Association

RAY HOLDSWORTH, Past Chair
California Chamber of Commerce

ALLAN ZAREMBERG, President
Californians Against Higher Taxes

ARGUMENT AGAINST PROPOSITION 87

**AREN'T GAS PRICES HIGH ENOUGH ALREADY?
DO WE REALLY WANT TO INCREASE OIL TAXES
BY ANOTHER \$4 BILLION?**

We all agree we need to advance alternative energy. But, Proposition 87 is *not* the way to get there. Increasing California oil taxes by \$4 BILLION to fund a new state bureaucracy—that isn't even required to produce results—is a recipe for *waste*, not progress.

It's also the road to more problems . . .

**HIGHER TAXES ON DOMESTIC OIL = MORE
DEPENDENCE ON FOREIGN OIL.**

Economists report that taxing California oil production will reduce in-state oil production and increase our dependence on foreign oil. Oil from the Middle East and other countries costs more to get here and costs more to refine once here.

HIGHER OIL TAXES, HIGHER GAS PRICES.

Prop. 87's sponsors *claim* it won't increase gas prices. Are voters supposed to believe a \$4 BILLION tax increase on California oil won't impact gas prices at the pump?

**PROP. 87 CREATES A NEW STATE BUREAUCRACY
WITH 50 POLITICAL APPOINTEES.**

It lets them spend taxes outside the normal checks and balances that govern other state agencies, outside the state budget review process, and exempt from important laws and taxpayer safeguards that apply to other agencies.

**PROP. 87 LETS THE NEW BUREAUCRACY KEEP
SPENDING EVEN IF THEY'RE NOT PRODUCING
RESULTS.**

It lets the political appointees tax and spend, year after year after year, even if they're making absolutely no progress reducing oil consumption or advancing alternative energy use.

**PROP. 87 ROBS SCHOOLS OF THEIR FAIR SHARE
OF NEW REVENUES.**

One of the most important protections our schools have is a constitutional guarantee that a portion of new state tax revenues be spent in the classroom. But, Prop. 87 excludes

itself from that requirement. One of California's leading education finance experts and the former Secretary of Education reports: *"At a time when California school funding is already below the national average, Prop. 87 could deny schools their fair share of up to \$1.9 billion in new revenues over the next 10 years."*

**PROP. 87 WOULD REDUCE TAX REVENUES USED
FOR EDUCATION, PUBLIC SAFETY, HEALTH CARE,
AND TRANSPORTATION NEEDS.**

Prop. 87 would reduce general fund and property tax revenues. Read the Legislative Analyst's report in your voter pamphlet.

**HIGHER GAS PRICES HURT FAMILIES, SMALL
BUSINESSES, AND SENIORS.**

Everyone bears the cost of high gas prices. The last thing we need is a ballot proposition that further drives up oil prices.

**EVERYONE AGREES WE NEED TO ADVANCE
ALTERNATIVE ENERGY, BUT PROP. 87 IS NOT THE
WAY TO GET THERE.**

"Gasoline prices in California are high enough already. Proposition 87 would just add insult to injury. This \$4 billion oil tax would result in even higher gas prices at the pump. We recommend drivers vote: NO on 87."

—Thomas V. McKernan, President and CEO, Automobile Club of Southern California

Join more than 150 organizations, taxpayer groups, consumers, California businesses, labor, parents, educators, seniors, and public safety officials . . .

VOTE NO on 87. *It's a recipe for waste, not progress.*

LARRY McCARTHY, President
California Taxpayers' Association

DANIEL CUNNINGHAM, President
California Small Business Alliance

MARIAN BERGESON, Past President
California School Boards Association

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 87

87

DO YOU TRUST THE OIL COMPANIES?

Oil companies are paying for the multimillion dollar misinformation campaign *against* Prop. 87.

See for yourself: California State Website: www.cal-access.ss.ca.gov

Notice the oil companies didn't sign the statement at the top of this page? What else are they hiding? THE FACTS:

- **PROP. 87 MAKES OIL COMPANIES PAY THEIR FAIR SHARE.**
Oil companies pay billions in drilling fees in New Mexico, Alaska, Louisiana, and *even* Texas. California is the only state where the oil companies do not pay similar drilling fees.
- **PROP. 87 MAKES IT ILLEGAL FOR OIL COMPANIES TO PASS THE COST ON TO CONSUMERS BY RAISING GAS PRICES.** *Official Initiative Language, § 42004(c)*
Think about it: If the oil companies could really pass the cost on to us, why would they be spending millions to defeat Prop. 87?
- **PROP. 87 MEANS CLEANER AIR, LESS ASTHMA.**
That's why Prop. 87 is endorsed by the American Lung Association.
- **PROP. 87 MEANS MORE ALTERNATIVE FUELS AND**

LESS DEPENDENCE ON FOREIGN OIL.

Almost half of California's imported oil comes from Saudi Arabia and Iraq. Prop. 87 would reduce our dependence on foreign oil. That's why former Secretary of State Madeleine Albright endorses Prop. 87.

- **PROP. 87 HAS NO NEW BUREAUCRACY.**
Prop. 87 requires independent audits, strict limits on administrative spending, open meetings with accountability, and oversight by public health and energy experts—not politicians. *Official Initiative Language, § 26004(a)*

**DON'T BE FOOLED BY THE OIL COMPANIES.
ENOUGH IS ENOUGH. MAKE THE OIL COMPANIES
PAY THEIR FAIR SHARE.**

VOTE YES ON 87. FOR CLEANER, CHEAPER ENERGY.

DR. MARIO MOLINA, Nobel Prize in Chemistry
University of California, San Diego

TIM CARMICHAEL, President, Coalition for Clean Air

JAMIE COURT, President
Foundation for Taxpayer and Consumer Rights

**EDUCATION FUNDING. REAL PROPERTY PARCEL TAX.
INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.**

- Provides additional public school funding for kindergarten through grade 12.
- Funded by \$50 tax on each real property parcel.
- Exempts certain elderly and disabled homeowners.
- Funds must be used for class size reduction, textbooks, school safety, Academic Success facility grants, and data system to evaluate educational program effectiveness.
- Provides for reimbursement to General Fund to offset anticipated decrease in income tax revenues due to increased deductions attributable to new parcel tax.
- Requires school district audits, penalties for fund misuse.
- Revenue excluded from minimum education funding (Proposition 98) calculations.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- State parcel tax revenue of roughly \$450 million annually, allocated to school districts for specified education programs.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

State and local governments in California impose several types of taxes and use the resulting revenue to support a variety of government activities. The most significant state taxes are on personal income, the sale of most types of goods (such as cars, appliances, and furniture), and corporate profits. At the local level, the most significant tax is on the assessed value of property (such as family-owned land and houses, retail stores, and industrial facilities). In California, the revenue generated from these various taxes is used to fund many types of government programs, including education, health, social, and environmental programs.

Local Property Taxes. Local governments in California impose a tax based on the assessed value of property. Under such a tax, the amount owed increases as the value of the property increases. Some local governments also impose a type of property tax known as a parcel tax. Under

this type of tax, the amount owed is typically the same for each parcel—or unit—of land. (Currently, state government does not impose either type of property-related tax.)

Use of Local Parcel Tax Revenue. Local parcel tax revenue may be used for virtually any designated purpose. In recent years, for example, parcel taxes have been approved by voters in several school districts and used to fund class size reduction (CSR), school libraries, education technology, and other education programs. In those school districts that have a parcel tax, this revenue can be a significant source of funding for kindergarten through grade 12 (K–12) education programs. Statewide, however, the parcel tax is a minor source of funding for school districts.

PROPOSAL

Proposition 88 creates a statewide parcel tax and uses the resulting revenue to fund specific K–12 education programs. It would take effect July 1, 2007.

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

Creates a Statewide \$50 Parcel Tax

The measure adds a new section to the State Constitution that establishes an annual \$50 tax on most parcels of land in California. (This dollar amount would not change over time.) For purposes of the measure, a “parcel” is defined as any unit of real property in the state that currently receives a separate local property tax bill. This definition would result in the vast majority of individuals and businesses that currently pay property taxes being subject to the new parcel tax. The measure exempts from the new tax any parcel owner who: (1) resides on the parcel, (2) is eligible for the state’s existing homeowner’s property tax exemption, and (3) is either 65 years of age or older or a severely and permanently disabled person.

The measure also includes a provision that ensures funding for other government programs is not affected. Specifically, the measure authorizes a transfer of parcel tax revenue to the state General Fund to offset any loss in state income tax revenue. A loss would occur because of additional property-related deductions resulting from the state parcel tax.

Funds Specific K–12 Education Programs With Tax Proceeds

Most of the revenue generated by the statewide parcel tax would be transferred to a new state special fund. Of the monies initially deposited in this fund, the measure allocates \$470 million for various K–12 education programs and initiatives, as shown in Figure 1. The annual allocation of funding would be adjusted on a proportional basis—up or down—to reflect actual revenues received. These monies would have to supplement existing monies provided for these programs.

The measure allocates monies to school districts (and other local education agencies) in various ways. The bulk of funding (amounts for K–12 CSR, instructional materials, and school safety) would be

allocated to school districts, public charter schools, and county offices of education using a new per student formula to be created by the Legislature. The formula likely would provide higher per student funding rates for higher-cost students. (Specifically, the formula is to account for cost differences resulting from students’ disabilities, English language skills, or socioeconomic status.) Facility grants would be allocated to school districts and public charter schools using a flat funding rate (capped at \$500) for each student enrolled in certain schools performing above average. For the data system, the measure does not specify how or to whom funding would be allocated. (Future legislation likely would be needed clarifying such issues.) School districts receiving any Proposition 88 funds would be required to conduct an annual independent audit showing how they spent these monies and post the audit reports online.

FIGURE 1

Proposition 88: Allocation of Parcel Tax Revenues

Program	Annual Target Amount (In Millions) ^a
K–12 class size reduction	\$175 ^b
Instructional materials	100 ^b
School safety	100 ^b
Facility grants	85 ^c
Data system	10 ^d
Total	\$470

^a Amounts adjusted annually, on a proportional basis, to reflect actual revenues available.

^b School districts, county offices of education, and public charter schools would be eligible to receive funding. Funding to be distributed using a weighted per student formula.

^c School districts and public charter schools meeting certain criteria would be eligible to receive funding. Funding to be based on an equal per student amount that is capped at \$500.

^d The measure does not specify how or to whom funds would be distributed.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

K–12 CSR. Currently, the state provides \$1.8 billion for the CSR program for kindergarten through grade 3 (K–3). This program funds school districts for reducing the size of their K–3 classrooms to no more than 20 students. The additional \$175 million provided by this measure could be used to further reduce class size in grades K–3 or for any other CSR initiative. For example, the funds would be sufficient to reduce the average class size of fourth grade by about four students (reducing it from a statewide average of about 29 students to 25 students).

Instructional Materials. Currently, the state provides over \$400 million annually for instructional material purchases. This equates to about \$66 per K–12 student. This is sufficient to purchase one new core textbook for most students in most grades each school year. The additional \$100 million provided by this measure could be used for purchasing any textbooks or other instructional materials that were approved by the State Board of Education. Funds likely would be sufficient to provide about 25 percent of K–12 students with one additional core textbook each year.

School Safety. Currently, the state provides \$548 million (or about \$90 per student) for after school programs, \$97 million (or about \$40 per grade 8–12 student) for general school safety programs, and \$17 million (or about \$3 per student) for competitive school safety grants. The additional \$100 million (or about \$16 per student) provided by this measure could be used for school community policing and violence prevention, gang-risk intervention, and afterschool and intersession programs.

Facility-Related Grants. Currently, the state provides funds for school facilities primarily using general obligation bonds. In addition, it has provided \$9 million annually for the last several years to help public charter schools in low-income areas cover some of their facility lease costs. The

\$85 million provided by this measure would be for school districts and charter schools that have not yet received any state general obligation bond monies for school facilities. In addition, charter schools are only eligible if they are governed by or operated by a nonprofit public benefit corporation. If those conditions are met, then school districts and charter schools would receive funding for each student enrolled in a school ranking in the top 50 percent based on the state’s standardized test scores. They could use the grants for any general purpose. Districts and schools receiving such grants would be prohibited from receiving future state general obligation bond monies unless the bond expressly allowed them to receive such funding. We estimate that about 40 noncharter schools (serving less than 1 percent of all noncharter enrollment) would be eligible for grants. For charter schools, we estimate about 100 schools (serving about 25 percent of all charter enrollment) would be eligible for grants.

Data System. Currently, the state provides virtually no state funding expressly for the ongoing collection and maintenance of student-level and teacher-level data. The additional \$10 million provided by this measure would be for an integrated longitudinal data system. Such a system would allow the state to measure student and teacher performance over time. The measure requires school districts to collect and report the data needed to create and maintain the system.

FISCAL EFFECTS

We estimate the statewide parcel tax would result in roughly \$450 million in new tax revenue each year. Given that the dollar amount of the tax would not increase, total parcel tax revenues would grow slowly over time as new parcels of land were created (such as by new subdivisions of property). Roughly \$30 million of the parcel tax revenue

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

would be transferred annually to the state General Fund to offset a projected decline in state income tax revenues (due to increased property-related tax deductions). In addition, the measure sets aside no more than 0.2 percent (or approximately \$1 million annually) for county administration of the parcel tax. The remainder of new tax revenue

would be allocated to schools for the specified education programs. These revenues likely would be somewhat less than that needed to meet the measure's designated funding levels. If so, the program allocations would be adjusted downward proportionally.

ARGUMENT IN FAVOR OF PROPOSITION 88

PROPOSITION 88: A SMART INVESTMENT FOR OUR SCHOOLS, OUR STUDENTS, AND CALIFORNIA'S FUTURE

Consider:

- Students in one-third of California classrooms don't have a textbook to take home—and many don't even have a textbook to use in class.
- Teachers are paying for school materials out of their own pockets.
- Too many California classrooms are still overcrowded.
- Prop. 88 will help California graduate the skilled, educated workforce that is critical to a healthy business environment and our state's economic prosperity.

PROP. 88: LOCAL CONTROL OF DOLLARS FOR CLASSROOMS

The education needs of communities and schools are not all the same. Prop. 88 provides needed funding directly to local schools and school districts so that they, not the Legislature, decide where to spend the funds.

Prop. 88 will provide dedicated funding to:

- Reduce class size so students get more individualized instruction
- Provide textbooks and other learning materials, so teachers don't have to pay for these fundamental necessities out of their own pockets
- Make schools safer for students and teachers and help stop campus violence and gangs

PROP. 88: A PRUDENT AND FAIR INVESTMENT

Prop. 88 will put over \$500 million a year directly into our local schools through a nominal (about 14¢ per day/\$50 per year) property parcel assessment. Funds from Prop. 88 will be used to invest in our teachers and students, providing local schools with needed resources, like textbooks, computers, and other materials. **TEACHERS SHOULDN'T HAVE TO DIP INTO THEIR OWN POCKETS TO PAY FOR CLASSROOM MATERIALS.**

To protect those on fixed incomes, PROP. 88 EXEMPTS

SENIOR AND DISABLED HOMEOWNERS [SECTION 21.5(b)].

PROP. 88: STRICT ACCOUNTABILITY AND ANNUAL AUDITS

Funds from Prop. 88 are prohibited from being used for administrative overhead and the Legislature cannot redirect the money to other programs [Section 6.2].

To ensure that funds go to classrooms and student learning, Prop. 88 requires annual independent audits [Section 6.2.(5)c] and penalties for misuse.

With Prop. 88, we know exactly where the money goes and we can make sure it is spent wisely.

PROP. 88: THE NEXT STEP IN IMPROVING OUR K-12 EDUCATION SYSTEM

Taxpayers have invested in our school system by approving local and state bonds to build new classrooms and remodel out-of-date facilities. But bonds don't pay for teachers, textbooks, or other learning materials and supplies. Prop. 88 puts funds in our classrooms and allows local educators to use the funds where they are most needed.

PROP. 88: A VOTE FOR TEACHERS AND OUR KIDS

Teachers have one of the most important jobs. Yet their jobs are made difficult because of overcrowded classrooms and a lack of basic supplies. YES on Prop. 88 will help provide teachers the resources they need to teach our children and give children the attention they need and deserve.

READ PROP. 88 FOR YOURSELF. IT'S A SMALL INVESTMENT NOW THAT CAN MAKE A BIG DIFFERENCE FOR OUR FUTURE.

Vote YES on 88: More Textbooks and Learning Materials, Smaller Classes, and Safer Schools!

REED HASTINGS, Past President
California State Board of Education

JACK O'CONNELL, California State Superintendent of
Public Instruction

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 88

88

The California Parents-Teachers Association (PTA) says "NO on Proposition 88."

Would the PTA say "No on 88" if it helped our kids' schools?

Proposition 88 is tricky and misleading. There is NOT ONE WORD in Proposition 88 about helping teachers who buy materials.

And, 88 gives the impression all funds will go to classrooms. Nonsense! Proposition 88 creates layers of costly new bureaucracies and expands old bureaucracies—for a program which forever bans Proposition 88's facilities grants to more than 95% of our kids' schools!

This whole new kind of parcel property tax would be collected from 10 million property owners by 58 county tax collectors—with new special exemptions.

Then your money goes to the State Legislature, which decides who gets your tax money. (Proposition 88—Section 6.2[d])

Then 1000+ school districts collect new data from 9300+ California schools.

Then Proposition 88 requires analysis from a new "integrated longitudinal teacher and student data system as defined by the Legislature." (Section 6.2 [b] [5])

County Treasurer Paul McDonnell says: "Proposition 88 is a costly administrative nightmare, creating new layers of expensive bureaucracy."

Proposition 88 creates a whole new kind of property tax, needing only a majority vote to pass, opening the floodgates to new parcel property tax propositions. A tax with no termination date—it lasts forever. All so fewer than 5% of our kids' schools can ask the State Legislature for a facilities grant?

Our kids, our schools, and our taxpayers deserve better. Much better.

Parents, Teachers, and Taxpayers agree . . . NO on 88!

CLIFFORD CORIGLIANO, SR., Teacher of the Year, 2003

ART PEDROZA, Member
California and American Federations of Teachers, AFL-CIO

LORIE McCANN, Parent-Teachers Association Local President

ARGUMENT AGAINST PROPOSITION 88

All Californians want better schools, but the promoters of Proposition 88 have taken the wrong approach. Concerned teachers and parents have joined with taxpayer groups and small business organizations to oppose Proposition 88. Here’s why:

- Proposition 88 does nothing to assure that funds raised in your community are spent on your schools. Proposition 88 lets the State Legislature give your tax money to any school district in the state.
- Proposition 88 creates a whole new kind of statewide property tax. Currently, all property taxes are collected locally and are used for local services, such as improving your local schools, reducing traffic congestion, improving health care, and increasing firefighting, paramedic, and law enforcement capabilities. The Prop. 88 property parcel tax goes to the State first.
- Proposition 88 would impose the first statewide property tax since 1910 and would encourage other special interests to pass more and bigger property parcel taxes for their self interest causes.
- Opening the door to the new property parcel tax could lead to huge new property taxes, contrary to the clear intent of Proposition 13 to limit property taxes. We could see owners of small homes or mom-and-pop stores taxed out of their homes and shops.
- This new tax is never ending; we will pay it forever, whether it does anything to help schools or not!
- Proposition 88 gives Sacramento politicians increased power to decide where and how to spend your money.
- Proposition 88 uses a loophole to get around the two-thirds vote requirement in Proposition 13 to increase taxes. Proposition 13 requires a two-thirds voter approval to impose a local property parcel tax. Proposition 88 would impose a new statewide property parcel tax with only a simple majority vote. As a result, it is much easier

to impose new statewide parcel taxes than a local parcel tax. This is another good reason to stop statewide property parcel taxes now before we are flooded with property parcel tax propositions.

People concerned about our kids and schools say:

“As a public school teacher, nothing is more important to me than the quality of our schools. Proposition 88 is poorly drafted, it will result in tax money raised in our community being spent by the State Legislature anywhere in the state.”

—Lillian T. Perry, Middle School Teacher
 Teacher of the Year 2002

“We are the parents of two children in public schools and are active in our PTA. We are very concerned about the impact of Proposition 88 on our local schools and are voting NO.”

—Paul and Susanna Fong
 El Dorado Hills

“Most of the school teachers I know are voting No on Proposition 88. It’s bad for our schools and bad for our kids.”

—Kate McGowan-Otto, 4th Grade Teacher
 Winner, Honorary Service Award, 2005

Proposition 88 doesn’t solve problems; it creates new ones. That’s why Parents and Teachers agree with Taxpayers and Small Business Owners. Vote NO on Proposition 88.

For more information visit: www.noprop88.com.

DR. TOM BOGETICH, Executive Director
 California State Board of Education (Ret.)

JON COUPAL, President
 Howard Jarvis Taxpayers Association

JOEL FOX, President
 Small Business Action Committee

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 88

Please read Proposition 88 for yourself. It’s a modest investment to help ensure students have updated textbooks, smaller classes, and safer campuses.

Two ultra conservative special interest groups are opposing this measure, just like they’ve opposed other efforts to improve public education in our state. They have never proposed a solution to fix our schools. Instead, they hide behind a smokescreen of distortions and will say anything to stop Prop. 88.

But don’t just take our word for it. READ 88 FOR YOURSELF. Then please join teachers, parents, businesses, and taxpayers around the state in voting YES on 88.

Prop. 88 will:

- Ensure that teachers won’t have to pay for classroom learning materials out of their own pocket.
- Protect students from gangs and violence on our school campuses.
- Reduce class sizes so students can get the attention they deserve.

- Keep the funds out of the hands of Sacramento politicians to ensure that EVERY DOLLAR goes to our local schools and that EVERY COMMUNITY BENEFITS.
- Provide taxpayers and businesses an even stake in improving our schools.
- Require the most strict accountability requirements and standards ever proposed to make sure the funds don’t get wasted.
- Protect the most vulnerable by exempting seniors and disabled homeowners.
- Ensure that homeowners are still protected from higher taxes due to increased property values.

Yes on Prop. 88—It’s a small investment with big returns—smaller classes, new textbooks, and more learning materials.

SHELBI WILSON, California Teacher of the Year, 2006

RUSSELL “RUSTY” HAMMER, Former Chamber of
 Commerce Executive

STEPHANIE PRIDMORE, Local PTA President

88

**POLITICAL CAMPAIGNS. PUBLIC FINANCING.
CORPORATE TAX INCREASE. CAMPAIGN CONTRIBUTION AND
EXPENDITURE LIMITS. INITIATIVE STATUTE.**

- Provides that candidates for state elective office meeting certain eligibility requirements, including collection of a specified number of \$5.00 contributions from voters, may voluntarily receive public campaign funding from Fair Political Practices Commission, in amounts varying by elective office and election type.
- Increases income tax rate on corporations and financial institutions by 0.2 percent to fund program.
- Imposes new limits on campaign contributions to state-office candidates and campaign committees, and new restrictions on contributions by lobbyists, state contractors.
- Limits certain contributions and expenditures by corporations.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Increased revenues (primarily from increased taxes on corporations and financial institutions) totaling more than \$200 million annually. The funds would be spent on the public financing of political campaigns for state elected officials.

ANALYSIS BY THE LEGISLATIVE ANALYST

OVERVIEW OF THE MEASURE

This proposition makes major changes to the way that political campaigns for state candidates and ballot measures are funded. Candidates could choose to receive public funding for the costs of their campaigns. For those candidates choosing not to receive public funding, existing limits on the amount of political donations (“contributions”) would be lowered. Figure 1 shows the main provisions of the measure, which are discussed in more detail below.

candidate is determined by state law. The limits were last changed when voters approved Proposition 34 at the November 2000 general election. Current limits on the amount of money that can be given depend on the office being sought and who is giving the donation. For instance, an individual can give a candidate for the state Assembly a donation of up to \$3,300. On the other hand, a political party can give that same candidate as much money as it chooses. A candidate can accept donations any time before an election and can spend without limit any money that is collected.

BACKGROUND

Current Limits on Political Contributions. Candidates for state offices collect private donations from individuals, corporations, political parties, and other organizations (such as labor unions and nonprofit organizations) to pay for the costs of their political campaigns. The maximum amount of money that each person or group can give to a

Role of Committees and Independent Expenditures. Rather than make donations directly to candidates, some individuals and groups choose to make political donations to “committees.” These committees take donations and then decide which candidates to give money. For instance, one type of committee—a small contributor committee—accepts donations of up to \$200 from more than

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

100 individuals and then distributes the funds to candidates. Other individuals, groups, and committees choose to spend money on political campaigns without giving money directly to candidates. Instead, they make “independent expenditures” without coordinating with the candidate. These independent expenditures, such as television commercials or newspaper advertisements, may encourage voters to support or oppose a candidate. There are no limits on the amount of money that can be donated for or spent on independent expenditures.

Ballot Measures. There are no limits on the amount of money that can be collected or spent for and against state ballot measures (propositions).

State Government’s Responsibilities. The state’s campaign finance laws are administered by the Secretary of State (SOS) and the Fair Political Practices Commission (FPPC). Under state law, individuals and groups must tell SOS how much money has been given, received, and spent on political campaigns. This information is available to the public—generally on the Internet. The FPPC is in charge of enforcing the laws to make sure candidates and donors obey the rules. The FPPC can assess fines on candidates violating election laws.

FIGURE 1

Proposition 89: Main Provisions

- ✓ **Public Funding for Political Candidates**
 - A candidate for state office meeting certain requirements could receive state funds to pay for the costs of a political campaign.
 - The amount of state funds that a candidate would receive would go up if an opponent spent more in private funds.
- ✓ **Lower Contribution Amounts for Privately Funded Candidates**
 - For candidates choosing not to receive public funding, the amount of money that could be collected from each individual, corporation, or other group would be lower than is currently the case.
- ✓ **Contribution Restrictions for State Ballot Measures**
 - Places new limits on contributions to candidates’ efforts to support or oppose ballot measures.
 - Places new limits on contributions from corporations to support or oppose ballot measures.
- ✓ **Higher Corporate Taxes**
 - Increases tax rate on corporations and financial institutions. For corporations, tax rate would increase from 8.84 percent to 9.04 percent. For financial institutions, tax rate would increase from 10.84 percent to 11.04 percent.
 - Raises over \$200 million each year to implement the measure.

PROPOSAL

This measure makes significant changes to state laws regarding the financing of campaigns for elected state offices and state ballot measures. The measure’s provisions regarding candidates for office generally affect only state elected officials (see Figure 2).

FIGURE 2

State Elected Officials Covered by Proposition 89

Statewide Officials

- Governor
- Lieutenant Governor
- Attorney General
- Secretary of State
- Treasurer
- Controller
- Insurance Commissioner
- Superintendent of Public Instruction

Legislature

- Senators (40)
- Assembly Members (80)

Board of Equalization Members (4)

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

PUBLIC FUNDING FOR POLITICAL CANDIDATES

The measure establishes a system for candidates to receive public funds to pay for the costs of campaigning for state offices.

Requirements to Receive Money

In order to receive public funding for a campaign, a candidate would have to meet certain requirements:

- **\$5 Donations and Signatures.** A candidate would be required to collect a number of \$5 donations (“qualifying contributions”) and signatures from residents prior to a primary election. As shown in Figure 3, the required number of donations would range from 750 to 25,000 depending on the office sought. The measure requires that these donations be paid to the state.
- **Private Contributions.** To receive public funding, a candidate could not receive private campaign funding, with two main exceptions. First, beginning up to 18 months prior to a primary election, the measure allows candidates to collect and spend start-up contributions, or “seed money.” (These funds could be used, for instance, to pay costs for collecting the qualifying contributions and signatures.) The measure restricts these types of donations to \$100 each. Total donations would be limited to between \$10,000 and \$250,000 depending on the office (see Figure 3). These funds could only be spent until 90 days prior to a primary election. Second,

candidates would continue to be able to receive donations from political parties. Donations from political parties would be subject to the same limits as for candidates choosing not to receive public funds (described below).

- **Other Requirements.** By accepting public funding, a candidate would be subject to some additional requirements. For example, candidates would be required to participate in public debates before each election. In addition, candidates could not use their personal funds to pay for campaign costs.

Public Funding Provided

Those candidates meeting the requirements described above would become eligible to receive public funds. As shown in Figure 3, the amount of funding would vary based on (1) the office sought and (2) whether it was a primary or general election. For instance, for a primary election, a candidate running for the Assembly could receive \$250,000 for the primary election and an additional \$400,000 for the general election (if successful in the primary election). A candidate for Governor could receive \$10 million in the primary election and an additional \$15 million in the general election. The FPPC would administer the funds and make disbursements using a debit card system.

Additional Public Funds. In cases where a candidate’s opponent chose not to participate in the public financing system, the measure allows a

FIGURE 3

Proposition 89: Public Financing Provisions for Major Party Candidates

Office	Initial Steps		Public Financing Available	
	NUMBER OF \$5 CONTRIBUTIONS	MAXIMUM START-UP CONTRIBUTIONS	PRIMARY ELECTION	GENERAL ELECTION
Assembly	750	\$10,000	\$250,000	\$400,000
Senate	1,500	20,000	500,000	800,000
Board of Equalization	2,000	30,000	250,000	400,000
Statewide officials	7,500	75,000	2,000,000	2,000,000
Governor	25,000	250,000	10,000,000	15,000,000

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

participating candidate to receive additional funds in some cases. Specifically, if an opponent spent more in private funds than the amount of public funds available, additional public funds would be provided to the candidate on a dollar-for-dollar basis. Similarly, a participating candidate would receive additional public funds if independent expenditures were made in support of an opponent. The maximum amount of additional public funds that a candidate could receive is capped under the measure (generally five times the original amount provided to a candidate and four times the amount for a candidate for Governor). For instance, the maximum amount of additional public funds that a candidate for the Assembly could receive for a primary election would be \$1.25 million.

Funds for Expenses While in Office. Under current law, state elected officials generally may use leftover campaign funds to pay for some expenses while in office. Under the measure, those candidates who accept public financing and win their election would be eligible to receive annual payments to cover similar expenses. Members of the Legislature would receive \$50,000 each year while in office and other state officials would receive \$100,000 each year.

Minor Party and Independent Candidates

The amounts shown in Figure 3 are for

candidates representing major parties (generally, parties whose nominee for Governor in the last election received at least 10 percent of the vote). Under the measure, candidates from minor parties and independent candidates are eligible to receive smaller amounts of public funds. Depending on the situation, a minor party or independent candidate could receive as much as one-half of the amount that a major party candidate receives.

LOWER CONTRIBUTION AMOUNTS FOR PRIVATELY FUNDED CANDIDATES

Lower Campaign Contributions. For those candidates who choose not to participate in the public financing of campaigns, the measure imposes new limits for campaign donations to candidates. The measure’s limits generally are much more restrictive than is now the case. For instance, currently individuals, corporations, and other groups can donate \$3,300 per election to a candidate for the Legislature. This measure would restrict contributions to \$500 for legislative candidates. Currently, political parties can give unlimited amounts to candidates. Under the measure, a political party’s donations would be limited. For example, a political party could give a privately funded candidate for Assembly up to \$20,000 for a general election. These new limits are summarized in Figure 4.

FIGURE 4

Campaign Contribution Limits for Privately Funded Candidates (For Each Election)

	Individual, Group, or Corporation		Small Contributor Committee		Political Party	
	CURRENT	PROPOSITION 89	CURRENT	PROPOSITION 89	CURRENT	PROPOSITION 89 ^a
Assembly	\$3,300	\$500	\$6,700	\$2,500	No limit	\$20,000
Senate	3,300	500	6,700	2,500	No limit	40,000
Board of Equalization	5,600	500	11,100	2,500	No limit	20,000
Statewide officials	5,600	1,000	11,100	2,500	No limit	200,000
Governor	22,300	1,000	22,300	2,500	No limit	750,000

^aAmounts shown are for general elections. Primary election limits are between one-half and two-thirds of the amounts shown. Political party limits would apply to both privately and publicly funded candidates.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

Other Restrictions on Campaign Contributions. The measure also adds other types of restrictions on campaign contributions related to privately funded candidates, which are summarized in Figure 5.

- **Independent Expenditure Contribution Limit.** The measure restricts donations to \$1,000 each year to a committee for independent expenditures. As under current law, individuals could make unlimited independent expenditures if they spent the money on their own, without the use of a committee.
- **Overall Donation Limit.** The measure also adds new limits on the overall amount of political contributions that a person or group can make to candidates and committees in a year. The total amount that could be donated to all types of committees to support or oppose state candidates would be limited to \$15,000. Of this total, however, any contributions over \$7,500 would be required to go for independent expenditures.
- **Lower Political Party Contribution Limit.** The measure lowers an existing limit on annual contributions to political parties from \$27,900 to \$7,500.
- **Lobbyist Restrictions.** Under existing law, lobbyists are prohibited from making contributions to candidates. The measure also forbids lobbyists from making donations to political parties and committees.

- **State Contractor Restrictions.** Under existing law, those individuals and entities receiving state contracts are not subject to any special restrictions on political contributions. The measure forbids, in some instances, those receiving state contracts from making donations to candidates, political parties, and committees.

CONTRIBUTION RESTRICTIONS FOR STATE BALLOT MEASURES

Unlike donations for candidates, the amount of money donated by entities to support or oppose state ballot measures currently is not subject to contribution limits. This measure places two new restrictions on donations for ballot measures:

- First, when a candidate for state office is significantly involved with a committee that supports or opposes a ballot measure, individuals, corporations, and other groups would be limited to a \$10,000 contribution to that committee.
- Second, corporations would be prohibited from making contributions or spending more than \$10,000 to support or oppose a ballot measure. (Nonprofit corporations meeting certain requirements would not be subject to this restriction.) Corporations, however, could establish special committees to collect voluntary donations from employees for additional expenditures.

FIGURE 5

Other Changes Under Proposition 89

	Current	Proposition 89
Candidate-Related Contributions		
• Total annual contribution to an independent expenditure committee to support or oppose a candidate.	No limit	\$1,000
• Total annual contributions to political parties for candidate-related expenditures.	\$27,900	7,500
• Total annual contributions to all types of committees for candidate-related expenditures.	No limit	15,000 ^a
Ballot Measure Contributions		
• Contributions for or against a ballot measure where a candidate is significantly involved.	No limit	\$10,000
• Contributions for or against a ballot measure by a corporation.	No limit	10,000

^aContributing more than \$7,500 is allowed only for independent expenditures.

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

FISCAL PROVISIONS

Higher Corporate Taxes. In order to pay for the measure's provisions (primarily for the public financing of campaigns), the measure increases taxes on corporations and financial institutions beginning in 2007. The measure increases the income tax rates paid by corporations from 8.84 percent to 9.04 percent. For financial institutions, the rate would rise from 10.84 percent to 11.04 percent.

Other Revenues. In addition, the measure would result in other, small sources of revenues, primarily the collection of candidates' \$5 contributions and fines on candidates violating election laws. (Under current law, fines for violating election laws are deposited into the state's General Fund.)

Total Amount of Funds. The total amount of funds that could be held by the state at any time for the measure's purposes would be limited to about \$900 million. (The formula determining this amount would be adjusted for inflation every two years.) Any amount over this limit would be transferred to the state's General Fund. If there were not enough money to fully fund the measure's provisions, the measure authorizes FPPC to proportionately reduce the amount of funds available to each candidate.

OTHER PROVISIONS

Administration Costs. The measure provides that a minimum of \$3 million (adjusted for inflation every two years) of the new funds would go to FPPC to pay for the administration of the measure. The SOS would also be required to use some of the funds for a voter education campaign.

Election Procedures. The measure makes a number of other changes to election procedures. For instance, the measure prohibits any candidate (whether receiving public financing or not) from collecting campaign donations earlier than 18 months prior to a primary election. Also, the measure changes what counts as independent and political expenditures prior to an election. These changes

would result in more spending being subject to donation limits and disclosure requirements.

FISCAL EFFECTS

New Revenues. We estimate that the measure would raise over \$200 million annually. Virtually all of this amount would come from the increased taxes on corporations and financial institutions. Small amounts would come from the collection of candidates' \$5 contributions and fines on candidates violating election laws. Since fines for violating election laws are currently deposited in the state's General Fund, the measure would slightly reduce General Fund revenues (by about \$1 million annually).

New Spending. The new funds would pay for costs associated with the measure. We estimate costs to administer the provisions of the measure and pay for voter education would be in the range of several million dollars each year. (There would be additional one-time costs, largely for computer systems and voter education, to set up the public financing of campaigns for the first time.) The remaining funds would be available for candidates who choose to receive public funds for their political campaigns. The amount of spending on the public financing of election campaigns would depend on a number of factors and vary from election to election. Among the factors affecting spending would be:

- The number of candidates accepting public funds.
- The amount of money spent by candidates not receiving public financing (which would determine the level of any additional public funds).

The measure provides that total spending could not exceed the amount of money available from the increased revenues. Assuming that the number of candidates in each election does not increase significantly from current levels, there probably would be sufficient funds available to provide all candidates with the amounts allowed under the measure.

ARGUMENT IN FAVOR OF PROPOSITION 89

VOTE YES TO TAKE A STAND AGAINST THE POWER OF SPECIAL INTERESTS AND LOBBYISTS IN CALIFORNIA GOVERNMENT.

VOTE "YES" ON PROPOSITION 89, THE CLEAN MONEY AND FAIR ELECTIONS ACT

We have a crisis of corruption in our government marked by scandal after scandal and criminal investigations of politicians from both parties. It is time for Californians to clean up this corruption and make politicians accountable to voters instead of big money campaign contributors.

THE PROBLEM

Right now, special interests like big oil companies, the drug giants, the insurance industry, and HMOs can get their way in Sacramento by donating millions to elect politicians who will owe them favors. Lobbyists and special interests use campaign contributions to pass their pork barrel projects and create tax loopholes—costing consumers and taxpayers like you billions of dollars each year.

THE SOLUTION: PROPOSITION 89

If you're dissatisfied with the way campaigns are funded in California and the effect of campaign contributions on state government, Vote Yes on Prop. 89.

YOUR "YES" VOTE WILL:

1. Help level the playing field and make our elections more fair and competitive—so that candidates with the best ideas have a chance to win, even if they are not rich or well connected to wealthy special interest groups and lobbyists.
2. Require candidates to adhere to strict spending limits and reject special interest contributions in order to qualify for public financing.
3. Ban contributions to candidates by lobbyists and state contractors.
4. Set limits on outside, so-called "independent" campaign committees created by big contributors to influence elections.
5. Limit to \$10,000 the amount corporations can spend directly on ballot measure campaigns.

6. Restrict contributions by corporations, unions, and individuals to \$500 for candidates for state Legislature, \$1,000 to candidates for statewide office.

7. Establish tough penalties, including jail time and removing candidates from office who break the law.

NOT FUNDED BY INDIVIDUAL TAXPAYERS OR THE STATE BUDGET

Proposition 89 is specifically funded by a modest increase in the corporate income tax rate—raising it from 8.84% to 9.04%. The resulting corporate income tax rate would still be less than it was from 1980 until 1996. Corporations should pay their fair share in taxes.

WHEN YOU HEAR THE ARGUMENTS AGAINST PROPOSITION 89, REMEMBER:

- Opposition to Proposition 89 is being led and funded by the big oil companies, drug companies, the insurance industry, HMOs, and other entrenched interests.
- Proposition 89 was drafted and reviewed by experts in constitutional and election law and put on the ballot and backed by Democrats, Republicans, and independent voters.
- The opponents of Proposition 89 want to keep the system exactly the way it is, because they know it works for them, NOT for you. They are making false claims against Proposition 89 because they want to keep political power for themselves rather than having fair elections that make politicians accountable to the voters.

VOTE YES ON PROPOSITION 89! RETURN ELECTIONS TO THE VOTERS AND REDUCE THE POWER OF THE SPECIAL INTERESTS.

DEBORAH BURGER, RN, President
California Nurses Association

HARVEY ROSENFELD, Founder
Foundation for Taxpayer and Consumer Rights

SUSAN LERNER, Executive Director
California Clean Money Campaign

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 89

Here's what you should know before voting:

PROPOSITION 89 IS A TAX INCREASE TO PAY FOR POLITICIANS' NEGATIVE POLITICAL CAMPAIGNS

The supporters of Proposition 89 won't tell you that what this measure really does, plain and simple, is raise taxes by hundreds of millions of dollars so politicians can run their campaigns at taxpayers' expense.

Everything we don't like about political campaigns—negative television ads and junk mail in our mailboxes—would still be there. The only difference is OUR TAX DOLLARS would be paying for it.

AFFECTS SMALL BUSINESSES TOO

They claim that Proposition 89 is about reducing the impact of big corporations in elections, but it also SEVERELY LIMITS the ability of many small businesses from backing candidates or impacting measures.

That's why the California Small Business Association opposes Prop. 89.

PROP. 89 IS COMPLICATED AND UNCONSTITUTIONAL

They say Prop. 89 was crafted by election experts, but they don't tell you that major portions of a similar measure were

recently thrown out by the Supreme Court. The truth—Prop. 89 is a complicated, 55-page measure that won't work.

PROP. 89 IS UNFAIR

And the biggest deception of all—the authors of Proposition 89 are special interests too! They wrote Prop. 89 so they can still contribute BIG MONEY to ballot initiatives, while small businesses, nonprofits, and others are virtually SHUT OUT. Prop. 89 is a power grab by a single special interest to dominate elections under the guise of campaign reform.

DON'T BE FOOLED BY PROP. 89—IT'S PHONY REFORM.

VOTE NO ON PROP. 89.

LARRY MCCARTHY, President
California Taxpayers' Association

BETTY JO TOCCOLI, Chair
California Small Business Roundtable

JAMES M. HALL, Former Chair
California Fair Political Practices Commission

ARGUMENT AGAINST PROPOSITION 89

Don't be fooled by Proposition 89. Prop. 89 is NOT about cleaning up politics. But, it is 56 pages of new, complicated, confusing election rules that won't work.

Proposition 89 was put on the ballot by a single special interest group, the California Nurses Association, that wants an UNFAIR advantage in California elections while small businesses and individuals are effectively SHUT OUT of the political process. Even other labor organizations like those representing teachers, firefighters, and law enforcement do not support Proposition 89, because it RESTRICTS their participation in the political process as well.

PROPOSITION 89: NOT JUST ABOUT BIG CORPORATIONS.

The authors of Prop. 89 say they are trying to stop big corporations from having too much influence. But, Proposition 89 restricts many small businesses from backing candidates or supporting and opposing initiatives. Even a mom-and-pop business, if it is incorporated like many are, is restricted under Prop. 89.

Proposition 89 also restricts many nonprofit groups that want to educate voters about the issues they care about. For example, a group of crime victim advocates will be limited in warning voters about a candidate who is soft on crime. Teachers will be limited in helping elect candidates who will support improving our schools.

PROPOSITION 89: INCREASES TAXES TO PAY FOR NEGATIVE CAMPAIGNS.

California has many urgent priorities to get our state back on the right track.

Proposition 89 contains a \$200 MILLION TAX INCREASE and gives that money to politicians to spend on their negative TV ads and junk mail.

Proposition 89 places virtually no limits on how the politicians spend their taxpayer-financed campaign funds. It means that *we, the taxpayers, will be paying for their negative ads!*

PROPOSITION 89: WON'T STOP WEALTHY CANDIDATES.

Proposition 89 puts no limits on wealthy candidates who try to buy California elections.

Under Proposition 89, a politician using taxpayer funds and running against a wealthy candidate can get up to *ten times the normal taxpayer money* to run his campaign. A candidate for Governor could qualify for up to \$200 million of taxpayer money to run his or her campaign.

PROPOSITION 89: IT'S UNCONSTITUTIONAL!

James Hall, past Chairman of the California Fair Political Practices Commission, says:

"Proposition 89 is unconstitutional, unfair, and won't work."

Supporters of 89 say it is modeled after measures in other states. But, the United States Supreme Court recently found the contribution and expenditure limits in a similar measure from Vermont unconstitutional because they limit free speech and violate the First Amendment.

PROPOSITION 89: WE ALREADY HAVE CAMPAIGN LIMITS.

Californians have already passed a campaign finance reform law, Proposition 34, which strictly limits contributions to candidates. This law has survived several court challenges and is working. We don't need Prop. 89.

SAY NO to PROPOSITION 89!

Proposition 89 is unfair to small businesses, nonprofits, and groups representing working Californians. It is a waste of our precious tax dollars, it's unconstitutional, and it's just another confusing measure that won't work. Please join small businesses, taxpayers, educators, organized labor, and so many others in voting NO on Proposition 89.

ALLAN ZAREMBERG, President

California Chamber of Commerce

TONY QUINN, Former Commissioner

California Fair Political Practices Commission

LARRY McCARTHY, President

California Taxpayers' Association

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 89

Elections should be decided by voters, not special interests. Elections should be about the best ideas, not who has the most money. Vote YES on Proposition 89 for fair and clean elections.

Proposition 89:

- Levels the playing field and makes our elections fairer and more competitive. Advocates for crime victims, education, healthcare, seniors, and other regular Californians will no longer be drowned out by big campaign spenders.
- Saves taxpayers money by ending the incentive for legislative giveaways on lobbyist-driven projects. The \$3.3 billion in corporate tax loopholes today cost each California household \$275 every year.
- Provides the antidote to negative advertising. Candidates who accept public financing must participate in real debates and cannot hide behind negative 30-second ads.
- Does not increase taxes on individuals. Small businesses will not foot the bill.
- Creates a Clean Money public financing system like those in other states that protects free speech and has been

proven to be effective and constitutional.

- Opens our elections to a diversity of qualified candidates from all walks of life, like teachers, nurses, and firefighters, not just those with access to the most money.
- Sets tough penalties for those who violate the law.

The special interests oppose Prop. 89 because they like the control they have over our political system today. As a *Los Angeles Times* headline said, "Prop. 89: So Good It's Scary—to Sacramento."

It is time to put the voters back in charge. VOTE YES ON PROPOSITION 89.

JACQUELINE JACOBBERGER, President

League of Women Voters of California

RICHARD L. HASEN, JD, Ph.D., Constitutional Election

Law Professor

KATHAY FENG, Executive Director

California Common Cause

OFFICIAL TITLE AND SUMMARY ★ ★ ★

Prepared by the Attorney General

GOVERNMENT ACQUISITION, REGULATION OF PRIVATE PROPERTY. INITIATIVE CONSTITUTIONAL AMENDMENT.

- Bars state and local governments from condemning or damaging private property to promote other private projects or uses.
- Limits government’s authority to adopt certain land use, housing, consumer, environmental and workplace laws and regulations, except when necessary to preserve public health or safety.
- Voids unpublished eminent domain court decisions.
- Defines “just compensation.”
- Government must occupy condemned property or lease property for public use.
- Condemned private property must be offered for resale to prior owner or owner’s heir at current fair market value if government abandons condemnation’s objective.
- Exempts certain governmental actions.

Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:

- Increased annual state and local government costs to pay property owners for (1) losses to their property associated with certain new laws and rules, and (2) property acquisitions. The amount of such costs is unknown, but potentially significant on a statewide basis.

ANALYSIS BY THE LEGISLATIVE ANALYST

SUMMARY

This measure amends the California Constitution to:

- Require government to pay property owners for substantial economic losses resulting from some new laws and rules.
- Limit government authority to take ownership of private property.

This measure applies to all types of private property, including homes, buildings, land, cars, and “intangible” property (such as ownership of a business or patent). The measure’s requirements apply to all state and local governmental agencies.

PAYING PROPERTY OWNERS FOR ECONOMIC LOSSES

State and local governments pass laws and other rules to benefit the overall public health, safety, or welfare of the community, including its long-term economy. (In this analysis, we use the term “laws and rules” to

cover a variety of government requirements, including statutes, ordinances, and regulations.)

In some cases, government requirements can reduce the value of private property. This can be the case, for example, with laws and rules that (1) limit development on a homeowner’s property, (2) require industries to change their operations to reduce pollution, or (3) restrict apartment rents.

PROPOSAL

This measure requires government to pay property owners if it passes certain new laws or rules that result in substantial economic losses to their property. Below, we discuss the types of laws and rules that would be exempt from the measure’s requirements and those that might require government compensation.

What Laws and Rules *Would Not* Require Compensation?

All *existing* laws and rules would be exempt from the measure’s compensation requirement. New laws

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

and rules also would be exempt from this requirement if government enacted them: (1) to protect public health and safety, (2) under a declared state of emergency, or (3) as part of rate regulation by the California Public Utilities Commission.

What Laws and Rules *Could* Require Compensation?

While the terms of the measure are not clear, the measure provides three examples of the types of new laws and rules that could require compensation. These examples relate to land use and development and are summarized below.

- **Downzoning Property.** This term refers to decisions by government to reduce the amount of development permitted on a parcel. For example, a government action to allow construction of three homes on an acre where five homes previously had been permitted commonly is called “downzoning.”
- **Limitations on the Use of Private Air Space.** This term generally refers to actions by government that limit the height of a building. For example, a government rule limiting how tall a building may be to preserve views or maintain historical character often is called a limitation of “air space.”
- **Eliminating Any Access to Private Property.** This term could include actions such as closing the only public road leading to a parcel.

In addition to the examples cited above, the broad language of the measure suggests that its provisions could apply to a variety of future governmental requirements that impose economic losses on property owners. These laws and rules could include requirements relating, for example, to employment conditions, apartment prices, endangered species, historical preservation, and consumer financial protection.

Would Government Pay Property Owners for All Losses?

Under current law and court rulings, government usually is required to compensate property owners for losses resulting from laws or rules if government’s action deprives the owners of virtually all beneficial use of the property.

This measure specifies that government must pay property owners if a new law or rule imposes “substantial economic losses” on the owners. While the measure does not define this term, dictionaries define “substantial” to be a level that is fairly large or considerable. Thus, the measure appears to require government to pay property owners for the costs of many more laws and rules than it does today, but would not require government to pay for smaller (or less than substantial) losses.

EFFECTS ON STATE AND LOCAL GOVERNMENTS

The measure’s provisions regarding economic losses could have a major effect on future state and local government policymaking and costs. The amount and nature of these effects, however, is difficult to determine as it would depend on how the courts interpreted the measure’s provisions and how the Legislature implemented it. Most notably:

- **How Many Laws and Rules Would Be Exempt From the Requirement That Government Pay Property Owners for Losses?** The measure does not require government to compensate property owners under certain circumstances (such as actions to protect public health and safety). If these exemptions were interpreted broadly (rather than narrowly), fewer new laws and rules could require compensation.
- **How Big Is a Substantial Economic Loss?** If relatively small losses (say, less than a 10 percent reduction in fair market value) to a property owner required compensation, government could be required to pay many property owners for costs resulting from new laws and rules. On the other hand, if courts ruled that a loss must exceed 50 percent of fair market value to be a substantial economic loss, government would be required to pay fewer property owners.

Under the measure, state and local governments probably would modify their policymaking practices to try to avoid the costs of compensating property owners for losses. In some cases, government might decide not to create laws and rules because of these costs. In other cases, government might take alternative approaches to achieving its goals. For example, government could:

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

- Give property owners incentives to voluntarily carry out public objectives.
- Reduce the scope of government requirements so that any property owners' losses were not substantial.
- Link the new law or rule directly to a public health and safety (or other exempt) purpose.

There probably would be many cases, however, where government would incur additional costs as a result of the measure. These would include situations where government anticipated costs to compensate property owners at the time it passed a law—as well as cases when government did not expect to incur these costs. The total amount of these payments by government to property owners cannot be determined, but could be significant on a statewide basis.

LIMITING GOVERNMENT AUTHORITY TO TAKE PROPERTY

Eminent domain (also called “condemnation”) is the power of local, state, and federal governments to take private property for a public use so long as government compensates the property owner. (In some cases, government has given the power of eminent domain to private entities, including telephone and energy companies and nonprofit hospitals. In this analysis, these private entities are included within the meaning of “government.”)

Over the years, government has taken private property to build roads, schools, parks, and other public facilities. In addition to these uses of eminent domain, government also has taken property for public purposes that do not include construction of public facilities. For example, government has taken property to: help develop higher value businesses in an area, correct environmental problems, enhance tax revenues, and address “public nuisances” (such as hazardous buildings, blight, and criminal activity).

PROPOSAL

This measure makes significant changes to government authority to take property, including:

- Restricting the purposes for which government may take property.
- Increasing the amount that government must pay property owners.
- Requiring government to sell property back to its original owners under certain circumstances.

Below, we discuss the major changes proposed by the measure, beginning with the situations under which government could—and could not—take property.

Under What Circumstance Could Government Take Property?

Under the measure, government could take private property to build public roads, schools, parks, and other government-owned public facilities. Government also could take property and lease it to a private entity to provide a public service (such as the construction and operation of a toll road). If a public nuisance existed on a specific parcel of land, government could take that parcel to correct the public nuisance. Finally, government could take property as needed to respond to a declared state of emergency.

What Property Takings Would Be Prohibited?

Before taking property, the measure requires government to state a “public use” for the property. The measure narrows the definition of public use in a way that generally would prevent government from taking a property:

- ***To Transfer It to Private Use.*** The measure specifies that government must maintain ownership of the property and use it only for the public use it specified when it took the property.
- ***To Address a Public Nuisance, Unless the Public Nuisance Existed on That Particular Property.*** For example, government could not take *all* the parcels in a run-down area unless it showed that each and every parcel was blighted.
- ***As Part of a Plan to Change the Type of Businesses in an Area or Increase Tax Revenues.*** For example, government could not take property to promote development of a new retail or tourist destination area.

★ ★ ★ ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

In any legal challenge regarding a property taking, government would be required to prove to a jury that the taking is for a public use as defined by this measure. In addition, courts could not hold property owners liable to pay government’s attorney fees or other legal costs if the property owner loses a legal challenge.

How Much Would Government Have to Pay Property Owners?

Current law requires government to pay “just compensation” to the owner before taking property. Just compensation includes money to reimburse the owner for the property’s “fair market value” (what the property and its improvements would sell for on an open market), plus any reduction in the value of remaining portions of the parcel that government did not take. State law also requires government to compensate property owners and renters for moving costs and some business costs and losses.

The measure appears to increase the amount of money government must pay when it takes property. Under the measure, for example, government would be required to pay more than a property’s fair market value if a greater sum were necessary to place the property owner “in the same position monetarily” as if the property had never been taken. The measure also appears to make property owners eligible for reimbursement for a wider range of costs and expenses associated with the property taking than is currently the case.

When Would Government Sell Properties to Former Owners?

If government stopped using property for the purpose it stated at the time it took the property, the former owner of the property (or an heir) would have the right to buy back the property. The property would be assessed for property tax purposes as if the former owner had owned the property continuously.

EFFECTS ON STATE AND LOCAL GOVERNMENTS

Government buys many hundreds of millions of dollars of property from private owners annually.

Relatively few properties are acquired using government’s eminent domain power. Instead, government buys most of this property from *willing* sellers. (Property owners often are aware, however, that government could take the property by eminent domain if they did not negotiate a mutually agreeable sale.)

A substantial amount of the property that government acquires is used for roads, schools, or other purposes that meet the public use requirements of this measure—or is acquired to address specific public nuisances. In these cases, the measure would not reduce government’s authority to take property. The measure, however, likely would increase somewhat the amount that government must pay property owners to take their property. In addition, the measure could result in willing sellers increasing their asking prices. (This is because sellers could demand the amount that they would have received if the property were taken by eminent domain.) The resulting increase in government’s costs to acquire property cannot be determined, but could be significant.

The rest of the property government acquires is used for purposes that do not meet the requirements of this measure. In these cases, government could not use eminent domain and could acquire property only by negotiating with property owners on a voluntary basis. If property owners demanded selling prices that were more than the amount government previously would have paid, government’s spending to acquire property would increase. Alternatively, if property owners did not wish to sell their property and no other suitable property was available for government to purchase, government’s spending to acquire property would decrease.

Overall, the net impact of the limits on government’s authority to take property is unknown. We estimate, however, that it is likely to result in significant net costs on a statewide basis.

ARGUMENT IN FAVOR OF PROPOSITION 90

Proposition 90 stops eminent domain abuse!

Local governments can take homes, businesses, and churches through unfair use of eminent domain. They can also take away your property value with the stroke of a pen.

We are three average Californians, and it happened to us.

Local governments unfairly tried to take our property away from us and turn it over to developers to build condos, hotels, and other commercial projects.

Why? Because these developers are politically connected, and their projects will generate more tax revenue for local governments.

If government can take our property, it can take yours too.

- Manuel Romero had eminent domain used against his family restaurant so that a Mercedes-Benz dealership next door could use the space for a parking lot.
- Bob Blue had eminent domain used against his small luggage store—in his family for almost sixty years—so that a luxury hotel could be built.
- Pastor Roem Agustin had his church threatened with condemnation so that a developer could build condominiums.

It's wrong for senior citizens, small business owners, or anyone who can't fight back to be forced to give up their property so wealthy developers can build giant retail stores, shopping malls, and upscale housing developments.

Government can also take property without compensating property owners.

When governments pass regulations that reduce the value of your property, it's called regulatory taking. When this happens you should be compensated by the government for your lost value.

Government should not be able to take your home—outright or through regulations that reduce the value of your property—without it being for a legitimate PUBLIC use and without paying for what it takes.

That's simple fairness.

That's why California needs Proposition 90, the Protect Our Homes Act.

Proposition 90 will:

- restore homeowners' rights that were gutted last year by the Supreme Court's outrageous *Kelo* decision. That ruling allows eminent domain to be used to take homes and businesses and turn them over to private developers.
- return eminent domain to legitimate public uses, such as building roads, schools, firehouses, and other needs that serve the public and not the financial interests of the government and powerful developers.
- restrict government's ability to take away people's use of their property without compensating them.

Those who benefit financially from the status quo are spending millions to mislead voters and claim the sky is falling.

Opponents are engaging in scare tactics in order to divert attention from their REAL MOTIVE—maintaining the status quo so they can continue to profit from taking our private property.

For example, opponents falsely claim that the measure will hurt the enforcement of environmental regulations. But all existing California environmental laws and regulations are expressly protected.

The Protect Our Homes Act protects *all of us*—and helps families for future generations—while stopping government from taking your property simply to boost tax revenue.

Save our homes and businesses.

Please vote YES on Proposition 90.

For more information, visit www.protectourhomes2006.com.

MANUEL ROMERO, Eminent Domain Abuse Victim

BOB BLUE, Eminent Domain Abuse Victim

PASTOR ROEM AGUSTIN, Eminent Domain Abuse Victim

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 90

Of course we can all agree that Californians deserve protection from eminent domain abuse. And, if Prop. 90 was a well-designed reform of eminent domain, many thoughtful Californians would support it.

However, the out-of-state drafter of Prop. 90 is attempting a bait and switch on voters. This poorly-written proposition is loaded with unrelated and far-reaching provisions that will harm, not protect, homeowners and be very expensive for all California taxpayers.

We can't afford to be misled.

The hidden provisions in Prop. 90 create a new category of lawsuits that allow wealthy landowners and corporations to sue for huge new payouts. These lawsuits and payouts would cost California taxpayers billions of dollars every year.

That's why groups representing taxpayers, homeowners, businesses, police and fire, environmentalists, and farmers all urge you to Vote NO on 90.

THE LEAGUE OF WOMEN VOTERS OF CALIFORNIA says: "*Prop. 90 would fundamentally change our system of*

representative democracy and put the interests of a few above the well-being of ALL Californians."

Prop. 90 is anti-taxpayer and anti-homeowner.

That's why THE LEAGUE OF CALIFORNIA HOMEOWNERS OPPOSES PROP. 90 and says: "*Prop. 90 is a trap that actually hurts homeowners. It would cost taxpayers billions and erode basic laws that protect our communities, our neighborhoods, and the value of our homes.*"

Say NO to the Taxpayer TRAP. Vote NO on 90.

www.NoProp90.com

KENNETH W. WILLIS, President
League of California Homeowners

CHIEF MICHAEL L. WARREN, President
California Fire Chiefs Association

JACQUELINE JACOBBERGER, President
League of Women Voters of California

ARGUMENT AGAINST PROPOSITION 90

The handful of wealthy landowners that paid to put Prop. 90 on the ballot are trying a classic bait and switch on California voters.

They want you to believe Prop. 90 is about eminent domain. That's the bait. But, hidden in the fine print of the measure is the trap—a far-reaching section unrelated to eminent domain that would lead to huge new costs for *all California taxpayers*.

Prop. 90 would change California's constitution to enable large landowners and corporations to demand huge payouts from state and local taxpayers just by *claiming* a law has harmed the value of their property or business—no matter how important the law may be or far-fetched the claim.

According to William G. Hamm, formerly California's nonpartisan legislative analyst, "PROP. 90 could require BILLIONS OF DOLLARS IN NEW TAXPAYER COSTS EACH YEAR, if communities and the state continue to pass or enforce basic laws to protect neighborhoods, limit unwanted development, protect the environment, restrict unsavory businesses, and protect consumers."

With no limit on the total costs, Prop. 90 traps taxpayers into signing a *blank check*. We all pay, while large landowners and corporations reap windfall payouts.

Here's an example of how the "taxpayer trap" works:

If local voters pass a measure to limit a new development to 500 houses—instead of 2,000 houses that a developer *wants* to build—under Prop. 90, the developer could demand a payment for the value of the remaining 1,500 houses. Even if local community services and infrastructure would be strained by the larger development, Prop. 90 would put taxpayers at risk for payment.

Prop. 90 is not just limited to land-use laws. Read the official analysis. Statewide consumer protection laws, restrictions on telemarketing, and worker protections would all trigger new demands for payouts.

As a result, Prop. 90 would lead to thousands of expensive lawsuits that would tie up our courts and result in added bureaucracy and red tape.

The cost of these lawsuits and payouts would rob local communities of billions of dollars in limited resources that fund fire and police protection, paramedic response, schools, traffic congestion relief, and other vital services. That's why the CALIFORNIA FIRE CHIEFS ASSOCIATION, CALIFORNIA POLICE CHIEFS ASSOCIATION, and CALIFORNIA SCHOOL BOARDS ASSOCIATION oppose Prop. 90.

PROP. 90 *would trap taxpayers in a LOSE-LOSE situation*. If communities act to protect their quality of life, taxpayers could be forced to make huge payouts. Or, if communities couldn't afford the payouts, basic quality-of-life protections simply couldn't be enacted. That's why conservation groups, including the CALIFORNIA LEAGUE OF CONSERVATION VOTERS and the PLANNING AND CONSERVATION LEAGUE, warn the measure would drastically limit our ability to protect California's coastline, open spaces, farmland, air and water quality.

For more information on Prop. 90, visit www.NoProp90.com.

When you vote, please join groups representing California taxpayers, firefighters, law enforcement officers, educators, small businesses, land conservationists, the environment, and homeowners.

Say NO to the TAXPAYER TRAP. Vote NO on PROPOSITION 90.

CHIEF MICHAEL L. WARREN, President
California Fire Chiefs Association

CHIEF STEVE KRULL, President
California Police Chiefs Association

EDWARD THOMPSON, JR., California Director
American Farmland Trust

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 90

DON'T BE FOOLED BY SPECIAL INTERESTS!!!

Proposition 90 protects our fundamental right to own—and keep—our homes and private property. It's called the "AMERICAN DREAM," and government should not be in the business of destroying it.

Proposition 90 fixes the Supreme Court's outrageous *Kelo* decision.

Opponents—those who profit most from abusing eminent domain and taking private property—are shamelessly trying to mislead you and distort what Proposition 90 does.

Opponents say read the fine print. WE AGREE. You'll see:

Proposition 90 MAINTAINS EVERY current state and local environmental, consumer protection, and public safety law and regulation. Read Section 6, which states, "the provisions added to this section shall not apply to any statute, charter provision, ordinance, resolution, law, rule or regulation in effect on the date of enactment."

Proposition 90 HAS NOTHING TO DO with funding for police or firefighters.

The public health and safety are PROTECTED. The Legislature can enact ANY NEW LAW to ensure public health and safety.

Proposition 90 protects YOU from politicians who reward their campaign contributors by taking your private property and giving it to someone else.

The REAL opponents of Proposition 90 are those who profit by TAKING OUR HOMES AND SMALL BUSINESSES—greedy government bureaucrats who want higher taxes and mega-developer campaign contributors who make millions using agricultural land, residential neighborhoods, businesses, and churches seized through eminent domain to develop strip malls and other projects. IF THEY WIN, WE LOSE.

PROTECT OUR HOMES: VOTE YES ON 90.

MIMI WALTERS, Honorary Chair
California Protect Our Homes Coalition

MARTYN B. HOPPER, California Director
National Federation of Independent Business (NFIB)

JOHN M. REVELLI, Eminent Domain Abuse Victim

This section provides an overview of the state's current situation involving bond debt. It also discusses the impact that the bond measures on this ballot would, if approved, have on the state's debt level and the costs of paying off such debt over time.

Background

What Is Bond Financing? Bond financing is a type of long-term borrowing that the state uses to raise money for various purposes. The state obtains this money by selling bonds to investors. In exchange, it agrees to repay this money, with interest, according to a specified schedule.

Why Are Bonds Used? The state has traditionally used bonds to finance major capital outlay projects such as roads, educational facilities, prisons, parks, water projects, and office buildings (that is, infrastructure-related projects). This is done mainly because these facilities provide services over many years, their large dollar costs can be difficult to pay for all at once, and different taxpayers benefit over time from the facilities. Recently, however, the state has also used bond financing to help close major shortfalls in its General Fund budget.

What Types of Bonds Does the State Sell? The state sells three major types of bonds. These are:

- **General Fund-Supported Bonds.** These are paid off from the state's General Fund, which is largely supported by tax revenues. These bonds take two forms. The majority are *general obligation* bonds. These must be approved by the voters and their repayment is guaranteed by the state's general taxing power. The second type is *lease-revenue* bonds. These are paid off from lease payments (primarily financed from the General Fund) by state agencies using the facilities the bonds finance. These bonds do not require voter approval and are not guaranteed. As a result, they have somewhat higher interest costs than general obligation bonds.
- **Traditional Revenue Bonds.** These also finance capital projects but are not supported by the General Fund. Rather, they are paid off from a designated revenue stream—usually generated by the projects they finance—such as bridge tolls. These bonds also are not guaranteed by the state's general taxing power and do not require voter approval.
- **Budget-Related Bonds.** In March 2004, the voters approved Proposition 57, authorizing \$15 billion in bonds to help pay off the state's

accumulated budget deficit and other obligations. Of this amount, \$11.3 billion was raised through bond sales in May and June of 2004, and \$3.7 billion is available for later sales. The impact on the General Fund of paying off these bonds is an annual cost of about \$1.5 billion. (Current law also allows for additional debt-service payments from the Budget Stabilization Account—BSA—established by Proposition 58 in order to pay off the bonds earlier.) The bonds' repayments are also guaranteed by the state's general taxing power.

What Are the Direct Costs of Bond Financing?

The state's cost for using bonds depends primarily on the amount sold, their interest rates, the time period over which they are repaid, and their maturity structure. For example, the most recently sold general obligation bonds will be paid off over a 30-year period with fairly level annual payments. Assuming that a bond issue carries a tax-exempt interest rate of 5 percent, the cost of paying it off with level payments over 30 years is close to \$2 for each dollar borrowed—\$1 for the amount borrowed and close to \$1 for interest. This cost, however, is spread over the entire 30-year period, so the cost after adjusting for inflation is considerably less—about \$1.30 for each \$1 borrowed.

The State's Current Debt Situation

Amount of General Fund Debt. As of July 1, 2006, the state had about \$45 billion of infrastructure-related General Fund bond debt outstanding on which it is making principal and interest payments. This consists of about \$37 billion of general obligation bonds and \$8 billion of lease-revenue bonds. In addition, the state has not yet sold about \$30 billion of authorized general obligation and lease-revenue infrastructure bonds. Most of these bonds have been committed, but the projects involved have not yet been started or those in progress have not yet reached their major construction phase. The above totals do not include the budget-related bonds identified above.

General Fund Debt Payments. We estimate that General Fund debt payments for infrastructure-related general obligation and lease-revenue bonds were about \$3.9 billion in 2005–06. As previously authorized but currently unsold bonds are marketed, outstanding bond debt costs will peak at approximately \$5.5 billion in 2010–11. If, in addition, the annual costs of the budget-related bonds are included, total debt-service costs were \$5.1 billion in 2005–06, and will rise to a peak of

Prepared by the Legislative Analyst's Office

\$8.4 billion in 2009–10. (These amounts assume additional repayments from the BSA.)

Debt-Service Ratio. One indicator of the state's debt situation is its debt-service ratio (DSR). This ratio indicates the portion of the state's annual revenues that must be set aside for debt-service payments on bonds and therefore are not available for other state programs. As shown in Figure 1, the DSR increased in the early 1990s and peaked at 5.7 percent before falling back to below 3 percent in 2002–03, partly due to some deficit-refinancing activities. The DSR then rose again beginning in 2003–04 and currently stands at 4.2 percent for infrastructure bonds. It is expected to increase to a peak of 4.8 percent in 2008–09 as currently authorized bonds are sold.

Effects of the Bond Propositions on This Ballot

There are five general obligation bond measures on this ballot, totaling \$42.7 billion in new authorizations. These include:

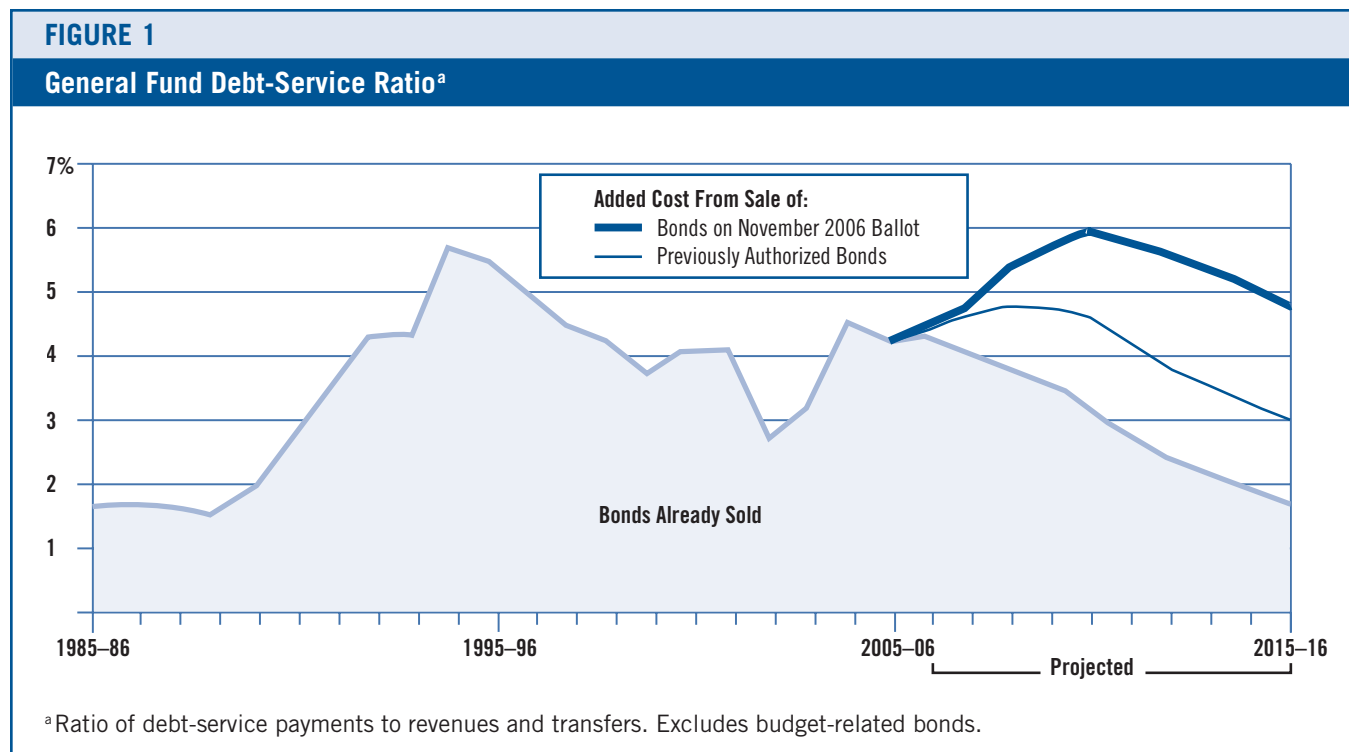
- Proposition 1B, which would authorize the state to issue \$19.9 billion of bonds to finance highway safety, traffic reduction, air quality, and port security.
- Proposition 1C, which would authorize the state to issue \$2.85 billion of bonds for housing and development programs.

- Proposition 1D, which would authorize the state to issue \$10.4 billion of bonds to finance kindergarten through university education facilities.
- Proposition 1E, which would authorize the state to issue \$4.1 billion of bonds for flood control projects.
- Proposition 84, which would authorize the state to issue \$5.4 billion of bonds to fund various resource-related projects.

The first four measures make up an infrastructure bond package approved by the Legislature and Governor. The fifth measure was placed on the ballot through the initiative process.

Impacts on Debt Payments. If the \$42.7 billion of bonds on this ballot are all approved, they would require total debt-service payments over the life of the bonds of about twice that amount. The average annual debt service on the bonds would depend on the timing of their sales. If they were sold over a 10-year period, the budgetary cost would average roughly \$2 billion annually.

Impact on the Debt-Service Ratio. Figure 1 shows what would happen to the state's DSR over time if all of the bonds were approved and sold. It would peak at 5.9 percent in 2010–11 and decline thereafter.



LIST OF CANDIDATES FOR STATEWIDE ELECTIVE OFFICE ★ ★ ★

Proposition 34 was adopted by the voters at the November 7, 2000 General Election. Under this measure, any candidate for Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, Attorney General, Insurance Commissioner, or Member of the Board of Equalization, who accepted the voluntary expenditure limit, has an opportunity to purchase a statement, not to exceed 250 words, in the California Voter Information Guide.

The expenditure limit for candidates running for Governor in the November 7, 2006 General Election is \$11,150,000. The expenditure limit for candidates running for Lieutenant Governor, Secretary of State, Controller, Treasurer, Attorney General, and Insurance Commissioner in the November 7, 2006 General Election is \$6,690,000. The expenditure limit for candidates running for the Board of Equalization in the November 7, 2006 General Election is \$1,672,000.

The following list of candidates for statewide elective office is current through August 14, 2006. For a current list of candidates, please see http://www.ss.ca.gov/elections/elections_cand.htm. In the following list, an asterisk (*) designates candidates who have accepted the voluntary spending limits.

GOVERNOR

Angelides, Phil	<i>Democratic</i>
* Camejo, Peter Miguel	<i>Green</i>
* Jordan, Janice	<i>Peace and Freedom</i>
* Noonan, Edward C.	<i>American Independent</i>
* Olivier, Art	<i>Libertarian</i>
Schwarzenegger, Arnold	<i>Republican</i>

SECRETARY OF STATE

* Akin, Margie	<i>Peace and Freedom</i>
* Bowen, Debra	<i>Democratic</i>
* Hill, Forrest	<i>Green</i>
* Lightfoot, Gail K.	<i>Libertarian</i>
* McMillon, Jr., Glenn	<i>American Independent</i>
* McPherson, Bruce	<i>Republican</i>

LIEUTENANT GOVERNOR

* Alexander, Stewart A.	<i>Peace and Freedom</i>
* Garamendi, John	<i>Democratic</i>
* King, Jim	<i>American Independent</i>
* McClintock, Tom	<i>Republican</i>
* Shaw, Lynnette	<i>Libertarian</i>
* Warren, Donna J.	<i>Green</i>

CONTROLLER

* Barrón, Elizabeth Cervantes	<i>Peace and Freedom</i>
Campbell, Warren Mark	<i>American Independent</i>
* Chiang, John	<i>Democratic</i>
* Strickland, Tony	<i>Republican</i>
* Tello, Donna	<i>Libertarian</i>
* Wells, Laura	<i>Green</i>

* Candidate has accepted voluntary spending limits.

LIST OF CANDIDATES FOR STATEWIDE ELECTIVE OFFICE ★ ★ ★

TREASURER

Lockyer, Bill	<i>Democratic</i>
* Noonan, E. Justin	<i>American Independent</i>
* Parrish, Claude	<i>Republican</i>
* Sanders, Gerald	<i>Peace and Freedom</i>
* Smithson, Marian	<i>Libertarian</i>
* Thakker, Mehul M.	<i>Green</i>

ATTORNEY GENERAL

Brown, Jerry	<i>Democratic</i>
* Harrison, Jack	<i>Peace and Freedom</i>
Poochigian, Chuck	<i>Republican</i>
* Weissman, Kenneth A.	<i>Libertarian</i>
* Wyman, Michael S.	<i>Green</i>

INSURANCE COMMISSIONER

Burden, Jay Earl	<i>American Independent</i>
* Bustamante, Cruz M.	<i>Democratic</i>
* Cafiero, Larry	<i>Green</i>
* Condit, Tom	<i>Peace and Freedom</i>
Ogden, Dale F.	<i>Libertarian</i>
Poizner, Steve	<i>Republican</i>

BOARD OF EQUALIZATION

District 1

Campbell, David	<i>Peace and Freedom</i>
* Neighbors, David J.	<i>Republican</i>
* Watson, Kennita	<i>Libertarian</i>
* Yee, Betty T.	<i>Democratic</i>

District 2

* Leonard, Bill	<i>Republican</i>
Michlin, Willard Del	<i>Libertarian</i>
* Perry, Richard R.	<i>Peace and Freedom</i>
* Raboy, Tim	<i>Democratic</i>

District 3

Christian-Heising, Mary	<i>Democratic</i>
Finley, Mary Lou	<i>Peace and Freedom</i>
* Steel, Michelle	<i>Republican</i>

District 4

Chu, Judy	<i>Democratic</i>
* Forsch, Glen	<i>Republican</i>
* Henderson, Cindy Varela	<i>Peace and Freedom</i>
* Kadera, Monica W.	<i>Libertarian</i>

* Candidate has accepted voluntary spending limits.

CANDIDATE STATEMENTS BY OFFICE

GOVERNOR



- As the state's chief executive officer, oversees most state departments and agencies and appoints judges.
- Proposes new laws and approves or vetoes legislation.
- Prepares and submits the annual state budget.
- Mobilizes and directs state resources during emergencies.

ART OLIVIER

www.electArt.com

Libertarian Party

CUT SPENDING! California recalled the Governor three years ago when he proposed a \$96,000,000,000 budget. Now it's \$131,000,000,000 plus \$43,000,000,000 in bonds on the November ballot. NO BENEFITS FOR ILLEGAL IMMIGRANTS. Giving free healthcare and education to illegal immigrants encourages more illegal immigration. California cannot afford it. END GRIDLOCK. Spend gasoline taxes and vehicle license fees on building more lanes and allow the construction of private toll roads for commercial trucks. Art Olivier cut taxes and improved services as Mayor and will do it again as our next Governor!

JANICE JORDAN

www.janicejordan.org

Peace and Freedom Party

Low-Cost Housing. Universal Health Care. Livable Wage. VOTE YOUR CONSCIENCE! NOT YOUR FEAR!

PETER MIGUEL CAMEJO

1710 Broadway #122
Sacramento, CA 95818

(510) 587-0807
info@votecamejo.com
www.votecamejo.com

Green Party

You've heard the expression, "I would have to write a book." Well, I did. It's called: "California: Under Corporate Rule." Corporations control our electoral system, want to privatize our schools, name our sports fields, control our media, destroy our ecology, and promote wars of plunder. Most profitable corporations pay no state taxes in California. Ninety percent of our people on average have received no increase in inflation adjusted pay in 35 years and our real minimum wage has dropped dramatically while our economy more than doubled and corporate profits soared. My web site shows how a FAIR TAX can raise an additional \$25 billion for our budget, allowing us to dramatically increase education funding, begin a massive move to alternative energy, and modernize our infrastructure, while reducing most people's taxes. Immigrants actually help create jobs. Marriage must be an option for everyone. The death penalty, three strikes, and racial profiling must end. Our outdated, exclusionary, winner-take-all money-controlled electoral system has been universally rejected. We need public funding, proportional representation, and ranked choice voting, where people feel free to vote for the candidates they support and can hear all points of view. Please visit votecamejo.com to help us plan and execute these ground-breaking opportunities for positive change in California. Thank you for your support.

EDWARD C. NOONAN

1606 Gold St.
Marysville, CA 95901

(530) 743-6878
vote2006@ednoonan4gov.org
www.ednoonan4gov.org

American Independent Party

See my webpages: ednoonan4gov.org, <http://www.aipca.org>, <http://www.constitutionparty.org>

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LIEUTENANT GOVERNOR



- Assumes the office and duties of Governor in the case of impeachment, death, resignation, removal from office, or absence from the state.
- Serves as President of and presides over the State Senate and has a tie-breaking vote.
- Chairs the Economic Development Commission, is a member of the State Lands Commission, and sits on the boards of the California university systems.
- Serves as an ex-officio member of the California State World Trade Commission.

LYNNETTE SHAW

Libertarian Party

7336 Santa Monica #822
West Hollywood, CA 90046

(415) 209-3996
lynette@voteshaw.info
www.voteshaw.info

The war against patients and their physicians must stop. Medical cannabis has been legal for ten years, but the authorities continue to arrest caregivers, patients, and doctors. This is a waste of time, human resources, and taxpayers' money. My Marijuana Peace Plan has been in operation for nine years in Marin County. This program has removed many illegal drug dealers from our streets, protected patients, and improved the quality of the medicine. Please join with me and Willie Nelson to help save family farms with industrial hemp and to protect your medical rights. I am Lynnette Shaw, and I would appreciate your vote for Lt. Governor. www.ca.lp.org

DONNA J. WARREN

Green Party

P.O. Box 88808
Los Angeles, CA 90009

(213) 427-8519
ecottry@socal.rr.com
www.donnawarren.com

Running with the Million Votes for Peace Campaign, in 1999, I sued the CIA for the crack cocaine infestation in South Central, and, in 2004, I helped coordinate Prop. 66 to amend California's Three Strikes Law. I will guide the Legislature to represent the people, not corporations and special interests. Don't be *fuelish*—stop voting for oil companies at the gas pump. Stop Global Warming, and keep California competitive in science/medical research. For my complete platform, see www.donnawarren.com.

STEWART A. ALEXANDER

Peace and Freedom Party

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Murrieta, CA 92563

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www.salt-g.com

Working people need a greater voice in government.

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LIEUTENANT GOVERNOR

★ ★ ★ (Continued)

TOM McCLINTOCK

Republican Party

1029 K Street, Suite 44
Sacramento, CA 95814

(916) 446-1246
info@tommcclintock.com
www.HelpTom.com

A generation ago, California was a land of opportunity with low taxes, plentiful jobs, affordable housing, cheap electricity, and abundant clean water. Our children were secure in their homes and our families were secure in their property. We enjoyed the finest highway system in the world and the finest school system in the country. The only thing that has changed between then and now is bad public policy—and together we can fix that. During the recall election, I offered a comprehensive plan to restore California's quality of life, and I will tenaciously pursue these reforms as Lt. Governor. For 25 years I have fought to roll back the taxes that are crushing our families, to rein in the bureaucracies that are wasting our money, to reduce the regulations that are destroying our economy, to oppose the illegal immigration that is overwhelming our services, and to restore our long-neglected public works. I began the movement to abolish California's car tax that now saves an average family \$490 in annual DMV fees. I am spearheading the effort to stop government from seizing one citizen's property for the private gain of another. And, I continue to battle waste and fraud in Republican and Democratic administrations. Together, we can restore to our children the Golden State that our parents gave to us. Please visit my Web site at www.HelpTom.com to see my proposals and to help this grassroots campaign for California's future.

JOHN GARAMENDI

Democratic Party

P.O. Box 496
Sacramento, CA 95812

(916) 863-6881
info@garamendi.org
www.garamendi.org

It's time we use the Lieutenant Governor's office as a forceful advocate for children, hardworking families, and retired Californians. That's my approach as Insurance Commissioner—protecting consumers, punishing fraud, and delivering results: *Over \$1 billion in insurance rebates—\$22 billion in auto insurance savings—\$24 million in additional homeowner benefits to fire victims—\$46 million in insurance company fines.* As Lieutenant Governor I will be the same powerful advocate—working for you to fully fund schools, helping small businesses thrive in the world marketplace, fighting to provide every Californian quality healthcare that values people before profits, and protecting women's rights. As a University of California Regent and State University Trustee, I'll be the *guardian of higher education*—promoting excellence in education, fostering research, and creating innovation. On the State Lands Commission, I'll take the same approach I used as President Clinton's Deputy Interior Secretary—*protecting California's magnificent coast, parks, and natural resources.* I'll address climate change by promoting conservation and alternative fuels. I oppose more oil drilling off our coasts and oppose excessive oil company profits. I'll fight to stop corporate polluters. I'll work with the Governor and Legislature to accomplish these goals. *California's teachers, police, firefighters, Senator Feinstein, and Al Gore share my vision and respect my independence. They endorse my candidacy.* I stand by my record as Insurance Commissioner, Deputy Interior Secretary, State Senator, Academic All-American at U.C. Berkeley, Harvard MBA, Peace Corps Volunteer, husband, and father. *I respectfully request your vote. www.garamendi.org*

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SECRETARY OF STATE



- As the state's chief elections officer, administers and enforces election laws and keeps records of all campaign and lobbyist disclosure statements required under the Political Reform Act.
- Files official documents relating to corporations, trademarks, the Uniform Commercial Code, notaries public, and limited partnerships.
- Collects and preserves historically valuable papers and artifacts in the California State Archives.
- Serves as an ex-officio member of the California State World Trade Commission.

DEBRA BOWEN

Democratic Party

578 Washington Blvd. #409
Marina del Rey, CA 90292

(310) 823-3106
info@debrabowen.com
www.debrabowen.com

California must never be like Florida or Ohio. Election results must be free from doubts about fraud and manipulation. As Chairwoman of the Senate Elections Committee, I'm fighting to *make sure your vote is counted accurately and to end the domination of big money on elections*. Your Secretary of State must bring integrity back to the electoral process. I fought to require a paper trail for electronic voting machines and to outlaw campaign contributions from voting machine manufacturers. Since my first day in public office, *I've refused to accept gifts* as an elected official, and I've pressed to limit the influence of special interest money. I've written bills requiring clear disclosure about who is paying to put initiative petitions on the ballot. I wrote the first proposal to allow voters to get vote-by-mail ballots automatically. I'm working to expand the Safe at Home program in the Secretary of State's office, which allows victims of domestic violence to keep their abusers from knowing where they live. *I'm a fighter for consumer protection, privacy rights, open government, and choice*. I led the nation by authoring a landmark measure to prevent your Social Security number from misuse and to protect you from identity theft. Senators Barbara Boxer and Dianne Feinstein, the National Organization for Women-California, California Nurses Association, California Federation of Teachers, and the Sierra Club have joined together to support me. Please join me in the fight to clean up campaigns and elections. I respectfully request your vote.

MARGIE AKIN

Peace and Freedom Party

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Riverside, CA 92507

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margieakin@hotmail.com
www.akin2006.com

New technology should help provide better services for voters and improve voter turnout to strengthen democracy. Instead we get insecure and faulty voting systems. We need to end corruption and corporate influence throughout the election process.

FORREST HILL

Green Party

815 Washington Street, Suite 24
Oakland, CA 94607

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forrest@VoteForrest.org
www.VoteForrest.org

California's electoral system needs a complete overhaul, not bandages! We must end gerrymandering and ensure all citizens are fully represented in government; Give citizens more choices with Instant Runoff Voting; Demand all votes are accurately counted and voting machines produce voter verified paper ballots; Increase voter turnout by allowing election day registration; End corruption by enacting new restrictions on all election-related contributions and implementing fair public financing laws.—*I am a Financial Advisor with a Ph.D. from MIT in Marine Biology*. I have the qualifications to fix our system and bring Free and Fair elections to California.

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SECRETARY OF STATE

★ ★ ★ (Continued)

BRUCE McPHERSON

Republican Party

925 University Ave.
Sacramento, CA 95825

www.mcpherson2006.com

In 2005, I was nominated to be Secretary of State by the Governor and unanimously confirmed by every Democrat and Republican in the Legislature. I have brought nonpartisanship to the Office, restored confidence in our elections process, and overseen two successful statewide elections. My most important mission is to preserve our basic freedom—the right to vote. When I became Secretary of State, the Office was in political, economic, and structural disarray. California was unprepared to comply with new federal voting requirements. I've worked tirelessly to bring integrity to the Office. I traveled to each of California's 58 counties and met with every elections official to effectively administer elections. Within weeks, I restored \$169 million in federal elections funds that had been frozen for nine months. California now leads the nation in modernizing voting technology with a voter registration database that reduces the potential for fraud. I've fought for campaign finance reform and support immediate public Internet disclosure of campaign contributions. To make the Office more efficient and responsive, we encourage people to do business online rather than in line. I have worked to improve California's international trade opportunities so California remains the 6th largest economy in the world. My positive record speaks for itself. I'm proud to be supported by the California Teachers Association, California Sheriffs Association, California Women's Leadership Association, California Small Business Association, California Farm Bureau, and a bipartisan group of elected officials. I respectfully request your vote for Secretary of State. Please visit www.mcpherson2006.com.

GLENN McMILLON, JR.

American Independent Party

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San Leandro, CA 94578

(510) 483-2845
mcmillon@alum.mit.edu
www.aipca.org

Pro-Life. Pro-Family. Pro-Enforcement. www.myspace.com/mcmillon2006. www.aipca.org.

GAIL K. LIGHTFOOT

Libertarian Party

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SOSVoteLP@aol.com
www.smartvoter.org

FULLY INFORM VOTERS.

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CONTROLLER



- As the state’s chief fiscal officer, acts as the state’s accountant and bookkeeper of all public funds.
- Administers the state payroll system and unclaimed property laws.
- Serves on numerous boards and commissions including the Board of Equalization and the Board of Control.
- Conducts audits and reviews of state operations.

TONY STRICKLAND

Republican Party

P.O. Box 1371
Thousand Oaks, CA 91358

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tony@tonystrickland.com
www.tonystrickland.com

The politicians are arguing about raising taxes, but I’m going to tell you the secret they don’t want you to know. If we cut the waste, fraud, and corruption out of the bureaucracy—and required those applying for state programs to provide proof of citizenship—we could balance our budget, fix our roads, protect our neighborhoods, and pay our teachers what they deserve, without raising taxes. As your Controller, I’ll audit the bloated LA Unified School District, and I’ll see to it that students are learning to read, write, and speak English. Am I willing to fight for you? Absolutely. During the energy crisis, when the politicians were afraid to rock the boat, I sued Gray Davis over his secret contracts with the energy companies—and won. I’ve led the battle to eliminate the double taxation on gasoline. And when others were going along with multi-billion dollar budget deficits, I led the fight to restore accountability and common sense. I am endorsed by California’s major taxpayer organizations because they know that I won’t back down when your tax dollars are at stake. Waste hurts us all. It robs our classrooms, shortchanges our teachers, and leaves us all stranded in traffic. As your Controller, I’ll take on the bureaucracy in every area of government, from welfare to the DMV to our public health system. You work hard for your money, and you have a right to have your tax dollars spent honestly. You can help by visiting www.TonyStrickland.com.

LAURA WELLS

Green Party

P.O. Box 16025
Oakland, CA 94610

info@LauraWells.org
www.LauraWells.org

I now see more hope for California than I have for a long time. I see many people fed up and turning to positive action. As my contribution, I would like to serve as your State Controller. The Controller is the state’s bookkeeper, the one who reports to the citizens who elected her exactly how their money is being managed. My over 20 years in financial systems—investments, pension funds, union dues accounting, real estate loans—prepare me for the job. My lifelong commitment to saner ways of living prepares me to ensure that California’s budget is in line with California’s values. Imagine a Controller who understands that a great environment and great economy work together, not in opposition. A Green Controller understands that crime prevention not only keeps the public safer than ever-expanding prisons, it also saves money we can use toward regaining our world-class educational system. In healthcare we can shift from exorbitant administrative costs, and worse and worse healthcare for fewer people, to healthcare for all at less cost. I support electoral reform, including ranked choice voting (instant runoff), to open up our elections, improve our democracy, and lower costs. For details of why I have hope, please see my website www.laurawells.org. This year, join the momentum toward real change.

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CONTROLLER

★ ★ ★ (Continued)

JOHN CHIANG

Democratic Party

600 Playhouse Alley #504
Pasadena, CA 91101

(626) 535-9616
info@chiangforcalifornia.com
www.chiangforcalifornia.com

California needs a Controller to slam shut corporate tax loopholes and insist that the oil and insurance companies pay their fair share. California needs a Controller to simplify taxes for middle class families and make it easy to calculate and pay taxes online. California needs a Controller to ensure our schools have the resources to prepare our children for a more competitive world. That's why I am running for State Controller. For 20 years I have fought for fair state tax and sound fiscal policies. After graduating with a degree in Finance and then a Law Degree from Georgetown, I worked as a policy advisor to the California State Controller's office. As a member and chair of the Board of Equalization and the State Franchise Tax Board I am a strong voice for taxpaying families and small businesses. I use my tax policy expertise to stand up to corporate lawyers and demand an end to special interest tax giveaways. I know how to audit and expose wasteful government spending to ensure our tax money is spent on vital services. *The San Francisco Chronicle* said that my experience gives me "a solid foundation to become what is essentially the state's chief financial officer." *The Sacramento Bee* called me "one of the finest young prospects the Democratic Party has produced in recent years." I will fight for full funding for quality schools. That's why I am endorsed by California's classroom teachers. For more information: www.ChiangforCalifornia.com

ELIZABETH CERVANTES BARRÓN 1720 Main Street
Peace and Freedom Party Venice, CA 90291

(951) 787-0318
ebtloc@aol.com
www.pfpboe.org

Raise taxes on the rich; lower taxes on workers.

DONNA TELLO

Libertarian Party

13446 Poway Road #202
Poway, CA 92064

donnatello4cacontroller@cox.net
www.donnatello.da.ru

Control spending, not people. Protect taxpayers, not special interests.

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TREASURER



- As the state's banker, manages the state's investments.
- Administers the sale of state bonds and notes and is the investment officer for most state funds.
- Chairs or serves on several commissions, most of which relate to the marketing of bonds.
- Pays out state funds when spent by the Controller and other state agencies.

MARIAN SMITHSON

Libertarian Party

(626) 919-1593

mariansway@earthlink.net

California needs leadership with fiscal responsibility. Vote NO on bond measures.

CLAUDE PARRISH

Republican Party

P.O. Box 2427

Palos Verdes, CA 90274

(213) 688-8862

parrishfortreasurer@gmail.com

www.smartvoter.org/vote/Parrish

State bond interest payments are consuming an ever increasing portion of the state's budget. This puts pressure on the Legislature to increase all state taxes. Any increase in Corporate, personal income taxes, or sales taxes will cause a stall in the California economy and undoubtedly cause businesses to leave the State. The State is already too deep in debt! First, the State Treasurer must go before the Legislature to oppose all but the most vital or cost effective bond issues! Second, having held NASD Security licenses has given me an understanding of the financial markets. We need to eliminate dealing with the "Middle Men" from "Wall Street" that receive hundreds of millions of dollars in underwriting fees and instead have our bonds underwritten by allocation to California-based brokerage firms. Not only will the state save hundreds of millions of dollars, California will receive taxes from those California-based firms. Third, the Treasurer's office needs to be accessible to the public and run in a cost-effective, efficient manner. Here's why. For California Citizens, State Bonds are exempt from Federal and State personal income taxes; however, these bonds are not available to the average California citizen because brokerage firms do not offer them in amounts of less than \$10,000. I will institute a small investor program so that Californians with as little as \$100 can invest in these tax-exempt bonds. I seek your vote and have been endorsed by the Howard Jarvis Taxpayer Organization and many leading state legislators.

MEHUL M. THAKKER

Green Party

815 Washington St. #52

Oakland, CA 94607

mehul@votethakker.com

<http://www.VoteThakker.com>

Corporate money should not buy political influence, so I don't take contributions from big business! We should protect our State pensions and invest our tax dollars to fund better schools, universal healthcare, more affordable housing, community development, and clean energy programs. We should forgive student loans so education becomes a benefit and not a burden. Banks that hold California's money should stop predatory and environmentally destructive lending, and we should move our State's investments into community development banks and credit unions that support local economies. We can balance California's budget immediately if the top 1% of earners pay the same local and state tax rates as the poorest citizens in California. We must implement a fair policy of legalization for undocumented workers and ensure that all workers are paid a fair minimum wage, with inflation protection.—I believe our competitiveness in the world economy and ability to foster peace globally depends on our ability to chart a *new course*. Vote Thakker, and help me work for *economic justice for all Californians*.

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ATTORNEY GENERAL



- As the state's chief law officer, ensures that the laws of the state are uniformly and adequately enforced.
- Heads the Department of Justice, which is responsible for providing state legal services and support for local law enforcement.
- Acts as the chief counsel in state litigation.
- Oversees law enforcement agencies, including District Attorneys and Sheriffs.

MICHAEL S. WYMAN

Green Party

P.O. Box 9380
San Rafael, CA 94912

(415) 785-3448
vote4mike@comcast.net
www.votewyman.org

Most Californians prefer life imprisonment without parole to the death penalty. Most Californians oppose lengthy prison sentences for nonviolent offenders. Most Californians agree that the War on Drugs has been a complete failure. Most Californians think that their police have better things to do than arrest the terminally ill for using medical marijuana. Most Californians don't believe they should be spied upon by their own government. Most Californians want equal rights for immigrants, including the right to live and work here in America in peace. *I agree with them.* We need to put the justice back in the justice system. We do this by enforcing laws humanely and challenging the laws and policies that deny the people of California their rights. We need an attorney general who defends the people of California as energetically as we prosecute the violent offender. I will be that kind of Attorney General. I ask for your support. Thank You.

KENNETH A. WEISSMAN

Libertarian Party

8484 Wilshire Blvd., Suite 850
Beverly Hills, CA 90211-3222

(323) 655-4529
CalAG2006@yahoo.com
www.ElectKenWeissman.com

I will fight for your rights. Absolutist on Second Amendment. Secure our borders NOW.

JACK HARRISON

Peace and Freedom Party

1312 Cornell Ave.
Berkeley, CA 94702

(510) 527-9584
JackLHa@Pacbell.net
www.jackharrison.org

Abolish the inhumane death penalty. Decriminalize marijuana. Expand parole and diversion services. Eliminate the disastrous "three strikes" sentencing. Use State funds for people's needs. Prosecute the corporate criminals and those who defile our environment.

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INSURANCE COMMISSIONER



- Oversees and directs all functions of the Department of Insurance.
- Licenses, regulates, and examines insurance companies.
- Answers public questions and complaints regarding the insurance industry.
- Enforces the laws of the California Insurance Code and adopts regulations to implement the laws.

TOM CONDIT

Peace and Freedom Party

2124 Kittredge St. #174
Berkeley, CA 94704

(510) 845-4360
condit@peaceandfreedom.org
www.tomcondit.org

Insurance company profits soar, but millions don't have health care or real protection against accident and disaster. While insurance companies pour money into "tort reform" schemes to deprive ordinary people of legal assistance, they spend billions on their own lawyers to evade paying claims. The bipartisan "reforms" of workers' compensation let insurance companies endlessly delay needed medical treatment for injured workers by second-guessing doctors and pharmacists. They make more in profits on workers' compensation than they pay for medical care. I advocate putting human need before insurance company profits. Let's publicly fund and manage *a single system of quality health care for all, a state basic auto liability plan, and a single workers' compensation fund*—all without insurance company profits, lawyers, or red tape. I will fight discrimination based on race, sex, age, or geography.

LARRY CAFIERO

Green Party

P.O. Box 203
Ben Lomond, CA 95005-0203

(831) 438-1401
larry4inscomm@earthlink.net
<http://www.votecafiero.com>

Candidate statements, once free, now cost \$20 per word. Fight pay-to-play government—Vote Green. My statement: <http://www.votecafiero.com/statement>

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BOARD OF EQUALIZATION



Serves on the Board of Equalization, California's elected tax commission, a body that:

- Oversees the administration of over two dozen tax and fee programs including sales and use, cigarette and tobacco, alcohol, and fuels tax.
- Serves as the appellate body for California income and franchise tax cases.
- Oversees the administration of property tax statewide.

DISTRICT 1

BETTY T. YEE

Democratic Party

601 Van Ness Avenue #E3-438
San Francisco, CA 94102

www.BettyYee2006.com

All Californians deserve to be treated fairly by their government. During the time I have served on the Board of Equalization, my actions and votes on all tax matters that have come before the Board demonstrate a strong commitment to fairness and honesty. My experience in making careful decisions with your tax dollars, my strong sense of fairness in interpreting California's tax laws, and my unblemished record of integrity and honesty make me your best choice to continue serving and providing leadership as the First District Member on the Board of Equalization. I will oppose special tax breaks for the wealthy. I will be a voice for all working persons. As your guardian of the state's revenues, my objective is to ensure California has the resources needed to provide a bright future and opportunities for all of us and for generations to come—this means quality schools in every community, access to health care for every Californian, a pristine natural environment, affordable housing, adequate transportation systems, and safe neighborhoods. I am proud to have earned the endorsements of a broad array of organizations that represent the interests of teachers, nurses, firefighters, peace officers, workers, women, students, and taxpayers—all of whom recognize my financial expertise and commitment to protecting the interests of hardworking Californians. I would be honored to continue serving you on the Board of Equalization.

DISTRICT 2

BILL LEONARD

Republican Party

P.O. Box 277090
Sacramento, CA 95827

(916) 441-1043 Ext. 2
leonard@billleonard.org
www.billleonard.org

California is a terrific place to live, but we need leaders who are not afraid to stand up and fight for the rights of taxpayers. As a Member of the State Board of Equalization—the only elected office in America with the job of protecting the rights of taxpayers—I have worked hard to hold government accountable. The State Board of Equalization is an independently elected tax panel that makes the final decision in disputes between taxpayers and government bureaucrats. Taxpayers deserve to have an advocate fighting for their interests—and that is what I have done as a Member of the State Board of Equalization. Illegal immigrants are among those who do not pay their fair share of taxes yet get their full share of government benefits. Not enough is being done to make sure that illegal aliens pay all the taxes they owe. It is not fair that law-abiding California families and business owners have to pay all their taxes and still get hit by government investigators when they are trying to comply with California's complex and excessive tax laws while illegal immigration laws go unenforced. We can do better. Please visit my website (www.billleonard.org) to learn more about the State Board of Equalization and my record as an advocate for taxpayers. I will continue to do all I can to make sure government is held accountable for how it spends your hard-earned tax dollars. I would be honored to have your vote on November 7th.

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BOARD OF EQUALIZATION

★ ★ ★ (Continued)

DISTRICT 2 (continued)

TIM RABOY

Democratic Party

P.O. Box 132
Galt, CA 95632

(209) 251-9695
info@timraboy.com
www.timraboy.com

I am a Supervising Investigator for the Board of Equalization (BOE), Investigations Division, fourteen-year BOE employee, and an Elected City Councilmember. Please visit www.timraboy.com.

DISTRICT 3

MICHELLE STEEL

Republican Party

27520 Hawthorne Blvd. #270
Palos Verdes, CA 90274

(310) 971-5865
info@steelforboe.com
www.steelforboe.com

As a fiscal conservative, I have been proud to serve as Chief Deputy to our current Member of the Board of Equalization. Now that the incumbent is retiring, it is vital that taxpayers have another fiscal watchdog to take his place. I will work to simplify tax rules so that businesses and individuals will not be constantly victimized by a bureaucracy that frequently oversteps its authority. As a rock-solid fiscal conservative, I will be the Taxpayer's Advocate against the bureaucracy. And, believe me, we need voices to speak out and defend taxpayers! I have witnessed firsthand how the taxing agencies assume taxpayers are guilty until proven innocent. And, I believe that approach is un-American. My philosophy is that every hearing should begin with the presumption that the taxpayer is innocent. As a businesswoman, wife, and mother, I know how tough it can be to make ends meet. I believe the hardworking families of California deserve an Advocate who will stand with them against abusive government bureaucracies. As a board member of the California World Trade Commission, I also became convinced that our high California taxes are harming our competitiveness in the world economy. I am an experienced, fiscally conservative professional who will not need on-the-job training, because I've already been on the job defending taxpayers. I would be honored to have your support. For any questions, please contact me at www.steelforboe.com.

DISTRICT 4

GLEN FORSCH

Republican Party

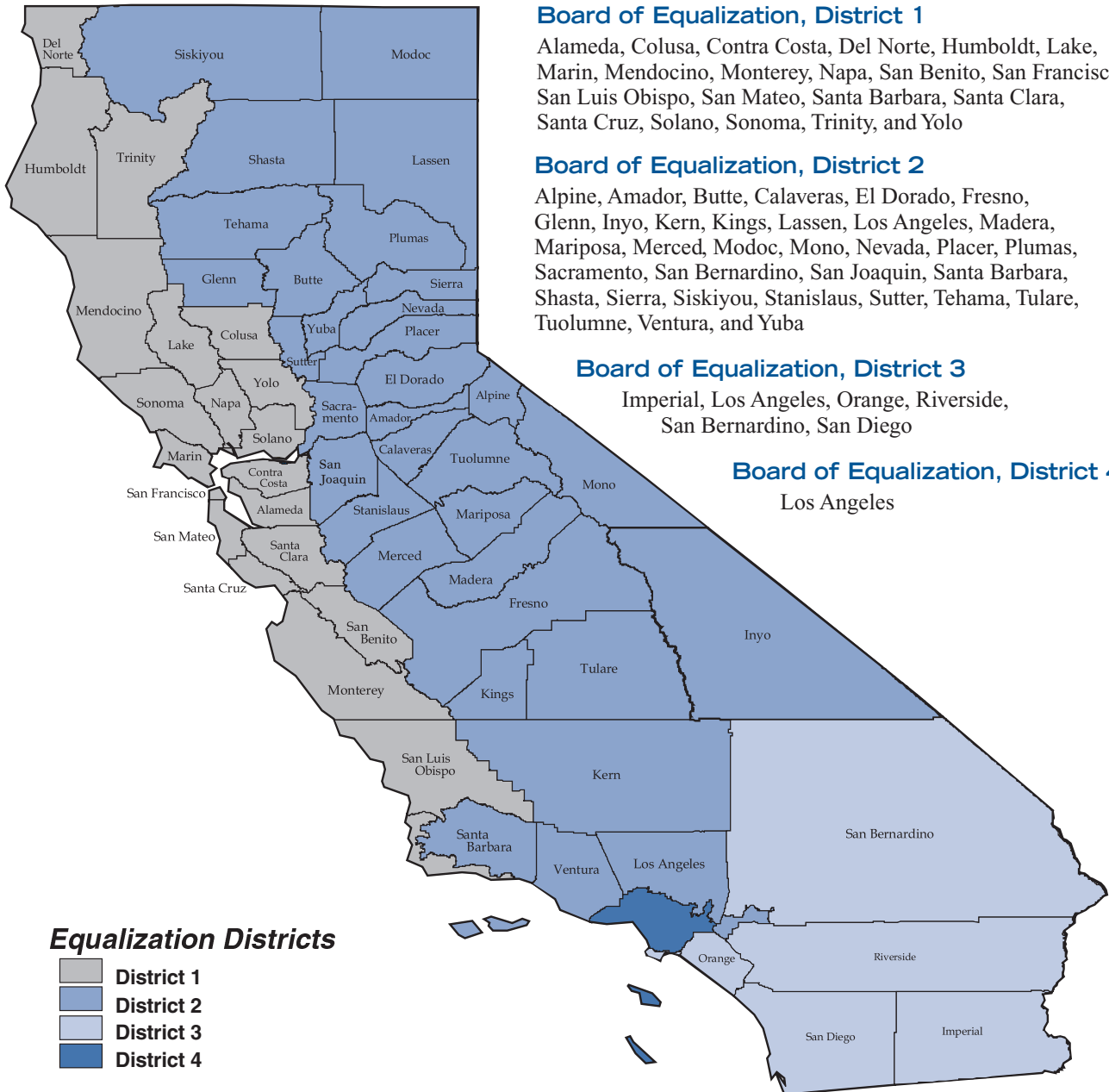
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Hi, I'm Glen Forsch. I am running for the Board of Equalization, Fourth District. I know how difficult it is to earn a living and pay our bills in California. I know it's a great RESPONSIBILITY TO COLLECT THE TAXPAYER'S MONEY. I join all REPUBLICANS, DEMOCRATS, INDEPENDENTS, AND ALL OTHER PARTIES, who want California TAXPAYERS and BUSINESSES to be Treated Fairly. I will do what it takes to get rid of the INHERITANCE TAX. I do not want the State Government to Tax and Take Your Inheritance. I will not stand by and let you, your parents, or your children be TAXED INTO POVERTY. Gather your Family, Friends, and Neighbors to VOTE FOR GLEN FORSCH.

The order of the candidates is determined by random alphabet drawing. Statements on this page were supplied by the candidates and have not been checked for accuracy. Each statement was voluntarily submitted by the candidate and is printed at the expense of the candidate. Candidates who did not submit statements could otherwise be qualified to appear on the ballot.

BOARD OF EQUALIZATION DISTRICTS BY COUNTY



JUSTICES OF THE SUPREME & APPELLATE COURTS ★ ★ ★

For more information about the Supreme Court Justices and the Appellate Court Justices, please visit the Secretary of State’s website at www.voterguide.ss.ca.gov or www.ss.ca.gov or call our toll-free voter line at 1-800-345-VOTE (8683).

THE ELECTORAL PROCEDURE

Under the California Constitution, justices of the Supreme Court and the courts of appeal are subject to confirmation by the voters. The public votes “yes” or “no” on whether to retain each justice.

These judicial offices are nonpartisan.

Before a person can become an appellate justice, the Governor must submit the candidate’s name to the Judicial Nominees Evaluation Commission, which is comprised of public members and lawyers. The commission conducts a thorough review of the candidate’s background and qualifications, with community input, and then forwards its evaluation of the candidate to the Governor.

The Governor then reviews the commission’s evaluation and officially nominates the candidate, whose qualifications are subject to public comment before examination and review by the Commission on Judicial Appointments. That commission consists of the Chief Justice of California, the Attorney General of California, and a senior Presiding Justice of the Courts of Appeal. The Commission on Judicial Appointments must then confirm or reject the nomination. Only if confirmed does the nominee become a justice.

Following confirmation, the justice is sworn into office and is subject to voter approval at the next gubernatorial election, and thereafter at the conclusion of each term. The term prescribed by the California Constitution for justices of the Supreme Court and courts of appeal is 12 years. Justices are confirmed by the Commission on Judicial Appointments only until the next gubernatorial election, at which time they run for retention of the remainder of the term, if any, of their predecessor, which will be either four or eight years.

(Elections Code Section 9083.)

1A

PROPOSITION 1A

This amendment proposed by Senate Constitutional Amendment 7 of the 2005–2006 Regular Session (Resolution Chapter 49, Statutes of 2006) expressly amends the California Constitution by amending a section thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

1B

PROPOSED AMENDMENT TO SECTION 1 OF ARTICLE XIX B

SECTION 1. (a) For the 2003–04 fiscal year and each fiscal year thereafter, all moneys that are collected during the fiscal year from taxes under the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code), or any successor to that law, upon the sale, storage, use, or other consumption in this State of motor vehicle fuel, and that are deposited in the General Fund of the State pursuant to that law, shall be transferred to the Transportation Investment Fund, which is hereby created in the State Treasury.

(b) (1) For the 2003–04 to 2007–08 fiscal years, inclusive, moneys in the Transportation Investment Fund shall be allocated, upon appropriation by the Legislature, in accordance with Section 7104 of the Revenue and Taxation Code as that section read on ~~the operative date of this article~~ *March 6, 2002*.

(2) For the 2008–09 fiscal year and each fiscal year thereafter, moneys in the Transportation Investment Fund shall be allocated solely for the following purposes:

(A) Public transit and mass transportation.

(B) Transportation capital improvement projects, subject to the laws governing the State Transportation Improvement Program, or any successor to that program.

(C) Street and highway maintenance, rehabilitation, reconstruction, or storm damage repair conducted by cities, including a city and county.

(D) Street and highway maintenance, rehabilitation, reconstruction, or storm damage repair conducted by counties, including a city and county.

(c) For the 2008–09 fiscal year and each fiscal year thereafter, moneys in the Transportation Investment Fund shall be allocated, upon appropriation by the Legislature, as follows:

(A) Twenty percent of the moneys for the purposes set forth in subparagraph (A) of paragraph (2) of subdivision (b).

(B) Forty percent of the moneys for the purposes set forth in subparagraph (B) of paragraph (2) of subdivision (b).

(C) Twenty percent of the moneys for the purposes set forth in subparagraph (C) of paragraph (2) of subdivision (b).

(D) Twenty percent of the moneys for the ~~purpose~~ *purposes* set forth in subparagraph (D) of paragraph (2) of subdivision (b).

(d) ~~The~~ *(1) Except as otherwise provided by paragraph (2), the transfer of revenues from the General Fund of the State to the Transportation Investment Fund pursuant to subdivision (a) may be suspended, in whole or in part, for a fiscal year if both all of the following conditions are met:*

~~(A) The Governor has issued issues a proclamation that declares that, due to a severe state fiscal hardship, the suspension of the transfer of revenues pursuant to required by subdivision (a) will result in a significant negative fiscal impact on the range of functions of government funded by the General Fund of the State is necessary.~~

~~(B) The Legislature enacts by statute, pursuant to a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, a suspension for that fiscal year of the transfer of revenues pursuant to required by subdivision (a); provided that and the bill does not contain any other unrelated provision.~~

(C) No later than the effective date of the statute described in subparagraph (B), a separate statute is enacted that provides for the full repayment to the Transportation Investment Fund of the total amount of revenue that was not transferred to that fund as a result of the suspension, including interest as provided by law. This full repayment shall be made not later than the end of the third fiscal year immediately following the fiscal year to which the suspension applies.

(2) (A) The transfer required by subdivision (a) shall not be suspended

for more than two fiscal years during any period of 10 consecutive fiscal years, which period begins with the first fiscal year commencing on or after July 1, 2007, for which the transfer required by subdivision (a) is suspended.

(B) The transfer required by subdivision (a) shall not be suspended during any fiscal year if a full repayment required by a statute enacted in accordance with subparagraph (C) of paragraph (1) has not yet been completed.

(e) The Legislature may enact a statute that modifies the percentage shares set forth in subdivision (c) by a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, provided that the bill does not contain any other unrelated provision and that the moneys described in subdivision (a) are expended solely for the purposes set forth in paragraph (2) of subdivision (b).

(f) (1) An amount equivalent to the total amount of revenues that were not transferred from the General Fund of the State to the Transportation Investment Fund, as of July 1, 2007, because of a suspension of transfer of revenues pursuant to this section as it read on January 1, 2006, but excluding the amount to be paid to the Transportation Deferred Investment Fund pursuant to Section 63048.65 of the Government Code, shall be transferred from the General Fund to the Transportation Investment Fund no later than June 30, 2016. Until this total amount has been transferred, the amount of transfer payments to be made in each fiscal year shall not be less than one-tenth of the total amount required to be transferred by June 30, 2016. The transferred revenues shall be allocated solely for the purposes set forth in this section as if they had been received in the absence of a suspension of transfer of revenues.

(2) The Legislature may provide by statute for the issuance of bonds by the state or local agencies, as applicable, that are secured by the minimum transfer payments required by paragraph (1). Proceeds from the sale of those bonds shall be allocated solely for the purposes set forth in this section as if they were revenues subject to allocation pursuant to paragraph (2) of subdivision (b).

PROPOSITION 1B

This law proposed by Senate Bill 1266 of the 2005–2006 Regular Session (Chapter 25, Statutes of 2006) is submitted to the people in accordance with the provisions of Article XVI of the California Constitution.

This proposed law adds sections to the Government Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Chapter 12.49 (commencing with Section 8879.20) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 12.49. THE HIGHWAY SAFETY, TRAFFIC REDUCTION, AIR QUALITY, AND PORT SECURITY BOND ACT OF 2006

Article 1. General Provisions

8879.20. (a) This chapter shall be known as the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006.

(b) This chapter shall only become operative upon adoption by the voters at the November 7, 2006, statewide general election.

8879.22. As used in this chapter, the following terms have the following meanings:

(a) "Board" means any department receiving an allocation of bond proceeds pursuant to this chapter.

(b) "Committee" means the Highway Safety, Traffic Reduction, Air Quality, and Port Security Committee created pursuant to Section 8879.27.

(c) "Fund" means the Highway Safety, Traffic Reduction, Air Quality, and Port Security Fund of 2006 created pursuant to Section 8879.23.

Article 2. Highway Safety, Traffic Reduction, Air Quality, and Port Security Fund of 2006 and Program

8879.23. The Highway Safety, Traffic Reduction, Air Quality, and Port Security Fund of 2006 is hereby created in the State Treasury. The Legislature intends that the proceeds of bonds deposited in the fund shall be used to fund the mobility, safety, and air quality improvements described in this article over the course of the next decade. The proceeds of bonds issued and sold pursuant to this chapter for the purposes specified in this chapter shall be allocated in the following manner:

(a) (1) Four billion five hundred million dollars (\$4,500,000,000) shall be deposited in the Corridor Mobility Improvement Account, which is hereby created in the fund. Funds in the account shall be available to the California Transportation Commission, upon appropriation in the annual Budget Bill by the Legislature, for allocation for performance improvements on highly congested travel corridors in California. Funds in the account shall be used for performance improvements on the state highway system, or major access routes to the state highway system on the local road system that relieve congestion by expanding capacity, enhancing operations, or otherwise improving travel times within these high-congestion travel corridors, as identified by the department and regional or local transportation agencies, pursuant to the process in paragraph (3) or (4), as applicable.

(2) The commission shall develop and adopt guidelines, by December 1, 2006, including regional programming targets, for the program funded by this subdivision, and shall allocate funds from the account to projects after reviewing project nominations submitted by the Department of Transportation and by regional transportation planning agencies or county transportation commissions or authorities pursuant to paragraph (4).

(3) Subject to the guidelines adopted pursuant to paragraph (2), the department shall nominate, by no later than January 15, 2007, projects for the allocation of funds from the account on a statewide basis. The department's nominations shall be geographically balanced and shall reflect the department's assessment of a program that best meets the policy objectives described in paragraph (1).

(4) Subject to the guidelines adopted pursuant to paragraph (2), a regional transportation planning agency or county transportation commission or authority responsible for preparing a regional transportation improvement plan under Section 14527 may nominate projects identified pursuant to paragraph (1) that best meet the policy objectives described in that paragraph for funding from the account. Projects nominated pursuant to this paragraph shall be submitted to the commission for consideration for funding by no later than January 15, 2007.

(5) All nominations to the California Transportation Commission shall be accompanied by documentation regarding the quantitative and qualitative measures validating each project's consistency with the policy objectives described in paragraph (1). All projects nominated to the commission for funds from this account shall be included in a regional transportation plan.

(6) After review of the project nominations, and supporting documentation, the commission, by no later than March 1, 2007, shall adopt an initial program of projects to be funded from the account. This program may be updated every two years in conjunction with the biennial process for adoption of the state transportation improvement program pursuant to guidelines adopted by the commission. The inclusion of a project in the program shall be based on a demonstration that the project meets all of the following criteria:

(A) Is a high-priority project in the corridor as demonstrated by either of the following: (i) its inclusion in the list of nominated projects by both the department pursuant to paragraph (3) and the regional transportation planning agency or county transportation commission or authority, pursuant to paragraph (4); or (ii) if needed to fully fund the project, the identification and commitment of supplemental funding to the project from other state, local, or federal funds.

(B) Can commence construction or implementation no later than December 31, 2012.

(C) Improves mobility in a high-congestion corridor by improving travel times or reducing the number of daily vehicle hours of delay, improves the connectivity of the state highway system between rural, suburban, and urban areas, or improves the operation or safety of a highway or road segment.

(D) Improves access to jobs, housing, markets, and commerce.

(7) Where competing projects offer similar mobility improvements to a specific corridor, the commission shall consider additional benefits when

determining which project shall be included in the program for funding. These benefits shall include, but are not limited to, the following:

(A) A finding that the project provides quantifiable air quality benefits.

(B) A finding that the project substantially increases the safety for travelers in the corridor.

(8) In adopting a program for funding pursuant to this subdivision, the commission shall make a finding that the program is (i) geographically balanced, consistent with the geographic split for funding described in Section 188 of the Streets and Highways Code; (ii) provides mobility improvements in highly traveled or highly congested corridors in all regions of California; and (iii) targets bond proceeds in a manner that provides the increment of funding necessary, when combined with other state, local or federal funds, to provide the mobility benefit in the earliest possible timeframe.

(9) The commission shall include in its annual report to the Legislature, required by Section 14535, a summary of its activities related to the administration of this program. The summary should, at a minimum, include a description and the location of the projects contained in the program, the amount of funds allocated to each project, the status of each project, and a description of the mobility improvements the program is achieving.

(b) One billion dollars (\$1,000,000,000) shall be made available, upon appropriation in the annual Budget Bill by the Legislature, to the department for improvements to State Route 99. Funds may be used for safety, operational enhancements, rehabilitation, or capacity improvements necessary to improve the State Route 99 corridor traversing approximately 400 miles of the central valley of this state.

(c) Three billion one hundred million dollars (\$3,100,000,000) shall be deposited in the California Ports Infrastructure, Security, and Air Quality Improvement Account, which is hereby created in the fund. The money in the account shall be available, upon appropriation by the Legislature and subject to such conditions and criteria as the Legislature may provide by statute, as follows:

(1) (A) Two billion dollars (\$2,000,000,000) shall be transferred to the Trade Corridors Improvement Fund, which is hereby created. The money in this fund shall be available, upon appropriation in the annual Budget Bill by the Legislature and subject to such conditions and criteria as the Legislature may provide by statute, for allocation by the California Transportation Commission for infrastructure improvements along federally designated "Trade Corridors of National Significance" in this state or along other corridors within this state that have a high volume of freight movement, as determined by the commission. In determining projects eligible for funding, the commission shall consult the trade infrastructure and goods movement plan submitted to the commission by the Secretary of Business, Transportation and Housing and the Secretary for Environmental Protection. No moneys shall be allocated from this fund until the report is submitted to the commission for its consideration, provided the report is submitted no later than January 1, 2007. The commission shall also consult trade infrastructure and goods movement plans adopted by regional transportation planning agencies, adopted regional transportation plans required by state and federal law, and the statewide port master plan prepared by the California Marine and Intermodal Transportation System Advisory Council (Cal-MITSAC) pursuant to Section 1760 of the Harbors and Navigation Code, when determining eligible projects for funding. Eligible projects for these funds include, but are not limited to, all of the following:

(i) Highway capacity improvements and operational improvements to more efficiently accommodate the movement of freight, particularly for ingress and egress to and from the state's seaports, including navigable inland waterways used to transport freight between seaports, land ports of entry, and airports, and to relieve traffic congestion along major trade or goods movement corridors.

(ii) Freight rail system improvements to enhance the ability to move goods from seaports, land ports of entry, and airports to warehousing and distribution centers throughout California, including projects that separate rail lines from highway or local road traffic, improve freight rail mobility through mountainous regions, relocate rail switching yards, and other

projects that improve the efficiency and capacity of the rail freight system.

(iii) Projects to enhance the capacity and efficiency of ports.

(iv) Truck corridor improvements, including dedicated truck facilities or truck toll facilities.

(v) Border access improvements that enhance goods movement between California and Mexico and that maximize the state's ability to access coordinated border infrastructure funds made available to the state by federal law.

(vi) Surface transportation improvements to facilitate the movement of goods to and from the state's airports.

(B) The commission shall allocate funds for trade infrastructure improvements from the account in a manner that (i) addresses the state's most urgent needs, (ii) balances the demands of various ports (between large and small ports, as well as between seaports, airports, and land ports of entry), (iii) provides reasonable geographic balance between the state's regions, and (iv) places emphasis on projects that improve trade corridor mobility while reducing emissions of diesel particulate and other pollutant emissions. In addition, the commission shall also consider the following factors when allocating these funds:

(i) "Velocity," which means the speed by which large cargo would travel from the port through the distribution system.

(ii) "Throughput," which means the volume of cargo that would move from the port through the distribution system.

(iii) "Reliability," which means a reasonably consistent and predictable amount of time for cargo to travel from one point to another on any given day or at any given time in California.

(iv) "Congestion reduction," which means the reduction in recurrent daily hours of delay to be achieved.

(C) The commission shall allocate funds made available by this paragraph to projects that have identified and committed supplemental funding from appropriate local, federal or private sources. The commission shall determine the appropriate amount of supplemental funding each project should have to be eligible for moneys from this fund based on a project-by-project review and an assessment of the project's benefit to the state and the program. Except for border access improvements described in clause (v) of subparagraph (A), improvements funded with moneys from this fund shall have supplemental funding that is at least equal to the amount of the contribution from the fund. The commission may give priority for funding to projects with higher levels of committed supplemental funding.

(D) The commission shall include in its annual report to the Legislature, required by Section 14535, a summary of its activities related to the administration of this program. The summary should, at a minimum, include a description and the location of the projects contained in the program, the amount of funds allocated to each project, the status of each project, and a description of the mobility and air quality improvements the program is achieving.

(2) One billion dollars (\$1,000,000,000) shall be made available, upon appropriation by the Legislature and subject to such conditions and criteria contained in a statute enacted by the Legislature, to the State Air Resources Board for emission reductions, not otherwise required by law or regulation, from activities related to the movement of freight along California's trade corridors. Funds made available by this paragraph are intended to supplement existing funds used to finance strategies and public benefit projects that reduce emissions and improve air quality in trade corridors commencing at the state's airports, seaports, and land ports of entry.

(3) One hundred million dollars (\$100,000,000) shall be available, upon appropriation by the Legislature, to the Office of Emergency Services to be allocated, as grants, for port, harbor, and ferry terminal security improvements. Eligible applicants shall be publicly owned ports, harbors, and ferryboat and ferry terminal operators, which may submit applications for projects that include, but are not limited to, the following:

(A) Video surveillance equipment.

(B) Explosives detection technology, including, but not limited to, X-ray devices.

(C) Cargo scanners.

(D) Radiation monitors.

(E) Thermal protective equipment.

(F) Site identification instruments capable of providing a fingerprint for a broad inventory of chemical agents.

(G) Other devices capable of detecting weapons of mass destruction using chemical, biological, or other similar substances.

(H) Other security equipment to assist in any of the following:

(i) Screening of incoming vessels, trucks, and incoming or outbound cargo.

(ii) Monitoring the physical perimeters of harbors, ports, and ferry terminals.

(iii) Providing or augmenting onsite emergency response capability.

(I) Overweight cargo detection equipment, including, but not limited to, intermodal crane scales and truck weight scales.

(J) Developing disaster preparedness or emergency response plans.

The Office of Emergency Services shall report to the Legislature on March 1 of each year on the manner in which the funds available pursuant to this paragraph were expended for that fiscal year.

(d) Two hundred million dollars (\$200,000,000) shall be available, upon appropriation by the Legislature, for schoolbus retrofit and replacement to reduce air pollution and to reduce children's exposure to diesel exhaust.

(e) Two billion dollars (\$2,000,000,000) shall be available for projects in the state transportation improvement program, to augment funds otherwise available for this purpose from other sources. The funds provided by this subdivision shall be deposited in the Transportation Facilities Account which is hereby created in the fund, and shall be available, upon appropriation by the Legislature, to the Department of Transportation, as allocated by the California Transportation Commission in the same manner as funds allocated for those projects under existing law.

(f) (1) Four billion dollars (\$4,000,000,000) shall be deposited in the Public Transportation Modernization, Improvement, and Service Enhancement Account, which is hereby created in the fund. Funds in the account shall be made available, upon appropriation by the Legislature, to the Department of Transportation for intercity rail projects and to commuter or urban rail operators, bus operators, waterborne transit operators, and other transit operators in California for rehabilitation, safety or modernization improvements, capital service enhancements or expansions, new capital projects, bus rapid transit improvements, or for rolling stock procurement, rehabilitation, or replacement.

(2) Of the funds made available in paragraph (1), four hundred million dollars (\$400,000,000) shall be available, upon appropriation by the Legislature, to the department for intercity rail improvements, of which one hundred twenty-five million dollars (\$125,000,000) shall be used for the procurement of additional intercity railcars and locomotives.

(3) Of the funds remaining after the allocations in paragraph (2), 50 percent shall be distributed to the Controller, for allocation to eligible agencies using the formula in Section 99314 of the Public Utilities Code, and 50 percent shall be distributed to the Controller, for allocation to eligible agencies using the formula in Section 99313 of the Public Utilities Code, subject to the provisions governing funds allocated under those sections.

(g) One billion dollars (\$1,000,000,000) shall be deposited in the State-Local Partnership Program Account, which is hereby created in the fund. The funds shall be available, upon appropriation by the Legislature and subject to such conditions and criteria as the Legislature may provide by statute, for allocation by the California Transportation Commission over a five-year period to eligible transportation projects nominated by an applicant transportation agency. A dollar for dollar match of local funds shall be required for an applicant transportation agency to receive state funds under this program.

(h) One billion dollars (\$1,000,000,000) shall be deposited in the Transit System Safety, Security, and Disaster Response Account, which is hereby created in the fund. Funds in the account shall be made available, upon appropriation by the Legislature and subject to such conditions and criteria as the Legislature may provide by statute, for capital projects that provide increased protection against a security and safety threat, and for capital expenditures to increase the capacity of transit operators, including waterborne transit operators, to develop disaster response

1B

transportation systems that can move people, goods, and emergency personnel and equipment in the aftermath of a disaster impairing the mobility of goods, people, and equipment.

(i) One hundred twenty-five million dollars (\$125,000,000) shall be deposited in the Local Bridge Seismic Retrofit Account, which is hereby created in the fund. The funds in the account shall be used, upon appropriation by the Legislature, to provide the 11.5 percent required match for federal Highway Bridge Replacement and Repair funds available to the state for seismic work on local bridges, ramps, and overpasses, as identified by the Department of Transportation.

(j) (1) Two hundred fifty million dollars (\$250,000,000) shall be deposited in the Highway-Railroad Crossing Safety Account, which is hereby created in the fund. Funds in the account shall be available, upon appropriation by the Legislature, to the Department of Transportation for the completion of high-priority grade separation and railroad crossing safety improvements. Funds in the account shall be made available for allocation pursuant to the process established in Chapter 10 (commencing with Section 2450) of Division 3 of the Streets and Highways Code, except that a dollar for dollar match of nonstate funds shall be provided for each project, and the limitation on maximum project cost in subdivision (g) of Section 2454 of the Streets and Highways Code shall not be applicable to projects funded with these funds.

(2) Notwithstanding the funding allocation process described in paragraph (1), in consultation with the department and the Public Utilities Commission, the California Transportation Commission shall allocate one hundred million dollars (\$100,000,000) of the funds in the account to high-priority railroad crossing improvements, including grade separation projects, that are not part of the process established in Chapter 10 (commencing with Section 2450) of Division 3 of the Streets and Highways Code. The allocation of funds under this paragraph shall be made in consultation and coordination with the High-Speed Rail Authority created pursuant to Division 19.5 (commencing with Section 185000) of the Public Utilities Code.

(k) (1) Seven hundred fifty million dollars (\$750,000,000) shall be deposited in the Highway Safety, Rehabilitation, and Preservation Account, which is hereby created in the fund. Funds in the account shall be available, upon appropriation by the Legislature, to the Department of Transportation, as allocated by the California Transportation Commission, for the purposes of the state highway operation and protection program as described in Section 14526.5.

(2) The department shall develop a program for distribution of two hundred and fifty million dollars (\$250,000,000) from the funds identified in paragraph (1) to fund traffic light synchronization projects or other technology-based improvements to improve safety, operations and the effective capacity of local streets and roads.

(l) (1) Two billion dollars (\$2,000,000,000) shall be deposited in the Local Streets and Road Improvement, Congestion Relief, and Traffic Safety Account of 2006, which is hereby created in the fund. The proceeds of bonds deposited into that account shall be available, upon appropriation by the Legislature, for the purposes specified in this subdivision to the Controller for administration and allocation in the fiscal year in which the bonds are issued and sold, including any interest or other return earned on the investment of those moneys, in the following manner:

(A) Fifty percent to the counties, including a city and county, in accordance with the following formulas:

(i) Seventy-five percent of the funds payable under this subparagraph shall be apportioned among the counties in the proportion that the number of fee-paid and exempt vehicles that are registered in the county bears to the number of fee-paid and exempt vehicles registered in the state.

(ii) Twenty-five percent of the funds payable under this subparagraph shall be apportioned among the counties in the proportion that the number of miles of maintained county roads in each county bears to the total number of miles of maintained county roads in the state. For the purposes of apportioning funds under this clause, any roads within the boundaries of a city and county that are not state highways shall be deemed to be county roads.

(B) Fifty percent to the cities, including a city and county, apportioned among the cities in the proportion that the total population of the city bears to the total population of all the cities in the state, provided, however, that the Controller shall allocate a minimum of four hundred thousand dollars (\$400,000) to each city, pursuant to this subparagraph.

(2) Funds received under this subdivision shall be deposited as follows in order to avoid the commingling of those funds with other local funds:

(A) In the case of a city, into the city account that is designated for the receipt of state funds allocated for local streets and roads.

(B) In the case of an eligible county, into the county road fund.

(C) In the case of a city and county, into a local account that is designated for the receipt of state funds allocated for local streets and roads.

(3) For the purpose of allocating funds under this subdivision to cities and a city and county, the Controller shall use the most recent population estimates prepared by the Demographic Research Unit of the Department of Finance. For a city that incorporated after January 1, 1998, that does not appear on the most recent population estimates prepared by the Demographic Research Unit, the Controller shall use the population determined for that city under Section 11005.3 of the Revenue and Taxation Code.

(4) Funds apportioned to a city, county, or city and county under this subdivision shall be used for improvements to transportation facilities that will assist in reducing local traffic congestion and further deterioration, improving traffic flows, or increasing traffic safety that may include, but not be limited to, street and highway pavement maintenance, rehabilitation, installation, construction and reconstruction of necessary associated facilities such as drainage and traffic control devices, or the maintenance, rehabilitation, installation, construction and reconstruction of facilities that expand ridership on transit systems, safety projects to reduce fatalities, or as a local match to obtain state or federal transportation funds for similar purposes.

(5) At the conclusion of each fiscal year during which a city or county expends the funds it has received under this subdivision, the Controller may verify the city's or county's compliance with paragraph (4). Any city or county that has not complied with paragraph (4) shall reimburse the state for the funds it received during that fiscal year. Any funds withheld or returned as a result of a failure to comply with paragraph (4) shall be reallocated to the other counties and cities whose expenditures are in compliance.

Article 3. Fiscal Provisions

8879.25. Bonds in the total amount of nineteen billion nine hundred twenty-five million dollars (\$19,925,000,000), exclusive of refunding bonds, or so much thereof as is necessary, are hereby authorized to be issued and sold for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5. All bonds herein authorized which have been duly sold and delivered as provided herein shall constitute valid and legally binding general obligations of the state, and the full faith and credit of the state is hereby pledged for the punctual payment of both principal and interest thereof.

8879.26. The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4), except subdivision (a) of Section 16727 to the extent that subdivision is inconsistent with this chapter, and all of the other provisions of that law as amended from time to time apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

8879.27. (a) Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this chapter, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Committee is hereby created. For the purposes of this chapter, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Committee is "the committee" as that term is used in the State General Obligation Bond Law. The committee consists of the Treasurer, the Controller, the Director of Finance, and the Secretary of the Business, Transportation and Housing Agency, or a designated representative of each of those officials. The Treasurer shall serve as the chairperson of the committee. A majority of the committee may act for the committee.

(b) The committee may adopt guidelines establishing requirements for administration of its financing programs to the extent necessary to protect the validity of, and tax exemption for, interest on the bonds. The guidelines shall not constitute rules, regulations, orders, or standards of general application.

(c) For the purposes of the State General Obligation Bond Law, any department receiving an allocation pursuant to this chapter is designated to be the “board.”

8879.28. Upon request of the board stating that funds are needed for purposes of this chapter, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Section 8879.23, and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and are not required to be sold at any one time. Bonds may bear interest subject to federal income tax.

8879.29. There shall be collected annually, in the same manner and at the same time as other state revenue is collected, a sum of money in addition to the ordinary revenues of the state, sufficient to pay the principal of, and interest on, the bonds as provided herein, and all officers required by law to perform any duty in regard to the collections of state revenues shall collect that additional sum.

8879.30. Notwithstanding Section 13340, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum which is necessary to carry out Section 8879.32, appropriated without regard to fiscal years.

8879.31. The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312, for purposes of this chapter. The amount of the request shall not exceed the amount of the unsold bonds which the committee has, by resolution, authorized to be sold for the purpose of this chapter, less any amount withdrawn pursuant to Section 8879.32. The board shall execute any documents as required by the Pooled Money Investment Board to obtain and repay the loan. Any amount loaned shall be deposited in the fund to be allocated in accordance with this chapter.

8879.32. For the purpose of carrying out this chapter, the Director of Finance may, by executive order, authorize the withdrawal from the General Fund of any amount or amounts not to exceed the amount of the unsold bonds which the committee has, by resolution, authorized to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the Highway Safety, Traffic Reduction, Air Quality, and Port Security Fund of 2006. Any money made available under this section shall be returned to the General Fund, plus the interest that the amounts would have earned in the Pooled Money Investment Account, from money received from the sale of bonds which would otherwise be deposited in that fund.

8879.33. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of the State General Obligation Bond Law. Approval by the electors of this act shall constitute approval of any refunding bonds issued pursuant to the State General Obligation Bond Law.

8879.34. Notwithstanding any provisions in the State General Obligation Bond Law, the maximum maturity of any bonds authorized by this chapter shall not exceed 30 years from the date of each respective series. The maturity of each series shall be calculated from the date of each series.

8879.35. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not “proceeds of taxes” as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

8879.36. Notwithstanding any provision of the State General Obligation Bond Law with regard to the proceeds from the sale of bonds authorized by this chapter that are subject to investment under Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4, the Treasurer may maintain a separate account for investment earnings, order the payment of those earnings to comply with any rebate requirement applicable under federal law, and may otherwise direct the use and investment of those proceeds so as to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

8879.37. All money derived from premium and accrued interest on bonds sold pursuant to this chapter shall be transferred to the General Fund as a credit to expenditures for bond interest.

PROPOSITION 1C

This law proposed by Senate Bill 1689 of the 2005–2006 Regular Session (Chapter 27, Statutes of 2006) is submitted to the people in accordance with the provisions of Article XVI of the California Constitution.

This proposed law adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SEC. 2. Part 12 (commencing with Section 53540) is added to Division 31 of the Health and Safety Code, to read:

PART 12. HOUSING AND EMERGENCY SHELTER TRUST FUND ACT OF 2006

CHAPTER 1. GENERAL PROVISIONS

53540. (a) This part shall be known as the Housing and Emergency Shelter Trust Fund Act of 2006.

(b) This part shall only become operative upon adoption by the voters at the November 7, 2006, statewide general election.

53541. As used in this part, the following terms have the following meanings:

(a) “Board” means the Department of Housing and Community Development for programs administered by the department, and the California Housing Finance Agency for programs administered by the agency.

(b) “Committee” means the Housing Finance Committee created pursuant to Section 53524 and continued in existence pursuant to Section 53548.

(c) “Fund” means the Housing and Emergency Shelter Trust Fund created pursuant to Section 53545.

CHAPTER 2. HOUSING AND EMERGENCY SHELTER TRUST FUND OF 2006 AND PROGRAM

53545. The Housing and Emergency Shelter Trust Fund of 2006 is hereby created in the State Treasury. The Legislature intends that the proceeds of bonds deposited in the fund shall be used to fund the housing-related programs described in this chapter over the course of the next decade. The proceeds of bonds issued and sold pursuant to this part for the purposes specified in this chapter shall be allocated in the following manner:

(a) (1) One billion five hundred million dollars (\$1,500,000,000) to be deposited in the Affordable Housing Account, which is hereby created in the fund. Notwithstanding Section 13340 of the Government Code, the money in the account shall be continuously appropriated in accordance with the following schedule:

(A) (i) Three hundred forty-five million dollars (\$345,000,000) shall be transferred to the Housing Rehabilitation Loan Fund to be expended for the Multifamily Housing Program authorized by Chapter 6.7 (commencing with Section 50675) of Part 2. The priorities specified in Section 50675.13 shall apply to the expenditure of funds pursuant to this clause.

(ii) Fifty million dollars (\$50,000,000) shall be transferred to the Housing Rehabilitation Loan Fund to be expended under the Multifamily Housing Program authorized by Chapter 6.7 (commencing with Section 50675) of Part 2 for housing meeting the definitions in paragraphs (2) and (3) of subdivision (e) of Section 11139.3 of the Government Code. The department may provide higher per-unit loan limits as necessary to achieve affordable housing costs to the target population. Any funds not encumbered for the purposes of this clause within 30 months of availability shall revert for general use in the Multifamily Housing Program.

(B) One hundred ninety-five million dollars (\$195,000,000) shall be transferred to the Housing Rehabilitation Loan Fund to be expended for the Multifamily Housing Program authorized by Chapter 6.7

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(commencing with Section 50675) of Part 2, to be used for supportive housing for individuals and households moving from emergency shelters or transitional housing or those at risk of homelessness. The Department of Housing and Community Development shall provide for higher per-unit loan limits as reasonably necessary to achieve housing costs affordable to those individuals and households. For purposes of this subparagraph, "supportive housing" means housing with no limit on length of stay, that is occupied by the target population, as defined in subdivision (d) of Section 53260, and that is linked to onsite or offsite services that assist the tenant to retain the housing, improve his or her health status, maximize his or her ability to live, and, when possible, work in the community. The criteria for selecting projects shall give priority to:

(i) Supportive housing for people with disabilities who would otherwise be at high risk of homelessness where the applications represent collaboration with programs that meet the needs of the person's disabilities.

(ii) Projects that demonstrate funding commitments from local governments for operating subsidies or services funding, or both, for five years or longer.

(C) One hundred thirty-five million dollars (\$135,000,000) shall be transferred to the fund created by subdivision (b) of Section 50517.5 to be expended for the programs authorized by Chapter 3.2 (commencing with Section 50517.5) of Part 2.

(D) Three hundred million dollars (\$300,000,000) shall be transferred to the Self-Help Housing Fund created by Section 50697.1. These funds shall be available to the Department of Housing and Community Development, to be expended for the purposes of enabling households to become or remain homeowners pursuant to the CalHome Program authorized by Chapter 6 (commencing with Section 50650) of Part 2, except ten million dollars (\$10,000,000) shall be expended for construction management under the California Self-Help Housing Program pursuant to subdivision (b) of Section 50696.

(E) Two hundred million dollars (\$200,000,000) shall be transferred to the Self-Help Housing Fund created by Section 50697.1. These funds shall be available to the California Housing Finance Agency, to be expended for the purposes of the California Homebuyer's Downpayment Assistance Program authorized by Chapter 11 (commencing with Section 51500) of Part 3. Up to one hundred million dollars (\$100,000,000) of these funds may be expended pursuant to subdivision (b) of Section 51504.

(F) One hundred million dollars (\$100,000,000) shall be transferred to the Affordable Housing Innovation Fund, which is hereby created in the State Treasury, to be administered by the Department of Housing and Community Development. Funds shall be expended for competitive grants or loans to sponsoring entities that develop, own, lend, or invest in affordable housing and used to create pilot programs to demonstrate innovative, cost-saving approaches to creating or preserving affordable housing. Specific criteria establishing eligibility for and use of the funds shall be established in statute as approved by a 2/3 vote of each house of the Legislature. Any funds not encumbered for the purposes set forth in this subparagraph within 30 months of availability shall revert to the Self-Help Housing Fund created by Section 50697.1 and shall be available for the purposes described in subparagraph (D).

(G) One hundred twenty-five million dollars (\$125,000,000) shall be transferred to the Building Equity and Growth in Neighborhoods Fund to be used for the Building Equity and Growth in Neighborhoods (BEGIN) Program pursuant to Chapter 14.5 (commencing with Section 50860) of Part 1. Any funds not encumbered for the purposes set forth in this subparagraph within 30 months of availability shall revert for general use in the CalHome Program.

(H) Fifty million dollars (\$50,000,000) shall be transferred to the Emergency Housing and Assistance Fund to be distributed in the form of capital development grants under the Emergency Housing and Assistance Program authorized by Chapter 11.5 (commencing with Section 50800) of Part 2 of Division 31. The funds shall be administered by the Department of Housing and Community Development in a manner consistent with the restrictions and authorizations contained in Provision 3 of Item 2240-105-0001 of the Budget Act of 2000, except that any appropriations in that item shall not apply. The competitive system used by the department shall incorporate priorities set by the designated local boards and their input as to the relative merits of submitted applications from within the designated local board's county in relation to those priorities. In addition, the funding

limitations contained in this section shall not apply to the appropriation in that budget item.

(2) The Legislature may, from time to time, amend the provisions of law related to programs to which funds are, or have been, allocated pursuant to this subdivision for the purpose of improving the efficiency and effectiveness of the program, or for the purpose of furthering the goals of the program.

(3) The Bureau of State Audits shall conduct periodic audits to ensure that bond proceeds are awarded in a timely fashion and in a manner consistent with the requirements of this subdivision, and that awardees of bond proceeds are using funds in compliance with applicable provisions of this subdivision. The first audit shall be conducted no later than one year from voter approval of this part.

(4) In its annual report to the Legislature, the Department of Housing and Community Development shall report how funds that were made available pursuant to this subdivision and allocated in the prior year were expended. The department shall make the report available to the public on its Internet Web site.

(b) Eight hundred fifty million dollars (\$850,000,000) shall be deposited in the Regional Planning, Housing, and Infill Incentive Account, which is hereby created in the fund. Funds in the account shall be available, upon appropriation by the Legislature, and subject to such other conditions and criteria as the Legislature may provide in statute, for the following purposes:

(1) For infill incentive grants for capital outlay related to infill housing development and other related infill development, including, but not limited to, all of the following:

(A) No more than two hundred million dollars (\$200,000,000) for park creation, development, or rehabilitation to encourage infill development.

(B) Water, sewer, or other public infrastructure costs associated with infill development.

(C) Transportation improvements related to infill development projects.

(D) Traffic mitigation.

(2) For brownfield cleanup that promotes infill housing development and other related infill development consistent with regional and local plans.

(c) Three hundred million dollars (\$300,000,000) to be deposited in the Transit-Oriented Development Account, which is hereby created in the fund, for transfer to the Transit-Oriented Development Implementation Fund, for expenditure, upon appropriation by the Legislature, pursuant to the Transit-Oriented Development Implementation Program authorized by Part 13 (commencing with Section 50560).

(d) Two hundred million dollars (\$200,000,000) shall be deposited in the Housing Urban-Suburban-and-Rural Parks Account, which is hereby created in the fund. Funds in the account shall be available upon appropriation by the Legislature for housing-related parks grants in urban, suburban, and rural areas, subject to the conditions and criteria that the Legislature may provide in statute.

CHAPTER 3. FISCAL PROVISIONS

53546. Bonds in the total amount of two billion eight hundred fifty million dollars (\$2,850,000,000), exclusive of refunding bonds, or so much thereof as is necessary, are hereby authorized to be issued and sold for carrying out the purposes expressed in this part and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. All bonds herein authorized which have been duly sold and delivered as provided herein shall constitute valid and legally binding general obligations of the state, and the full faith and credit of the state is hereby pledged for the punctual payment of both principal and interest thereof.

53547. The bonds authorized by this part shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4), except subdivision (a) of Section 16727 to the extent that it is inconsistent with this part, and all of the other provisions of that law as amended from time to time apply to the bonds and to this part and are hereby incorporated in this part as though set forth in full in this part.

53548. (a) Solely for the purpose of authorizing the issuance and

sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this part, the Housing Finance Committee created pursuant to Section 53524 is continued in existence. For the purposes of this part, the Housing Finance Committee is “the committee” as that term is used in the State General Obligation Bond Law.

(b) The committee may adopt guidelines establishing requirements for administration of its financing programs to the extent necessary to protect the validity of, and tax exemption for, interest on the bonds. The guidelines shall not constitute rules, regulations, orders, or standards of general application and are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) For the purposes of the State General Obligation Bond Law, the Department of Housing and Community Development is designated the “board” for programs administered by the department, and the California Housing Finance Agency is the “board” for programs administered by the agency.

53549. Upon request of the board stating that funds are needed for purposes of this part, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this part in order to carry out the actions specified in Section 53545, and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and are not required to be sold at any one time. Bonds may bear interest subject to federal income tax.

53550. There shall be collected annually, in the same manner and at the same time as other state revenue is collected, a sum of money in addition to the ordinary revenues of the state, sufficient to pay the principal of, and interest on, the bonds as provided herein, and all officers required by law to perform any duty in regard to the collections of state revenues shall collect that additional sum.

53551. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this part, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this part, as the principal and interest become due and payable.

(b) The sum which is necessary to carry out Section 53553, appropriated without regard to fiscal years.

53552. The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for purposes of this part. The amount of the request shall not exceed the amount of the unsold bonds which the committee has, by resolution, authorized to be sold for the purpose of this part, less any amount withdrawn pursuant to Section 53553. The board shall execute any documents as required by the Pooled Money Investment Board to obtain and repay the loan. Any amount loaned shall be deposited in the fund to be allocated in accordance with this part.

53553. For the purpose of carrying out this part, the Director of Finance may, by executive order, authorize the withdrawal from the General Fund of any amount or amounts not to exceed the amount of the unsold bonds which the committee has, by resolution, authorized to be sold for the purpose of carrying out this part. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, plus the interest that the amounts would have earned in the Pooled Money Investment Account, from money received from the sale of bonds which would otherwise be deposited in that fund.

53554. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of the State General Obligation Bond Law. Approval by the electors of this act shall constitute approval of any refunding bonds issued pursuant to the State General Obligation Bond Law.

53555. Notwithstanding any provisions in the State General Obligation Bond Law, the maximum maturity of any bonds authorized by this part shall not exceed 30 years from the date of each respective series. The maturity of each series shall be calculated from the date of each series.

53556. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this part are not “proceeds of taxes” as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

53557. Notwithstanding any provision of the State General Obligation Bond Law with regard to the proceeds from the sale of bonds authorized by this part that are subject to investment under Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, the Treasurer may maintain a separate account for investment earnings, order the payment of those earnings to comply with any rebate requirement applicable under federal law, and may otherwise direct the use and investment of those proceeds so as to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

53558. All money derived from premium and accrued interest on bonds sold pursuant to this chapter shall be transferred to the General Fund as a credit to expenditures for bond interest.

PROPOSITION 1D

This law proposed by Assembly Bill 127 of the 2005–2006 Regular Session (Chapter 35, Statutes of 2006) is submitted to the people in accordance with the provisions of Article XVI of the California Constitution.

This proposed law adds sections to the Education Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SEC. 16. Part 69 (commencing with Section 101000) is added to the Education Code, to read:

PART 69. KINDERGARTEN–UNIVERSITY PUBLIC EDUCATION FACILITIES BOND ACT OF 2006

CHAPTER 1. GENERAL

101000. This part shall be known and may be cited as the Kindergarten–University Public Education Facilities Bond Act of 2006.

101001. The incorporation of, or reference to, any provision of California statutory law in this part includes all acts amendatory thereof and supplementary thereto.

101002. (a) Bonds in the total amount of ten billion four hundred sixteen million dollars (\$10,416,000,000), not including the amount of any refunding bonds issued in accordance with Sections 101030, 101039, and 101059, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this part and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established by Section 15909 or the Higher Education Facilities Finance Committee established pursuant to Section 67353, as the case may be, at any different times necessary to service expenditures required by the apportionments.

CHAPTER 2. KINDERGARTEN THROUGH 12TH GRADE

Article 1. Kindergarten Through 12th Grade School Facilities Program Provisions

101010. The proceeds of bonds issued and sold pursuant to Article 2 (commencing with Section 101020) shall be deposited in the 2006 State School Facilities Fund established in the State Treasury under subdivision (d) of Section 17070.40 and shall be allocated by the State Allocation Board pursuant to this chapter.

101011. All moneys deposited in the 2006 State School Facilities Fund for the purposes of this chapter shall be available to provide aid to school districts, county superintendents of schools, and county boards of education of the state in accordance with the Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5 (commencing with Section 17070.10) of Part 10), as set forth in Section 101012, to provide funds to repay any money advanced or loaned to the 2006 State School Facilities Fund under

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any act of the Legislature, together with interest provided for in that act, and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code.

101012. (a) The proceeds from the sale of bonds, issued and sold for the purposes of this chapter, shall be allocated in accordance with the following schedule:

(1) The amount of one billion nine hundred million dollars (\$1,900,000,000) for new construction of school facilities of applicant school districts under Chapter 12.5 (commencing with Section 17070.10) of Part 10. Of the amount allocated under this paragraph, up to 10.5 percent shall be available for purposes of seismic repair, reconstruction, or replacement, pursuant to Section 17075.10.

(2) The amount of five hundred million dollars (\$500,000,000) shall be available for providing school facilities to charter schools pursuant to Article 12 (commencing with Section 17078.52) of Chapter 12.5 of Part 10.

(3) The amount of three billion three hundred million dollars (\$3,300,000,000) for the modernization of school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10.

(4) The amount of five hundred million dollars (\$500,000,000) for the purposes set forth in Article 13 (commencing with Section 17078.70) of Chapter 12.5 of Part 10, relating to facilities for career technical education programs.

(5) Of the amounts allocated under paragraphs (1) and (3), up to two hundred million dollars (\$200,000,000) for the purposes set forth in Chapter 894 of the Statutes of 2004, relating to incentives for the creation of smaller learning communities and small high schools.

(6) The amount of twenty-nine million dollars (\$29,000,000) for the purposes set forth in Article 10.6 (commencing with Section 17077.40) of Chapter 12.5 of Part 10, relating to joint use projects.

(7) The amount of one billion dollars (\$1,000,000,000) shall be available for providing new construction funding to severely overcrowded schoolsites pursuant to Article 14 (commencing with Section 17079) of Chapter 12.5 of Part 10.

(8) The amount of one hundred million dollars (\$100,000,000) for incentive grants to promote the use of designs and materials in new construction and modernization projects that include the attributes of high-performance schools, including, but not limited to, the elements set forth in Section 17070.96, pursuant to regulations adopted by the State Allocation Board.

(b) School districts may use funds allocated pursuant to paragraph (3) of subdivision (a) only for one or more of the following purposes in accordance with Chapter 12.5 (commencing with Section 17070.10) of Part 10:

(1) The purchase and installation of air-conditioning equipment and insulation materials, and related costs.

(2) Construction projects or the purchase of furniture or equipment designed to increase school security or playground safety.

(3) The identification, assessment, or abatement in school facilities of hazardous asbestos.

(4) Project funding for high-priority roof replacement projects.

(5) Any other modernization of facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10.

(c) Funds allocated pursuant to paragraph (1) of subdivision (a) may also be utilized to provide new construction grants for eligible applicant county boards of education under Chapter 12.5 (commencing with Section 17070.10) of Part 10 for funding classrooms for severely handicapped pupils, or for funding classrooms for county community school pupils.

(d) (1) The Legislature may amend this section to adjust the funding amounts specified in paragraphs (1) to (8), inclusive, of subdivision (a), only by either of the following methods:

(A) By a statute, passed in each house of the Legislature by rollcall vote entered in the respective journals, by not less than two-thirds of the membership in each house concurring, if the statute is consistent with, and furthers the purposes of, this chapter.

(B) By a statute that becomes effective only when approved by the voters.

(2) Amendments pursuant to this subdivision may adjust the amounts

to be expended pursuant to paragraphs (1) to (8), inclusive, of subdivision (a), but may not increase or decrease the total amount to be expended pursuant to that subdivision.

(e) Funds available pursuant to this section may be used for acquisition of school facilities authorized pursuant to Section 17280.5.

Article 2. Kindergarten Through 12th Grade School Facilities Fiscal Provisions

101020. (a) Of the total amount of bonds authorized to be issued and sold pursuant to Chapter 1 (commencing with Section 101000), bonds in the amount of seven billion three hundred twenty-nine million dollars (\$7,329,000,000) not including the amount of any refunding bonds issued in accordance with Section 101030, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established pursuant to Section 15909 at any different times necessary to service expenditures required by the apportionments.

101021. The State School Building Finance Committee, established by Section 15909 and composed of the Governor, the Controller, the Treasurer, the Director of Finance, and the Superintendent, or their designated representatives, all of whom shall serve thereon without compensation, and a majority of whom shall constitute a quorum, is continued in existence for the purpose of this chapter. The Treasurer shall serve as chairperson of the committee. Two Members of the Senate appointed by the Senate Committee on Rules, and two Members of the Assembly appointed by the Speaker of the Assembly, shall meet with and provide advice to the committee to the extent that the advisory participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this chapter, the Members of the Legislature shall constitute an interim investigating committee on the subject of this chapter and, as that committee, shall have the powers granted to, and duties imposed upon, those committees by the Joint Rules of the Senate and the Assembly. The Director of Finance shall provide assistance to the committee as it may require. The Attorney General of the state is the legal adviser of the committee.

101022. (a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law, except Section 16727 of the Government Code to the extent that it conflicts with this part, apply to the bonds and to this chapter and are hereby incorporated into this chapter as though set forth in full within this chapter.

(b) For purposes of the State General Obligation Bond Law, the State Allocation Board is designated the "board" for purposes of administering the 2006 State School Facilities Fund.

101023. (a) Upon request of the State Allocation Board, the State School Building Finance Committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to fund the apportionments and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to fund those apportionments progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

(b) A request of the State Allocation Board pursuant to subdivision (a) shall be supported by a statement of the apportionments made and to be made for the purposes described in Sections 101011 and 101012.

101024. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act that is necessary to collect

that additional sum.

101025. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 101028, appropriated without regard to fiscal years.

101026. The State Allocation Board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account or any other approved form of interim financing, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The board shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

101027. Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

101028. For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the State School Building Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the 2006 State School Facilities Fund consistent with this chapter. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

101029. All money deposited in the 2006 State School Facilities Fund, that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

101030. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

101031. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

CHAPTER 3. CALIFORNIA COMMUNITY COLLEGE FACILITIES

Article 1. General

101032. (a) The 2006 California Community College Capital Outlay Bond Fund is hereby established in the State Treasury for deposit of funds from the proceeds of bonds issued and sold for the purposes of this chapter.

(b) The Higher Education Facilities Finance Committee established pursuant to Section 67353 is hereby authorized to create a debt or debts,

liability or liabilities, of the State of California pursuant to this chapter for the purpose of providing funds to aid the California Community Colleges.

Article 2. California Community College Program Provisions

101033. (a) From the proceeds of bonds issued and sold pursuant to Article 3 (commencing with Section 101034), the sum of one billion five hundred seven million dollars (\$1,507,000,000) shall be deposited in the 2006 California Community College Capital Outlay Bond Fund for the purposes of this article. When appropriated, these funds shall be available for expenditure for the purposes of this article.

(b) The purposes of this article include assisting in meeting the capital outlay financing needs of the California Community Colleges.

(c) Proceeds from the sale of bonds issued and sold for the purposes of this article may be used to fund construction on existing campuses, including the construction of buildings and the acquisition of related fixtures, construction of facilities that may be used by more than one segment of public higher education (intersegmental), the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings for facilities of the California Community Colleges.

Article 3. California Community College Fiscal Provisions

101034. (a) Of the total amount of bonds authorized to be issued and sold pursuant to Chapter 1 (commencing with Section 101000), bonds in the total amount of one billion five hundred seven million dollars (\$1,507,000,000), not including the amount of any refunding bonds issued in accordance with Section 101039, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) It is the intent of the Legislature that the California Community Colleges annually consider, as part of their annual capital outlay planning process, the inclusion of facilities that may be used by more than one segment of public higher education (intersegmental), and, that on or before May 15th of each year, those entities report their findings to the budget committees of each house of the Legislature.

(c) Pursuant to this section, the Treasurer shall sell the bonds authorized by the Higher Education Facilities Finance Committee established pursuant to Section 67353 at any different times necessary to service expenditures required by the apportionments.

101034.5. (a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law, except Section 16727 of the Government Code to the extent that it conflicts with this part, apply to the bonds and to this chapter and are hereby incorporated into this chapter as though set forth in full within this chapter.

(b) For the purposes of the State General Obligation Bond Law, each state agency administering an appropriation of the 2006 Community College Capital Outlay Bond Fund is designated as the "board" for projects funded pursuant to this chapter.

(c) The proceeds of the bonds issued and sold pursuant to this chapter shall be available for the purpose of funding aid to the California Community Colleges for the construction on existing or new campuses, and their respective off-campus centers and joint use and intersegmental facilities, as set forth in this chapter.

101035. The Higher Education Facilities Finance Committee established pursuant to Section 67353 shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments for the purposes described in this chapter that are expressly authorized

by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the purposes described in this chapter and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

101035.5. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

101036. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 101037.5, appropriated without regard to fiscal years.

101036.5. The board, as defined in subdivision (b) of Section 101034.5, may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account or any other approved form of interim financing, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The board, as defined in subdivision (b) of Section 101034.5, shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

101037. Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

101037.5. (a) For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the Higher Education Facilities Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the 2006 California Community College Capital Outlay Bond Fund consistent with this chapter. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

(b) Any request forwarded to the Legislature and the Department of Finance for funds from this bond issue for expenditure for the purposes described in this chapter by the California Community Colleges shall be accompanied by the five-year capital outlay plan that reflects the needs and priorities of the community college system and is prioritized on a statewide basis. Requests shall include a schedule that prioritizes the seismic retrofitting needed to significantly reduce, in the judgment of the particular college, seismic hazards in buildings identified as high priority by the college.

101038. All money deposited in the 2006 California Community College Capital Outlay Bond Fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

101039. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

101039.5. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

CHAPTER 4. UNIVERSITY FACILITIES

Article 1. General

101040. (a) The system of public universities in this state includes the University of California, the Hastings College of the Law, and the California State University, and their respective off-campus centers.

(b) The 2006 University Capital Outlay Bond Fund is hereby established in the State Treasury for deposit of funds from the proceeds of bonds issued and sold for the purposes of this chapter.

(c) The Higher Education Facilities Finance Committee established pursuant to Section 67353 is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of providing funds to aid the University of California, the Hastings College of the Law, and the California State University.

Article 2. Program Provisions Applicable to the University of California and the Hastings College of the Law

101041. (a) From the proceeds of bonds issued and sold pursuant to Article 4 (commencing with Section 101050), the sum of eight hundred ninety million dollars (\$890,000,000) shall be deposited in the 2006 University Capital Outlay Bond Fund for the purposes of this article. When appropriated, these funds shall be available for expenditure for the purposes of this article.

(b) The purposes of this article include assisting in meeting the capital outlay financing needs of the University of California and the Hastings College of the Law.

(c) Of the amount made available under subdivision (a), the amount of two hundred million dollars (\$200,000,000) shall be used for capital improvements that expand and enhance medical education programs with an emphasis on telemedicine aimed at developing high-tech approaches to health care.

(d) Proceeds from the sale of bonds issued and sold for the purposes of this article may be used to fund construction on existing campuses, including the construction of buildings and the acquisition of related fixtures, construction of facilities that may be used by more than one segment of public higher education (intersegmental), the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings for facilities of the University of California and the Hastings College of the Law.

Article 3. Program Provisions Applicable to the California State University

101042. (a) From the proceeds of bonds issued and sold pursuant to Article 4 (commencing with Section 101050), the sum of six hundred ninety million dollars (\$690,000,000) shall be deposited in the 2006 University Capital Outlay Bond Fund for the purposes of this article. When appropriated, these funds shall be available for expenditure for the purposes of this article.

(b) The purposes of this article include assisting in meeting the capital outlay financing needs of the California State University.

(c) Proceeds from the sale of bonds issued and sold for the purposes of this article may be used to fund construction on existing campuses, including the construction of buildings and the acquisition of related



fixtures, construction of facilities that may be used by more than one segment of public higher education (intersegmental), the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings for facilities of the California State University.

Article 4. University Fiscal Provisions

101050. (a) Of the total amount of bonds authorized to be issued and sold pursuant to Chapter 1 (commencing with Section 101000), bonds in the amount of one billion five hundred eighty million dollars (\$1,580,000,000), not including the amount of any refunding bonds issued in accordance with Section 101059, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) It is the intent of the Legislature that the University of California and the California State University annually consider, as part of their annual capital outlay planning process, the inclusion of facilities that may be used by more than one segment of public higher education (intersegmental), and, that on or before May 15 of each year, those entities report their findings to the budget committees of each house of the Legislature.

(c) Pursuant to this section, the Treasurer shall sell the bonds authorized by the Higher Education Facilities Finance Committee established pursuant to Section 67353 at any different times necessary to service expenditures required by the apportionments.

101051 (a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law, except Section 16727 of the Government Code to the extent that it conflicts with this part, apply to the bonds and to this chapter and are hereby incorporated into this chapter as though set forth in full within this chapter.

(b) For the purposes of the State General Obligation Bond Law, each state agency administering an appropriation of the 2006 University Capital Outlay Bond Fund is designated as the "board" for projects funded pursuant to this chapter.

(c) The proceeds of the bonds issued and sold pursuant to this chapter shall be available for the purpose of funding aid to the University of California, the Hastings College of the Law, and the California State University, for the construction on existing or new campuses, and their respective off-campus centers and joint use and intersegmental facilities, as set forth in this chapter.

101052. The Higher Education Facilities Finance Committee established pursuant to Section 67353 shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments for the purposes described in this chapter that are expressly authorized by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the purposes described in this chapter and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

101053. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

101054. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury,

for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 101057, appropriated without regard to fiscal years.

101055. The board, as defined in subdivision (b) of Section 101051, may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account or any other approved form of interim financing, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The board, as defined in subdivision (b) of Section 101051, shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

101056. Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

101057. (a) For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the Higher Education Facilities Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the 2006 University Capital Outlay Bond Fund consistent with this chapter. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

(b) Any request forwarded to the Legislature and the Department of Finance for funds from this bond issue for expenditure for the purposes described in this chapter by the University of California, the Hastings College of the Law, or the California State University shall be accompanied by the five-year capital outlay plan. Requests forwarded by a university or college shall include a schedule that prioritizes the seismic retrofitting needed to significantly reduce, in the judgment of the particular university or college, seismic hazards in buildings identified as high priority by the university or college.

101058. All money deposited in the 2006 University Capital Outlay Bond Fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

101059. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

101060. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

SEC. 20. (a) Up to twenty-one million dollars (\$21,000,000) of any funds that are required to be made available for rehabilitation or construction of joint-use facilities for public schools and that result or are derived from the sale of bonds issued on or before January 1, 2006, shall be

1D

transferred to the State Allocation Board and may be apportioned by that board for the purposes of Article 10.6 (commencing with Section 17077.40) of Chapter 12.5 of Part 10 of the Education Code.

(b) Any funds remaining after the transfer required under subdivision (a) that conform to the description set forth in that subdivision shall be transferred to the State Allocation Board and may be apportioned by that board for any of the purposes of Chapter 12.5 (commencing with Section 17070.10) of Part 10 of the Education Code.

PROPOSITION 1E

This law proposed by Assembly Bill 140 of the 2005–2006 Regular Session (Chapter 33, Statutes of 2006) is submitted to the people in accordance with the provisions of Article XVI of the California Constitution.

This proposed law adds sections to the Public Resources Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Chapter 1.699 (commencing with Section 5096.800) is added to Division 5 of the Public Resources Code, to read:

CHAPTER 1.699. DISASTER PREPAREDNESS AND FLOOD PREVENTION BOND ACT OF 2006

Article 1. General Provisions

5096.800. *This chapter shall be known and may be cited as the Disaster Preparedness and Flood Prevention Bond Act of 2006.*

Article 2. Definitions

5096.805. *Unless the context otherwise requires, the definitions set forth in this article govern the construction of this chapter.*

- (a) *“Board” means the Reclamation Board or successor entity.*
- (b) *“Committee” means the Disaster Preparedness and Flood Prevention Bond Finance Committee, created by Section 5096.957.*
- (c) *“Delta” means the area of the Sacramento–San Joaquin Delta as defined in Section 12220 of the Water Code.*
- (d) *“Department” means the Department of Water Resources.*
- (e) *“Facilities of the State Plan of Flood Control” means the levees, weirs, channels, and other features of the federal and state authorized flood control facilities located in the Sacramento and San Joaquin River drainage basin for which the board or the department has given the assurances of nonfederal cooperation to the United States required for the project, and those facilities identified in Section 8361 of the Water Code.*
- (f) *“Fund” means the Disaster Preparedness and Flood Prevention Bond Fund of 2006, created by Section 5096.806.*
- (g) *“Project levees” means the levees that are part of the facilities of the State Plan of Flood Control.*
- (h) *“Restoration” means the improvement of a physical structure or facility and, in the case of natural system and landscape features includes, but is not limited to, a project for the control of erosion, the control and elimination of exotic species, including prescribed burning, fuel hazard reduction, fencing out threats to existing or restored natural resources, road elimination, and other plant and wildlife habitat improvement to increase the natural system value of the property. A restoration project shall include the planning, monitoring, and reporting necessary to ensure successful implementation of the project objectives.*
- (i) *“State General Obligation Bond Law” means the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code).*
- (j) *“State Plan of Flood Control” means the state and federal flood control works, lands, programs, plans, conditions, and mode of maintenance and operations of the Sacramento River Flood Control Project described in Section 8350 of the Water Code, and of flood control projects in the Sacramento River and San Joaquin River watersheds*

authorized pursuant to Article 2 (commencing with Section 12648) of Chapter 2 of Part 6 of Division 6 of the Water Code for which the board or the department has provided the assurances of nonfederal cooperation to the United States, which shall be updated by the department and compiled into a single document entitled “The State Plan of Flood Control.”

(k) *“Urban area” means any contiguous area in which more than 10,000 residents are protected by project levees.*

Article 3. Disaster Preparedness and Flood Prevention Bond Fund of 2006

5096.806. *The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the Disaster Preparedness and Flood Prevention Bond Fund of 2006, which is hereby created.*

Article 4. Disaster Preparedness and Flood Prevention Program

5096.820. (a) *The sum of four billion ninety million dollars (\$4,090,000,000) shall be available, upon appropriation therefor, for disaster preparedness and flood prevention projects pursuant to this article.*

(b) *In expending funds pursuant to this article, the Governor shall do all of the following:*

(1) *Secure the maximum feasible amounts of federal and local matching funds to fund disaster preparedness and flood prevention projects in order to ensure prudent and cost-effective use of these funds to the extent that this does not prohibit timely implementation of this article.*

(2) *Prioritize project selection and project design to achieve maximum public benefits from the use of these funds.*

(3) *In connection with the submission of the annual Governor’s Budget, submit an annual Bond Expenditure Disaster Preparedness and Flood Prevention Plan that describes in detail the proposed expenditures of bond funds, the amount of federal appropriations and local funding obtained to fund disaster preparedness and flood prevention projects to match those expenditures, and an investment strategy to meet long-term flood protection needs and minimize state taxpayer liabilities from flooding.*

5096.821. *Three billion dollars (\$3,000,000,000) shall be available, upon appropriation to the department, for the following purposes:*

(a) *The evaluation, repair, rehabilitation, reconstruction, or replacement of levees, weirs, bypasses, and facilities of the State Plan of Flood Control by all of the following actions:*

(1) *Repairing erosion sites and removing sediment from channels or bypasses.*

(2) *Evaluating and repairing levees and any other facilities of the State Plan of Flood Control.*

(3) *Implementing mitigation measures for a project undertaken pursuant to this subdivision. The department may fund participation in a natural community conservation plan pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code to facilitate projects authorized by this subdivision.*

(b) *Improving or adding facilities to the State Plan of Flood Control to increase levels of flood prevention for urban areas, including all related costs for mitigation and infrastructure relocation. Funds made available by this subdivision may be expended for state financial participation in federal and state authorized flood control projects, feasibility studies and design of federal flood damage reduction and related projects, and reservoir reoperation and groundwater flood storage projects. Not more than two hundred million dollars (\$200,000,000) may be expended on a single project, excluding authorized flood control improvements to Folsom Dam.*

(c) (1) *To reduce the risk of levee failure in the delta.*
(2) *The funds made available for the purpose specified in paragraph (1) shall be expended for both of the following purposes:*

(A) *Local assistance under the delta levee maintenance subventions program under Part 9 (commencing with Section 12980) of Division 6 of the Water Code, as that part may be amended.*

(B) *Special flood protection projects under Chapter 2 (commencing with Section 12310) of Part 4.8 of Division 6 of the Water Code, as that chapter may be amended.*

5096.824. (a) *Five hundred million dollars (\$500,000,000) shall*

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be available, upon appropriation to the department, for payment for the state's share of the nonfederal costs, and related costs, of flood control and flood prevention projects authorized under any of the following:

(1) The State Water Resources Law of 1945 (Chapter 1 (commencing with Section 12570) and Chapter 2 (commencing with Section 12639) of Part 6 of Division 6 of the Water Code).

(2) The Flood Control Law of 1946 (Chapter 3 (commencing with Section 12800) of Part 6 of Division 6 of the Water Code).

(3) The California Watershed Protection and Flood Prevention Law (Chapter 4 (commencing with Section 12850) of Part 6 of Division 6 of the Water Code).

(b) The costs described in subdivision (a) include costs incurred in connection with either of the following:

(1) The granting of credits or loans to local agencies, as applicable, pursuant to Sections 12585.3, 12585.4 of, subdivision (d) of Section 12585.5 of, and Sections 12866.3 and 12866.4 of, the Water Code.

(2) The implementation of Chapter 3.5 (commencing with Section 12840) of Part 6 of Division 6 of the Water Code.

(c) The funds made available by this section shall be allocated only to projects that are not part of the State Plan of Flood Control.

5096.825. Two hundred ninety million dollars (\$290,000,000) shall be available, upon appropriation, for the protection, creation, and enhancement of flood protection corridors and bypasses through any of the following actions:

(a) Acquiring easements and other interests in real property to protect or enhance flood protection corridors and bypasses while preserving or enhancing the agricultural use of the real property.

(b) Constructing new levees necessary for the establishment of a flood protection corridor or bypass.

(c) Setting back existing flood control levees, and in conjunction with undertaking those setbacks, strengthening or modifying existing levees and weirs.

(d) Relocating or flood proofing structures necessary for the establishment of a flood protection corridor.

(e) Acquiring interests in, or providing incentives for maintaining agricultural uses of, real property that is located in a flood plain that cannot reasonably be made safe from future flooding.

(f) Acquiring easements and other interests in real property to protect or enhance flood protection corridors while preserving or enhancing the wildlife value of the real property.

(g) Flood plain mapping and related activities, including both of the following:

(1) The development of flood hazard maps, including all necessary studies and surveys.

(2) Alluvial fan flood plain mapping.

5096.827. Three hundred million dollars (\$300,000,000) shall be available, upon appropriation to the department, for grants for stormwater flood management projects that meet all of the following requirements:

(a) Have a nonstate cost share of not less than 50 percent.

(b) Are not part of the State Plan of Flood Control.

(c) Are designed to manage stormwater runoff to reduce flood damage and where feasible, provide other benefits, including groundwater recharge, water quality improvement, and ecosystem restoration.

(d) Comply with applicable regional water quality control plans.

(e) Are consistent with any applicable integrated regional water management plan.

5096.828. Funds provided by this article are only available for appropriation until July 1, 2016, and at that time the amount of indebtedness authorized by this chapter shall be reduced by the amount of funds provided by this article that have not been appropriated.

Article 16. Program Expenditures

5096.953. The Secretary of the Resources Agency shall provide for an independent audit of expenditures pursuant to this chapter to ensure that all moneys are expended in accordance with the requirements of this chapter. The secretary shall publish a list of all program and project expenditures pursuant to this chapter not less than annually, in written

form, and shall post an electronic form of the list on the Resources Agency's Internet Web site.

Article 17. Fiscal Provisions

5096.955. (a) Bonds in the total amount of four billion ninety million dollars (\$4,090,000,000), not including the amount of any refunding bonds issued in accordance with Section 5096.966, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute valid and binding obligations of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) The Treasurer shall sell the bonds authorized by the committee pursuant to this section. The bonds shall be sold upon the terms and conditions specified in a resolution to be adopted by the committee pursuant to Section 16731 of the Government Code.

5096.956. The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law, and all of the provisions of that law apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

5096.957. (a) Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this chapter, the Disaster Preparedness and Flood Prevention Bond Finance Committee is hereby created. For the purposes of this chapter, the Disaster Preparedness and Flood Prevention Bond Finance Committee is "the committee" as that term is used in the State General Obligation Bond Law. The committee consists of the Controller, the Director of Finance, and the Treasurer, or their designated representatives. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

(b) For purposes of the State General Obligation Bond Law, the department is designated the "board."

5096.958. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter to carry out this chapter and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

5096.959. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year, and it is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

5096.960. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum that is necessary to carry out Section 5096.963, appropriated without regard to fiscal years.

5096.961. The department may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee has, by resolution, authorized to be sold for the purpose of carrying out this chapter. The department shall execute those documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the department in accordance with this chapter.

5096.962. Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds that

include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes under designated conditions, the Treasurer may maintain separate accounts for the bond proceeds invested and for the investment earnings on those proceeds, and may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds, as may be required or desirable under federal law in order to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

5096.963. For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, with interest at the rate earned by the money in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

5096.964. All money deposited in the fund that is derived from premium and accrued interest on bonds sold pursuant to this chapter shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

5096.965. Pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, the cost of bond issuance shall be paid out of the bond proceeds. These costs shall be shared proportionally by each program funded through this bond act.

5096.966. The bonds issued and sold pursuant to this chapter may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the electors of the state for the issuance of the bonds under this chapter shall include approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

5096.967. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

PROPOSITION 83

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and adds sections to the Penal Code and amends sections of the Welfare and Institutions Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. SHORT TITLE

This Act shall be known and may be cited as "The Sexual Predator Punishment and Control Act: Jessica's Law."

SEC. 2. FINDINGS AND DECLARATIONS

The People find and declare each of the following:

(a) The State of California currently places a high priority on maintaining public safety through a highly skilled and trained law enforcement as well as laws that deter and punish criminal behavior.

(b) Sex offenders have very high recidivism rates. According to a 1998 report by the U.S. Department of Justice, sex offenders are the least likely to be cured and the most likely to reoffend, and they prey on the most innocent members of our society. More than two-thirds of the victims of rape and sexual assault are under the age of 18. Sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon.

(c) Child pornography exploits children and robs them of their innocence. FBI studies have shown that pornography is very influential in the actions of sex offenders. Statistics show that 90% of the predators

who molest children have had some type of involvement with pornography. Predators often use child pornography to aid in their molestation.

(d) The universal use of the Internet has also ushered in an era of increased risk to our children by predators using this technology as a tool to lure children away from their homes and into dangerous situations. Therefore, to reflect society's disapproval of this type of activity, adequate penalties must be enacted to ensure predators cannot escape prosecution.

(e) With these changes, Californians will be in a better position to keep themselves, their children, and their communities safe from the threat posed by sex offenders.

(f) It is the intent of the People in enacting this measure to help Californians better protect themselves, their children, and their communities; it is not the intent of the People to embarrass or harass persons convicted of sex offenses.

(g) Californians have a right to know about the presence of sex offenders in their communities, near their schools, and around their children.

(h) California must also take additional steps to monitor sex offenders, to protect the public from them, and to provide adequate penalties for and safeguards against sex offenders, particularly those who prey on children. Existing laws that punish aggravated sexual assault, habitual sexual offenders, and child molesters must be strengthened and improved. In addition, existing laws that provide for the commitment and control of sexually violent predators must be strengthened and improved.

(i) Additional resources are necessary to adequately monitor and supervise sexual predators and offenders. It is vital that the lasting effects of the assault do not further victimize victims of sexual assault.

(j) Global Positioning System technology is a useful tool for monitoring sexual predators and other sex offenders and is a cost effective measure for parole supervision. It is critical to have close supervision of this class of criminals to monitor these offenders and prevent them from committing other crimes.

(k) California is the only state, of the number of states that have enacted laws allowing involuntary civil commitments for persons identified as sexually violent predators, which does not provide for indeterminate commitments. California automatically allows for a jury trial every two years irrespective of whether there is any evidence to suggest or prove that the committed person is no longer a sexually violent predator. As such, this act allows California to protect the civil rights of those persons committed as a sexually violent predator while at the same time protect society and the system from unnecessary or frivolous jury trial actions where there is no competent evidence to suggest a change in the committed person.

SEC. 3. Section 209 of the Penal Code is amended to read:

209. (a) Any person who seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away another person by any means whatsoever with intent to hold or detain, or who holds or detains, that person for ransom, reward or to commit extortion or to exact from another person any money or valuable thing, or any person who aids or abets any such act, is guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for life without possibility of parole in cases in which any person subjected to any such act suffers death or bodily harm, or is intentionally confined in a manner which exposes that person to a substantial likelihood of death, or shall be punished by imprisonment in the state prison for life with the possibility of parole in cases where no such person suffers death or bodily harm.

(b)(1) Any person who kidnaps or carries away any individual to commit robbery, rape, spousal rape, oral copulation, sodomy, or ~~sexual penetration in any violation of Section 264.1, 288, or 289~~, shall be punished by imprisonment in the state prison for life with *the* possibility of parole.

(2) This subdivision shall only apply if the movement of the victim is beyond that merely incidental to the commission of, and increases the risk of harm to the victim over and above that necessarily present in, the intended underlying offense.

(c) In all cases in which probation is granted, the court shall, except in unusual cases where the interests of justice would best be served by a lesser penalty, require as a condition of the probation that the person be confined in the county jail for 12 months. If the court grants probation without requiring the defendant to be confined in the county jail for 12 months, it shall specify its reason or reasons for imposing a lesser penalty.

(d) Subdivision (b) shall not be construed to supersede or affect

Section 667.61. A person may be charged with a violation of subdivision (b) and Section 667.61. However, a person may not be punished under subdivision (b) and Section 667.61 for the same act that constitutes a violation of both subdivision (b) and Section 667.61.

SEC. 4. Section 220 of the Penal Code is amended to read:

220. Every (a) *Except as provided in subdivision (b), any person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 is punishable shall be punished by imprisonment in the state prison for two, four, or six years.*

(b) *Any person who, in the commission of a burglary of the first degree, as defined in subdivision (a) of Section 460, assaults another with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for life with the possibility of parole.*

SEC. 5. Section 269 of the Penal Code is amended to read:

269. (a) Any person who commits any of the following acts upon a child who is under 14 years of age and ~~10~~ seven or more years younger than the person is guilty of aggravated sexual assault of a child:

(1) ~~A Rape, in violation of paragraph (2) or (6) of subdivision (a) of Section 261.~~

(2) ~~A Rape or sexual penetration, in concert, in violation of Section 264.1.~~

(3) ~~Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 286, when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.~~

(4) ~~Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 288a, when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.~~

(5) ~~A Sexual penetration, in violation of subdivision (a) of Section 289.~~

(b) Any person who violates this section is guilty of a felony and shall be punished by imprisonment in the state prison for 15 years to life.

(c) *The court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6.*

SEC. 6. Section 288.3 is added to the Penal Code, to read:

288.3. (a) *Every person who contacts or communicates with a minor, or attempts to contact or communicate with a minor, who knows or reasonably should know that the person is a minor, with intent to commit an offense specified in Section 207, 209, 261, 264.1, 273a, 286, 288, 288a, 288.2, 289, 311.1, 311.2, 311.4 or 311.11 involving the minor shall be punished by imprisonment in the state prison for the term prescribed for an attempt to commit the intended offense.*

(b) *As used in this section, "contacts or communicates with" shall include direct and indirect contact or communication that may be achieved personally or by use of an agent or agency, any print medium, any postal service, a common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications device or system.*

(c) *A person convicted of a violation of subdivision (a) who has previously been convicted of a violation of subdivision (a) shall be punished by an additional and consecutive term of imprisonment in the state prison for five years.*

SEC. 7. Section 290.3 of the Penal Code is amended to read:

290.3. (a) Every person who is convicted of any offense specified in subdivision (a) of Section 290 shall, in addition to any imprisonment or fine, or both, imposed for ~~violation~~ *commission* of the underlying offense, be punished by a fine of ~~two three~~ *three* hundred dollars (~~\$200~~) (*\$300*) upon the first conviction or a fine of ~~three five~~ *three* hundred dollars (~~\$300~~) (*\$500*) upon the second and each subsequent conviction, unless the court determines that the defendant does not have the ability to pay the fine.

An amount equal to all fines collected pursuant to this subdivision during the preceding month upon conviction of, or upon the forfeiture of bail by, any person arrested for, or convicted of, committing an offense specified in subdivision (a) of Section 290, shall be transferred once a month by the county treasurer to the Controller for deposit in the General Fund. Moneys deposited in the General Fund pursuant to this subdivision

shall be transferred by the Controller as provided in subdivision (b).

(b) ~~Out~~ *Except as provided in subdivision (d), out of the moneys deposited pursuant to subdivision (a) as a result of second and subsequent convictions of Section 290, one-third shall first be transferred to the Department of Justice Sexual Habitual Offender Fund, as provided in paragraph (1) of this subdivision. Out of the remainder of all moneys deposited pursuant to subdivision (a), 50 percent shall be transferred to the Department of Justice Sexual Habitual Offender Fund, as provided in paragraph (1), 25 percent shall be transferred to the Department of Justice DNA Testing Fund, as provided in paragraph (2), and 25 percent shall be allocated equally to counties that maintain a local DNA testing laboratory, as provided in paragraph (3).*

(1) Those moneys so designated shall be transferred to the Department of Justice Sexual Habitual Offender Fund created pursuant to paragraph (5) of subdivision (b) of Section 11170 and, when appropriated by the Legislature, shall be used for the purposes of Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4 for the purpose of monitoring, apprehending, and prosecuting sexual habitual offenders.

(2) Those moneys so designated shall be directed to the Department of Justice and transferred to the Department of Justice DNA Testing Fund, which is hereby created, for the exclusive purpose of testing deoxyribonucleic acid (DNA) samples for law enforcement purposes. The moneys in that fund shall be available for expenditure upon appropriation by the Legislature.

(3) Those moneys so designated shall be allocated equally and distributed quarterly to counties that maintain a local DNA testing laboratory. Before making any allocations under this paragraph, the Controller shall deduct the estimated costs that will be incurred to set up and administer the payment of these funds to the counties. Any funds allocated to a county pursuant to this paragraph shall be used by that county for the exclusive purpose of testing DNA samples for law enforcement purposes.

(c) Notwithstanding any other provision of this section, the Department of Corrections or the Department of the Youth Authority may collect a fine imposed pursuant to this section from a person convicted of a violation of any offense listed in subdivision (a) of Section 290, that results in incarceration in a facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority. All moneys collected by the Department of Corrections or the Department of the Youth Authority under this subdivision shall be transferred, once a month, to the Controller for deposit in the General Fund, as provided in subdivision (a), for transfer by the Controller, as provided in subdivision (b).

(d) *An amount equal to one hundred dollars for every fine imposed pursuant to subdivision (a) in excess of one hundred dollars shall be transferred to the Department of Corrections and Rehabilitation to defray the cost of the global positioning system used to monitor sex offender parolees.*

SEC. 8. Section 311.11 of the Penal Code is amended to read:

311.11. (a) Every person who knowingly possesses or controls any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a ~~public offense felony~~ and shall be punished by imprisonment in the ~~state prison, or a county jail~~ for up to one year, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both the fine and imprisonment.

(b) ~~If a~~ *Every person who commits a violation of subdivision (a), and who has been previously convicted of a violation of this section, or of a violation of subdivision (b) of Section 311.2, or subdivision (b) of Section 311.4, he or she an offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, or an attempt to commit any of the above-mentioned offenses, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.*

(c) It is not necessary to prove that the matter is obscene in order to establish a violation of this section.

(d) This section does not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America, nor does it apply to live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

SEC. 9. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as defined in subdivision (c) or (d) of Section 286.

(5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as defined in subdivision (c) or (d) of Section 288a.

(6) Lewd acts on a child under the age of 14 years or lascivious act as defined in subdivision (a) or (b) of Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) ~~The offense Sexual penetration as defined in subdivision (a) or (j) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.~~

(12) Attempted murder.

(13) A violation of Section 12308, 12309, or 12310.

(14) Kidnapping.

(15) ~~Assault with the intent to commit mayhem, rape, sodomy, or oral copulation a specified felony, in violation of Section 220.~~

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) ~~A Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.~~

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.

(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 10. Section 667.51 of the Penal Code is amended to read:

667.51. (a) Any person who is ~~found guilty convicted~~ of violating Section 288 or 288.5 shall receive a five-year enhancement for a prior conviction of an offense ~~listed specified~~ in subdivision (b); ~~provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction.~~

(b) Section 261, 262, 264.1, 269, 285, 286, 288, 288a, 288.5, or 289, or any offense committed in another jurisdiction that includes all of the elements of any of the offenses ~~set forth specified~~ in this subdivision.

(c) ~~Section 261, 264.1, 286, 288, 288a, 288.5, or 289, or any offense committed in another jurisdiction that includes all of the elements of any of the offenses set forth in this subdivision.~~

(d) A violation of Section 288 or 288.5 by a person who has been

previously convicted two or more times of an offense listed *specified* in subdivision (c) is punishable as a felony (b) shall be punished by imprisonment in the state prison for 15 years to life. However, if the two or more prior convictions were for violations of Section 288, this subdivision is applicable only if the current violation or at least one of the prior convictions is for an offense other than a violation of subdivision (a) of Section 288. For purposes of this subdivision, a prior conviction is required to have been for charges brought and tried separately. The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term in a state prison imposed pursuant to this section, but that person shall not otherwise be released on parole prior to that time.

SEC. 11. Section 667.6 of the Penal Code is amended to read:

667.6. (a) Any person who is found guilty of violating paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, Section 288.5 or subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person *convicted of an offense specified in subdivision (e) and* who has been convicted previously of any of those offenses shall receive a five-year enhancement for each of those prior convictions provided that no enhancement shall be imposed under this subdivision for any conviction occurring prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. In addition to the five-year enhancement imposed under this subdivision, the court also may impose a fine not to exceed twenty thousand dollars (\$20,000) for anyone sentenced under these provisions. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837.

(b) Any person who is convicted of an offense specified in subdivision (a) (e) and who has served two or more prior prison terms as defined in Section 667.5 for any offense specified in subdivision (a), of those offenses shall receive a 10-year enhancement for each of those prior terms provided that no additional enhancement shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. In addition to the 10-year enhancement imposed under this subdivision, the court also may impose a fine not to exceed twenty thousand dollars (\$20,000) for any person sentenced under this subdivision. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837.

(c) In lieu of the term provided in Section 1170.1, a full, separate, and consecutive term may be imposed for each violation of Section 220, other than an assault with intent to commit mayhem, provided that the person has been convicted previously of violating Section 220 for an offense other than an assault with intent to commit mayhem, paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, Section 288.5 or subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person whether or not the crimes were committed during a single transaction *an offense specified in subdivision (e) if the crimes involve the same victim on the same occasion. A term may be imposed consecutively pursuant to this subdivision if a person is convicted of at least one offense specified in subdivision (e).* If the term is imposed consecutively pursuant to this subdivision, it shall be served consecutively to any other term of imprisonment, and shall commence from the time the person otherwise would have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but

shall commence at the time the person otherwise would have been released from prison.

(d) A full, separate, and consecutive term shall be served *imposed* for each violation of Section 220, other than an assault with intent to commit mayhem, provided that the person has been convicted previously of violating Section 220 for an offense other than an assault with intent to commit mayhem, paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person *an offense specified in subdivision (e) if the crimes involve separate victims or involve the same victim on separate occasions.*

In determining whether crimes against a single victim were committed on separate occasions under this subdivision, the court shall consider whether, between the commission of one sex crime and another, the defendant had a reasonable opportunity to reflect upon his or her actions and nevertheless resumed sexually assaultive behavior. Neither the duration of time between crimes, nor whether or not the defendant lost or abandoned his or her opportunity to attack, shall be, in and of itself, determinative on the issue of whether the crimes in question occurred on separate occasions.

The term shall be served consecutively to any other term of imprisonment and shall commence from the time the person otherwise would have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.

(e) *This section shall apply to the following offenses:*

- (1) Rape, in violation of paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261.
- (2) Spousal rape, in violation of paragraph (1), (4), or (5) of subdivision (a) of Section 262.
- (3) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.
- (4) Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) or (k), of Section 286.
- (5) Lewd or lascivious act, in violation of subdivision (b) of Section 288.
- (6) Continuous sexual abuse of a child, in violation of Section 288.5.
- (7) Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) or (k), of Section 288a.
- (8) Sexual penetration, in violation of subdivision (a) or (g) of Section 289.
- (9) As a present offense under subdivision (c) or (d), assault with intent to commit a specified sexual offense, in violation of Section 220.
- (10) As a prior conviction under subdivision (a) or (b), an offense committed in another jurisdiction that includes all of the elements of an offense specified in this subdivision.

(f) *In addition to any enhancement imposed pursuant to subdivision (a) or (b), the court may also impose a fine not to exceed twenty thousand dollars (\$20,000) for anyone sentenced under those provisions. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837. If the court orders a fine to be imposed pursuant to this subdivision (a) or (b), the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.*

SEC. 12. Section 667.61 of the Penal Code is amended to read:

667.61. (a) ~~Any~~ Any person who is convicted of an offense specified in subdivision (c) under one or more of the circumstances specified in subdivision (d) or under two or more of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for 25 years to life and shall not be eligible for release on parole for 25 years

except as provided in subdivision (j).

(b) Except as provided in subdivision (a), a *any* person who is convicted of an offense specified in subdivision (c) under one of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for 15 years to life and shall not be eligible for release on parole for 15 years except as provided in subdivision (j).

(c) This section shall apply to any of the following offenses:

(1) ~~A Rape, in violation of paragraph (2) or (6) of subdivision (a) of Section 261.~~

(2) ~~A Spousal rape, in violation of paragraph (1) or (4) of subdivision (a) of Section 262.~~

(3) ~~A Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.~~

(4) ~~A Lewd or lascivious act, in violation of subdivision (b) of Section 288.~~

(5) ~~A Sexual penetration, in violation of subdivision (a) of Section 289.~~

(6) ~~Sodomy or oral copulation Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.~~

(7) ~~A Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 288a.~~

(8) ~~Lewd or lascivious act, in violation of subdivision (a) of Section 288, unless the defendant qualifies for probation under subdivision (c) of Section 1203.066.~~

(9) ~~Continuous sexual abuse of a child, in violation of Section 288.5.~~

(d) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) The defendant has been previously convicted of an offense specified in subdivision (c), including an offense committed in another jurisdiction that includes all of the elements of an offense specified in subdivision (c).

(2) The defendant kidnapped the victim of the present offense and the movement of the victim substantially increased the risk of harm to the victim over and above that level of risk necessarily inherent in the underlying offense in subdivision (c).

(3) The defendant inflicted aggravated mayhem or torture on the victim or another person in the commission of the present offense in violation of Section 205 or 206.

(4) The defendant committed the present offense during the commission of a burglary of the first degree, as defined in subdivision (a) of Section 460, with intent to commit an offense specified in subdivision (c).

(5) ~~The defendant committed the present offense in violation of Section 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 288a, and, in the commission of that offense, any person committed any act described in paragraph (2), (3), or (4) of this subdivision.~~

(e) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) Except as provided in paragraph (2) of subdivision (d), the defendant kidnapped the victim of the present offense in violation of Section 207, 209, or 209.5.

(2) Except as provided in paragraph (4) of subdivision (d), the defendant committed the present offense during the commission of a burglary, as defined in subdivision (a) of Section 460, or during the commission of a burglary of a building, including any commercial establishment, which was then closed to the public, in violation of Section 459.

(3) The defendant personally inflicted great bodily injury on the victim or another person in the commission of the present offense in violation of Section 12022.53, 12022.7, or 12022.8.

(4) The defendant personally used a dangerous or deadly weapon or a firearm in the commission of the present offense in violation of Section 12022, 12022.3, 12022.5, or 12022.53.

(5) The defendant has been convicted in the present case or cases of committing an offense specified in subdivision (c) against more than one victim.

(6) The defendant engaged in the tying or binding of the victim or

another person in the commission of the present offense.

(7) ~~The defendant administered a controlled substance to the victim by force, violence, or fear in the commission of the present offense in violation of Section 12022.75.~~

(8) ~~The defendant committed the present offense in violation of Section 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 288a, and, in the commission of that offense, any person committed any act described in paragraph (1), (2), (3), (4), (6), or (7) of this subdivision.~~

(f) If only the minimum number of circumstances specified in subdivision (d) or (e) which that are required for the punishment provided in subdivision (a) or (b) to apply have been pled and proved, that circumstance or those circumstances shall be used as the basis for imposing the term provided in subdivision (a) or (b), whichever is greater, rather than being used to impose the punishment authorized under any other provision of law, unless another provision of law provides for a greater penalty or the punishment under another provision of law can be imposed in addition to the punishment provided by this section. However, if any additional circumstance or circumstances specified in subdivision (d) or (e) have been pled and proved, the minimum number of circumstances shall be used as the basis for imposing the term provided in subdivision (a), and any other additional circumstance or circumstances shall be used to impose any punishment or enhancement authorized under any other provision of law.

(g) Notwithstanding Section 1385 or any other provision of law, the court shall not strike any allegation, admission, or finding of any of the circumstances specified in subdivision (d) or (e) for any person who is subject to punishment under this section.

(g) ~~The term specified in subdivision (a) or (b) shall be imposed on the defendant once for any offense or offenses committed against a single victim during a single occasion. If there are multiple victims during a single occasion, the term specified in subdivision (a) or (b) shall be imposed on the defendant once for each separate victim. Terms for other offenses committed during a single occasion shall be imposed as authorized under any other law, including Section 667.6, if applicable.~~

(h) ~~Probation Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is subject to punishment under this section for any offense specified in paragraphs (1) to (6), inclusive, of subdivision (c).~~

(i) ~~For the any offense specified in paragraphs (1) to (7), inclusive, of subdivision (c), the court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6.~~

(j) ~~The penalties provided in this section shall apply; only if the existence of any fact required under circumstance specified in subdivision (d) or (e) shall be alleged in the accusatory pleading pursuant to this section, and is either admitted by the defendant in open court or found to be true by the trier of fact.~~

(j) ~~Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce the minimum term of 25 years in the state prison imposed pursuant to subdivision (a) or 15 years in the state prison imposed pursuant to subdivision (b). However, in no case shall the minimum term of 25 or 15 years be reduced by more than 15 percent for credits granted pursuant to Section 2933, 4019, or any other law providing for conduct credit reduction. In no case shall any person who is punished under this section be released on parole prior to serving at least 85 percent of the minimum term of 25 or 15 years in the state prison.~~

SEC. 13. Section 667.71 of the Penal Code amended to read:

667.71. (a) For the purpose of this section, a habitual sexual offender is a person who has been previously convicted of one or more of the offenses listed specified in subdivision (c) and who is convicted in the present proceeding of one of those offenses.

(b) ~~A habitual sexual offender is punishable shall be punished by imprisonment in the state prison for 25 years to life. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 25 years in the state prison imposed pursuant to this section. However, in no case shall the minimum term of 25 years be reduced by more than 15 percent for credits granted pursuant to Section 2933, 4019, or any other law providing for conduct credit reduction. In no case shall any person who is punished under this section be released on parole prior to serving at least 85 percent of the minimum term of 25~~

years in the state prison:

- (c) This section shall apply to any of the following offenses:
 - (1) ~~A Rape, in violation of paragraph (2) or (6) of subdivision (a) of Section 261.~~
 - (2) ~~A Spousal rape, in violation of paragraph (1) or (4) of subdivision (a) of Section 262.~~
 - (3) ~~A Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.~~
 - (4) ~~A Lewd or lascivious act, in violation of subdivision (a) or (b) of Section 288.~~
 - (5) ~~A Sexual penetration, in violation of subdivision (a) or (j) of Section 289.~~
 - (6) ~~A Continuous sexual abuse of a child, in violation of Section 288.5.~~
 - (7) ~~A Sodomy, in violation of subdivision (c) or (d) of Section 286 by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.~~
 - (8) ~~A violation of subdivision (d) of Section 286.~~
 - (9) ~~A Oral copulation, in violation of subdivision (c) or (d) of Section 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.~~
 - (10) ~~A (9) Kidnapping, in violation of subdivision (b) of Section 207.~~
 - (11) ~~A (10) Kidnapping, in violation of former subdivision (d) of Section 208 (kidnapping to commit specified sex offenses).~~
 - (12) ~~(11) Kidnapping, in violation of subdivision (b) of Section 209 with the intent to commit rape, spousal rape, oral copulation, or sodomy or sexual penetration in violation of Section 289 a specified sexual offense.~~
 - (13) ~~A (12) Aggravated sexual assault of a child, in violation of Section 269.~~
 - (14) ~~(13) An offense committed in another jurisdiction that has includes all of the elements of an offense specified in paragraphs (1) to (13), inclusive, of this subdivision.~~
 - (d) ~~Notwithstanding Section 1385 or any other provision of law, the court shall not strike any allegation, admission, or finding of any prior conviction specified in subdivision (c) for any person who is subject to punishment under this section.~~
 - (e) ~~Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is subject to punishment under this section.~~
 - (f) This section shall apply only if the defendant's status as a habitual sexual offender is alleged in the information accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by court sitting without a jury trier of fact.
- SEC. 14. Section 1203.06 of the Penal Code is amended to read:
- 1203.06. ~~Notwithstanding Section 1203:~~
- (a) ~~Probation Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within this section be stricken pursuant to Section 1385 for, any of the following persons:~~
 - (1) Any person who personally used a firearm during the commission or attempted commission of any of the following crimes:
 - (A) Murder.
 - (B) Robbery, in violation of Section 211.
 - (C) Kidnapping, in violation of Section 207, 209, or 209.5.
 - (D) ~~Kidnapping in violation of Section 209 Lewd or lascivious act, in violation of Section 288.~~
 - (E) Burglary of the first degree, as defined in Section 460.
 - (F) ~~Except as provided in Section 1203.065, rape Rape, in violation of paragraph (2) of subdivision (a) of Section 261, 262, or 264.1.~~
 - (G) Assault with intent to commit ~~rape or sodomy a specified sexual offense, in violation of Section 220.~~
 - (H) Escape, in violation of Section 4530 or 4532.
 - (I) Carjacking, in violation of Section 215.
 - (J) ~~Any person convicted of aggravated Aggravated mayhem, in~~

violation of Section 205.

- (K) Torture, in violation of Section 206.
 - (L) ~~Kidnapping, in violation of Section 209.5 Continuous sexual abuse of a child, in violation of Section 288.5.~~
 - (M) A felony violation of Section 136.1 or 137.
 - (N) Sodomy, in violation of Section 286.
 - (O) Oral copulation, in violation of Section 288a.
 - (P) Sexual penetration, in violation of Section 289 or 264.1.
 - (Q) ~~Aggravated sexual assault of a child, in violation of Section 269.~~
 - (2) Any person previously convicted of a felony specified in ~~subparagraphs (A) to (L), inclusive, of paragraph (1), or assault with intent to commit murder under former Section 217, who is convicted of a subsequent felony and who was personally armed with a firearm at any time during its commission or attempted commission or was unlawfully armed with a firearm at the time of his or her arrest for the subsequent felony.~~
 - (3) Aggravated arson, in violation of Section 451.5.
 - (b)(1) The existence of any fact which ~~that~~ would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt, ~~by the court where guilt is established by plea of guilty or nolo contendere, or by trial by the court sitting without a jury trier of fact.~~
 - (2) ~~This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.~~
 - (3) As used in subdivision (a), "used a firearm" means to display a firearm in a menacing manner, to intentionally fire it, ~~or to intentionally strike or hit a human being with it, or to use it in any manner that qualifies under Section 12022.5.~~
 - (4) (3) As used in subdivision (a), "armed with a firearm" means to knowingly carry ~~or have available for use~~ a firearm as a means of offense or defense.
- SEC. 15. Section 1203.065 of the Penal Code is amended to read:
- 1203.065. (a) ~~Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is convicted of violating paragraph (2) or (6) of subdivision (a) of Section 261, Section 264.1, 266h, 266i, or 266j, or 269, paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 286, paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 288a, subdivision (a) of Section 289, of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, or of violating subdivision (c) of Section 311.4.~~
- (b)(1) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of ~~a violation of violating paragraph (7) of subdivision (a) of Section 261, subdivision (k) of Section 286, subdivision (k) of Section 288a, subdivision (g) of Section 289, or Section 220 for assault with intent to commit any of the following: rape; sodomy, oral copulation, or any violation of Section 264.1, subdivision (b) of Section 288, or Section 289 a specified sexual offense.~~
 - (2) When probation is granted, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.
- SEC. 16. Section 1203.075 of the Penal Code is amended to read:
- 1203.075. ~~Notwithstanding the provisions of Section 1203:~~
- (a) ~~Probation Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within this section be stricken pursuant to Section 1385 for, any person who, with the intent to inflict the injury, personally inflicts great bodily injury, as defined in Section 12022.7, on the person of another in the commission or attempted commission of any of the following crimes:~~
 - (1) Murder.
 - (2) Robbery, in violation of Section 211.
 - (3) Kidnapping, in violation of Section 207, 209, or 209.5.
 - (4) ~~Kidnapping, in violation of Section 209 Lewd or lascivious act, in violation of Section 288.~~

- (5) Burglary of the first degree, as defined in Section 460.
- (6) Rape, in violation of paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 261, 262, or 264.1.
- (7) Assault with intent to commit rape or sodomy a specified sexual offense, in violation of Section 220.
- (8) Escape, in violation of Section 4530 or 4532.
- (9) A Sexual penetration, in violation of subdivision (a) of Section 289 or 264.1.
- (10) Sodomy, in violation of Section 286.
- (11) Oral copulation, in violation of Section 288a.
- (12) Carjacking, in violation of Section 215.
- (13) Kidnapping, in violation of Section 209.5 Continuous sexual abuse of a child, in violation of Section 288.5.

(14) Aggravated sexual assault of a child, in violation of Section 269.

(b)(4) The existence of any fact which that would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury trier of fact.

(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(3) As used in subdivision (a), "great bodily injury" means "great bodily injury" as defined in Section 12022.7.

SEC. 17. Section 3000 of the Penal Code is amended to read:

3000. (a)(1) The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section.

(2) The Legislature finds and declares that it is not the intent of this section to diminish resources allocated to the Department of Corrections for parole functions for which the department is responsible. It is also not the intent of this section to diminish the resources allocated to the Board of Prison Terms to execute its duties with respect to parole functions for which the board is responsible.

(3) The Legislature finds and declares that diligent effort must be made to ensure that parolees are held accountable for their criminal behavior, including, but not limited to, the satisfaction of restitution fines and orders.

(4) Any finding made pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, that a person is *The parole period of any person found to be a sexually violent predator shall not toll, discharge, or otherwise affect that person's be tolled until that person is found to no longer be a sexually violent predator, at which time the period of parole, or any remaining portion thereof, shall begin to run.*

(b) Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter, the following shall apply:

(1) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, the inmate shall be released on parole for a period not exceeding three years, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding five years, unless in either case the parole authority for good cause waives parole and discharges the inmate from the custody of the department.

(2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause

waives parole and discharges the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(3) Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61 or 667.71, the period of parole shall be five 10 years. Upon the request of the Department of Corrections, and on the grounds that the paroled inmate may pose a substantial danger to public safety, the Board of Prison Terms shall conduct a hearing to determine if the parolee shall be subject to a single additional five-year period of parole. The board shall conduct the hearing pursuant to the procedures and standards governing parole revocation. The request for parole extension shall be made no less than 180 days prior to the expiration of the initial five-year period of parole.

(4) The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(5) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1), (2), or (3), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and paragraphs (1), (2), and (3) shall be computed from the date of initial parole or from the date of extension of parole pursuant to paragraph (3) and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, in no case, except the period of parole is subject to the following:

(A) Except as provided in Section 3064, in no case may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial parole, and, except parole.

(B) Except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole or from the date of extension of parole pursuant to paragraph (3).

(C) Except as provided in Section 3064, in no case may a prisoner subject to 10 years on parole be retained under parole supervision or in custody for a period longer than 15 years from the date of his or her initial parole.

(6) The Department of Corrections shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections or the Board of Prison Terms may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

(7) For purposes of this chapter, the Board of Prison Terms shall be considered the parole authority.

(8) The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the Board of Prison Terms, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

(9) It is the intent of the Legislature that efforts be made with respect to persons who are subject to subparagraph (C) of paragraph (1) of subdivision (a) of Section 290 who are on parole to engage them in treatment.

SEC. 18. Section 3000.07 is added to the Penal Code, to read:

3000.07. (a) Every inmate who has been convicted for any felony violation of a "registerable sex offense" described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290 or any attempt to commit any of the above-mentioned offenses and who is committed to prison and released on parole pursuant to Section 3000 or 3000.1 shall be monitored by a global positioning system for the term of his or her parole, or for the duration or any remaining part thereof, whichever period of time is less.

(b) Any inmate released on parole pursuant to this section shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections shall waive any

or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for the global positioning monitoring. No inmate shall be denied parole on the basis of his or her inability to pay for those monitoring costs.

SEC. 19. Section 3001 of the Penal Code is amended to read:

3001. (a) Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was not imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison, and has been on parole continuously for one year since release from confinement, within 30 days, that person shall be discharged from parole, unless the Department of Corrections recommends to the Board of Prison Terms that the person be retained on parole and the board, for good cause, determines that the person will be retained. Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison for a period not exceeding three years and has been on parole continuously for two years since release from confinement, or has been released on parole from the state prison for a period not exceeding five years and has been on parole continuously for three years since release from confinement, the department shall discharge, within 30 days, that person from parole, unless the department recommends to the board that the person be retained on parole and the board, for good cause, determines that the person will be retained. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(b) Notwithstanding any other provision of law, when any person referred to in paragraph (2) or (3) of subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for three years since release from confinement or since extension of parole, the board shall discharge, within 30 days, the person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(c) Notwithstanding any other provision of law, when any person referred to in paragraph (3) of subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for six years since release from confinement, the board shall discharge, within 30 days, the person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(d) In the event of a retention on parole, the parolee shall be entitled to a review by the parole authority each year thereafter until the maximum statutory period of parole has expired.

(e) The amendments to this section made during the 1987–88 Regular Session of the Legislature shall only be applied prospectively and shall not extend the parole period for any person whose eligibility for discharge from parole was fixed as of the effective date of those amendments.

SEC. 20. Section 3003 of the Penal Code is amended to read:

3003. (a) Except as otherwise provided in this section, an inmate who is released on parole shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration.

For purposes of this subdivision, “last legal residence” shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Prison Terms setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee’s permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following

factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate’s parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate’s parole would be successfully completed.

(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

(e)(l) The following information, if available, shall be released by the Department of Corrections to local law enforcement agencies regarding a paroled inmate who is released in their jurisdictions:

(A) Last, first, and middle name.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver’s license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the parolee’s residence location for use with a Geographical Information System (GIS) or comparable computer program.

(2) The information required by this subdivision shall come from the statewide parole database. The information obtained from each source shall be based on the same timeframe.

(3) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(4) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(f) Notwithstanding any other provision of law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, of subdivision (c) of Section 667.5 or a

felony in which the defendant inflicts great bodily injury on any person other than an accomplice that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(g)(1) Notwithstanding any other law, an inmate who is released on parole for any violation of Section 288 or 288.5 shall not be placed or reside, for the duration of his or her period of parole, within one quarter mile of any public or private school, including any or all of kindergarten and grades 1 to 8, inclusive.

Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of his or her parole, within one-half mile of any public or private school including any or all of kindergarten and grades 1 to 12, inclusive.

(h) Notwithstanding any other law, an inmate who is released on parole for an offense involving stalking shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of the victim.

(i) (h) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

(j) (i) An inmate may be paroled to another state pursuant to any other law.

(k) (j)(1) Except as provided in paragraph (2), the Department of Corrections shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e).

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

SEC. 21. Section 3003.5 of the Penal Code is amended to read:

3003.5. (a) Notwithstanding any other provision of law, when a person is released on parole after having served a term of imprisonment in state prison for any offense for which registration is required pursuant to Section 290, that person may not, during the period of parole, reside in any single family dwelling with any other person also required to register pursuant to Section 290, unless those persons are legally related by blood, marriage, or adoption. For purposes of this section, "single family dwelling" shall not include a residential facility which serves six or fewer persons.

(b) Notwithstanding any other provision of law, it is unlawful for any person for whom registration is required pursuant to Section 290 to reside within 2000 feet of any public or private school, or park where children regularly gather.

(c) Nothing in this section shall prohibit municipal jurisdictions from enacting local ordinances that further restrict the residency of any person for whom registration is required pursuant to Section 290.

SEC. 22. Section 3004 of the Penal Code is amended to read:

3004. (a) Notwithstanding any other law, the parole authority may require, as a condition of release on parole or reinstatement on parole, or as an intermediate sanction in lieu of return to prison, that an inmate or parolee agree in writing to the use of electronic monitoring or supervising devices for the purpose of helping to verify his or her compliance with all other conditions of parole. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the parolee and the agent supervising the parolee which is to be used solely for the purposes of voice identification.

(b) Every inmate who has been convicted for any felony violation of a "registerable sex offense" described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290 or any attempt to commit any of the above-mentioned offenses and who is committed to prison and released on parole pursuant to Section 3000 or 3000.1 shall be monitored by a global positioning system for life.

(c) Any inmate released on parole pursuant to this section shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for the global positioning monitoring.

SEC. 23. Section 12022.75 of the Penal Code is amended to read:

12022.75. Any (a) Except as provided in subdivision (b), any person who, for the purpose of committing a felony, administers by injection, inhalation, ingestion, or any other means, any controlled substance listed in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code, against the victim's will by means of force, violence, or fear of immediate and unlawful bodily injury to the victim or another person, shall, in addition and consecutive to the penalty provided for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of three years.

(b)(1) Any person who, in the commission or attempted commission of any offense specified in paragraph (2), administers any controlled substance listed in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code to the victim shall be punished by an additional and consecutive term of imprisonment in the state prison for five years.

(2) This subdivision shall apply to the following offenses:

(A) Rape, in violation of paragraph (3) or (4) of subdivision (a) of Section 261.

(B) Sodomy, in violation of subdivision (f) or (i) of Section 286.

(C) Oral copulation, in violation of subdivision (f) or (i) of Section 288a.

(D) Sexual penetration, in violation of subdivision (d) or (e) of Section 289.

(E) Any offense specified in subdivision (c) of Section 667.61.

SEC. 24. Section 6600 of the Welfare and Institutions Code is amended to read:

6600. As used in this article, the following terms have the following meanings:

(a)(1) "Sexually violent predator" means a person who has been convicted of a sexually violent offense against two or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(2) For purposes of this subdivision any of the following shall be considered a conviction for a sexually violent offense:

(A) A prior or current conviction that resulted in a determinate prison sentence for an offense described in subdivision (b).

(B) A conviction for an offense described in subdivision (b) that was committed prior to July 1, 1977, and that resulted in an indeterminate prison sentence.

(C) A prior conviction in another jurisdiction for an offense that includes all of the elements of an offense described in subdivision (b).

(D) A conviction for an offense under a predecessor statute that includes all of the elements of an offense described in subdivision (b).

(E) A prior conviction for which the inmate received a grant of probation for an offense described in subdivision (b).

(F) A prior finding of not guilty by reason of insanity for an offense described in subdivision (b).

(G) A conviction resulting in a finding that the person was a mentally disordered sex offender.

(H) A prior conviction for an offense described in subdivision (b) for which the person was committed to the Department of the Youth Authority pursuant to Section 1731.5.

(I) A prior conviction for an offense described in subdivision (b) that resulted in an indeterminate prison sentence.

(3) Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of any prior convictions may be shown with documentary evidence. The details underlying the commission of an

offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of Mental Health. Jurors shall be admonished that they may not find a person a sexually violent predator based on prior offenses absent relevant evidence of a currently diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(4) The provisions of this section shall apply to any person against whom proceedings were initiated for commitment as a sexually violent predator on or after January 1, 1996.

(b) “Sexually violent offense” means the following acts when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, *or threatening to retaliate in the future against the victim or any other person*, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as provided defined in subdivision (a): a felony violation of paragraph (2) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262, Section 264.1, 269, 286, subdivision (a) or (b) of Section 288, 288a, 288.5, or subdivision (a) of Section 289 of the Penal Code, or sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code *any felony violation of Section 207, 209, or 220 of the Penal Code, committed with the intent to commit a violation of Section 261, 262, 264.1, 286, 288, 288a, or 289 of the Penal Code.*

(c) “Diagnosed mental disorder” includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

(d) “Danger to the health and safety of others” does not require proof of a recent overt act while the offender is in custody.

(e) “Predatory” means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

(f) “Recent overt act” means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

(g) Notwithstanding any other provision of law and for purposes of this section, ~~no more than one~~ a prior juvenile adjudication of a sexually violent offense may constitute a prior conviction for which the person received a determinate term if all of the following ~~applies apply~~:

(1) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(2) The prior offense is a sexually violent offense as specified in subdivision (b). ~~Notwithstanding Section 6600.1, only an offense described in subdivision (b) shall constitute a sexually violent offense for purposes of this subdivision.~~

(3) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 because of the person’s commission of the offense giving rise to the juvenile court adjudication.

(4) The juvenile was committed to the Department of the Youth Authority for the sexually violent offense.

(h) A minor adjudged a ward of the court for commission of an offense that is defined as a sexually violent offense shall be entitled to specific treatment as a sexual offender. The failure of a minor to receive that treatment shall not constitute a defense or bar to a determination that any person is a sexually violent predator within the meaning of this article.

SEC. 25. Section 6600.1 of the Welfare and Institutions Code is amended to read:

6600.1. (a) If the victim of an underlying offense that is specified in subdivision (b) of Section 6600 is a child under the age of 14 ~~and the offending act or acts involved substantial sexual conduct~~, the offense shall constitute a “sexually violent offense” for purposes of Section 6600.

(b) “Substantial sexual conduct” means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender.

SEC. 26. Section 6601 of the Welfare and Institutions Code is

amended to read:

6601. (a)(1) Whenever the Director of Corrections determines that an individual who is in custody under the jurisdiction of the Department of Corrections, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the director shall, at least six months prior to that individual’s scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate’s release date is modified by judicial or administrative action, the director may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate’s scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual’s custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and the Board of Prison Terms based on whether the person has committed a sexually violent predatory offense and on a review of the person’s social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Director of Corrections or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and

shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) If the person is otherwise subject to parole, a finding or placement made pursuant to this article shall not toll, discharge, or otherwise affect the term of parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

(l) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

SEC. 27. Section 6604 of the Welfare and Institutions Code is amended to read:

6604. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for ~~two years an indeterminate term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health, and the person shall not be kept in actual custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a petition for extended commitment under this article or unless the term of commitment changes pursuant to subdivision (e) of Section 6605. Time spent on conditional release shall not count toward the two-year term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the two-year term of commitment.~~ The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.

SEC. 28. Section 6604.1 of the Welfare and Institutions Code is amended to read:

6604.1. (a) The ~~two-year indeterminate~~ term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section. ~~The initial two-year term shall not be reduced by any time spent in a secure facility prior to the order of commitment. For any subsequent extended commitments, the term of commitment shall be for two years commencing from the date of the termination of the previous commitment.~~

(b) The person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychologist and one practicing psychiatrist, designated by the State Department of Mental Health. The provisions of subdivisions (c) to (i), inclusive, of Section 6601 shall apply to evaluations performed for purposes of extended commitments. The rights, requirements, and procedures set forth in Section 6603 shall apply to ~~extended all~~ commitment proceedings.

SEC. 29. Section 6605 of the Welfare and Institutions Code is

amended to read:

6605. (a) A person found to be a sexually violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. *The annual report shall include consideration of whether the committed person currently meets the definition of a sexually violent predator and whether conditional release to a less restrictive alternative or an unconditional release is in the best interest of the person and conditions can be imposed that would adequately protect the community. The Department of Mental Health shall file this periodic report with the court that committed the person under this article. The report shall be in the form of a declaration and shall be prepared by a professionally qualified person. A copy of the report shall be served on the prosecuting agency involved in the initial commitment and upon the committed person.* The person may retain, or if he or she is indigent and so requests, the court may appoint, a qualified expert or professional person to examine him or her, and the expert or professional person shall have access to all records concerning the person.

~~(b) The director shall provide the committed person with an annual written notice of his or her right to petition the court for conditional release under Section 6608. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report. If the person does not affirmatively waive his or her right to petition the court for conditional release, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she would not be a danger to the health and safety of others if discharged. The committed person shall have the right to be present and to have an attorney represent him or her at the show cause hearing. If the Department of Mental Health determines that either: (1) the person's condition has so changed that the person no longer meets the definition of a sexually violent predator, or (2) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the director shall authorize the person to petition the court for conditional release to a less restrictive alternative or for an unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall order a show cause hearing at which the court can consider the petition and any accompanying documentation provided by the medical director, the prosecuting attorney or the committed person.~~

(c) If the court at the show cause hearing determines that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, then the court shall set a hearing on the issue.

(d) At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged.

(e) If the court or jury rules against the committed person at the hearing conducted pursuant to subdivision (d), the term of commitment of the person shall run for ~~a an indeterminate~~ period of ~~two years~~ from the date of this ruling. If the court or jury rules for the committed person, he or she shall be unconditionally released and unconditionally discharged.

(f) In the event that the State Department of Mental Health has reason to believe that a person committed to it as a sexually violent predator is no longer a sexually violent predator, it shall seek judicial review of the person's commitment pursuant to the procedures set forth in Section 7250 in the superior court from which the commitment was made. If the superior court determines that the person is no longer a sexually violent predator, he

or she shall be unconditionally released and unconditionally discharged.

SEC. 30. Section 6608 of the Welfare and Institutions Code is amended to read:

6608. (a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release and subsequent or an unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel.

(b) The court shall give notice of the hearing date to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed person, and the Director of Mental Health at least 15 court days before the hearing date.

(c) No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.

(d) The court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.

(e) Before placing a committed person in a state-operated forensic conditional release program, the community program director designated by the State Department of Mental Health shall submit a written recommendation to the court stating which forensic conditional release program is most appropriate for supervising and treating the committed person. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the record. The procedures described in Sections 1605 to 1610, inclusive, of the Penal Code shall apply to the person placed in the forensic conditional release program.

(f) If the court determines that the person should be transferred to a state-operated forensic conditional release program, the community program director, or his or her designee, shall make the necessary placement arrangements and, within 21 days after receiving notice of the court's finding, the person shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court.

(g) If the court rules against the committed person at the trial for unconditional release from commitment, the court may place the committed person on outpatient status in accordance with the procedures described in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(h) If the court denies the petition to place the person in an appropriate forensic conditional release program or if the petition for unconditional discharge is denied, the person may not file a new application until one year has elapsed from the date of the denial.

(i) In any hearing authorized by this section, the petitioner shall have the burden of proof by a preponderance of the evidence.

(j) If the petition for conditional release is not made by the director of the treatment facility to which the person is committed, no action on the petition shall be taken by the court without first obtaining the written recommendation of the director of the treatment facility.

(k) Time spent in a conditional release program pursuant to this section shall not count toward the term of commitment under this article unless the person is confined in a locked facility by the conditional release program, in which case the time spent in a locked facility shall count toward the term of commitment.

SEC. 31. Intent Clause

It is the intent of the People of the State of California in enacting this measure to strengthen and improve the laws that punish and control sexual offenders. It is also the intent of the People of the State of California that if any provision in this act conflicts with any other provision of law that provides for a greater penalty or longer period of imprisonment the latter provision shall apply.

SEC. 32. Severability Clause

If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

SEC. 33. Amendment Clause

The provisions of this act shall not be amended by the Legislature except by a statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters. However, the Legislature may amend the provisions of this act to expand the scope of their application or to increase the punishments or penalties provided herein by a statute passed by majority vote of each house thereof.

PROPOSITION 84

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure adds sections to the Public Resources Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Division 43 is added to the Public Resources Code, to read:

DIVISION 43. THE SAFE DRINKING WATER, WATER QUALITY AND SUPPLY, FLOOD CONTROL, RIVER AND COASTAL PROTECTION BOND ACT OF 2006

CHAPTER 1. GENERAL PROVISIONS

75001. This Division shall be known and may be cited as the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.

75002. The people of California find and declare that protecting the state's drinking water and water resources is vital to the public health, the state's economy, and the environment.

75002.5. The people of California further find and declare that the state's waters are vulnerable to contamination by dangerous bacteria, polluted runoff, toxic chemicals, damage from catastrophic floods and the demands of a growing population. Therefore, actions must be taken to ensure safe drinking water and a reliable supply of water for farms, cities and businesses, as well as to protect California's rivers, lakes, streams, beaches, bays and coastal waters, for this and future generations.

75003. The people of California further find and declare that it is

83

84

necessary and in the public interest to do all of the following:

- (a) Ensure that safe drinking water is available to all Californians by:
- (1) Providing for emergency assistance to communities with contaminated sources of drinking water.
 - (2) Assisting small communities in making the improvements needed in their water systems to clean up and protect their drinking water from contamination.
 - (3) Providing grants and loans for safe drinking water and water pollution prevention projects.
 - (4) Protecting the water quality of the Sacramento-San Joaquin Delta, a key source of drinking water for 23 million Californians.
 - (5) Assisting each region of the state in improving local water supply reliability and water quality.
 - (6) Resolving water-related conflicts, improving local and regional water self-sufficiency and reducing reliance on imported water.
- (b) Protect the public from catastrophic floods by identifying and mapping the areas most at risk, inspecting and repairing levees and flood control facilities, and reducing the long-term costs of flood management, reducing future flood risk and maximizing public benefits by planning, designing and implementing multi-objective flood corridor projects.
- (c) Protect the rivers, lakes and streams of the state from pollution, loss of water quality, and destruction of fish and wildlife habitat.
- (d) Protect the beaches, bays and coastal waters of the state for future generations.
- (e) Revitalizing our communities and making them more sustainable and livable by investing in sound land use planning, local parks and urban greening.

75003.5. The people of California further find and declare that the growth in population of the state and the impacts of climate change pose significant challenges. These challenges must be addressed through careful planning and through improvements in land use and water management that both reduce contributions to global warming and improve the adaptability of our water and flood control systems. Improvements include better integration of water supply, water quality, flood control and ecosystem protection, as well greater water use efficiency and conservation to reduce energy consumption.

75004. It is the intent of the people that investment of public funds pursuant to this division should result in public benefits.

75005. As used in this division, the following terms have the following meanings:

- (a) "Acquisition" means the acquisition of a fee interest or any other interest in real property including easements, leases and development rights.
- (b) "Board" means the Wildlife Conservation Board.
- (c) "California Water Plan" means the California Water Plan Update Bulletin 160-05 and subsequent revisions and amendments.
- (d) "Delta" means the Sacramento-San Joaquin River Delta.
- (e) "Department" means the Department of Water Resources.
- (f) "Development" includes, but is not limited to the physical improvement of real property including the construction of facilities or structures.
- (g) "Disadvantaged community" means a community with a median household income less than 80% of the statewide average. "Severely disadvantaged community" means a community with a median household income less than 60% of the statewide average.
- (h) "Fund" means the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Fund of 2006.
- (i) "Interpretation" includes, but is not limited to, a visitor serving amenity that educates and communicates the significance and value of natural, historical, and cultural resources in a way that increases the understanding and enjoyment of these resources and that may utilize the expertise of a naturalist or other specialist skilled at educational interpretation.
- (j) "Local conservation corps" means a program operated by a public agency or nonprofit organization that meets the requirements of Section 14406.
- (k) "Nonprofit organization" means any nonprofit corporation

qualified to do business in California, and qualified under Section 501 (c)(3) of the Internal Revenue Code.

(l) "Preservation" means rehabilitation, stabilization, restoration, development, and reconstruction, or any combination of those activities.

(m) "Protection" means those actions necessary to prevent harm or damage to persons, property or natural resources or those actions necessary to allow the continued use and enjoyment of property or natural resources and includes acquisition, development, restoration, preservation and interpretation.

(n) "Restoration" means the improvement of physical structures or facilities and, in the case of natural systems and landscape features includes, but is not limited to, projects for the control of erosion, the control and elimination of exotic species, prescribed burning, fuel hazard reduction, fencing out threats to existing or restored natural resources, road elimination, and other plant and wildlife habitat improvement to increase the natural system value of the property. Restoration projects shall include the planning, monitoring and reporting necessary to ensure successful implementation of the project objectives.

(o) "Secretary" means the Secretary of the Resources Agency.

(p) "State Board" means the State Water Resources Control Board. 75009. The proceeds of bonds issued and sold pursuant to this division shall be deposited in the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Fund of 2006, which is hereby created. Except as specifically provided in this division the money shall be available for appropriation by the Legislature, in the manner and for the purposes set forth in this division in accordance with the following schedule:

(a) The sum of one billion five hundred twenty five million dollars (\$1,525,000,000) for safe drinking water, water quality and other water projects in accordance with the provisions of Chapter 2.

(b) The sum of eight hundred million dollars (\$800,000,000) for flood control projects in accordance with the provisions of Chapter 3.

(c) The sum of sixty five million dollars (\$65,000,000) for statewide water management in accordance with the provisions of Chapter 4.

(d) The sum of nine hundred twenty eight million dollars (\$928,000,000) for the protection of rivers, lakes and streams in accordance with the provisions of Chapter 5.

(e) The sum of four hundred fifty million dollars (\$450,000,000) for forest and wildlife conservation in accordance with the provisions of Chapter 6.

(f) The sum of five hundred forty million dollars (\$540,000,000) for the protection of beaches, bays, and coastal waters and watersheds in accordance with the provisions of Chapter 7.

(g) The sum of five hundred million dollars (\$500,000,000) for state parks and nature education facilities in accordance with Chapter 8.

(h) The sum of five hundred eighty million dollars (\$580,000,000) for sustainable communities and climate change reduction projects in accordance with Chapter 9.

CHAPTER 2. SAFE DRINKING WATER AND WATER QUALITY PROJECTS

75020. This chapter is intended to provide the funds necessary to address the most critical water needs of the state including the provision of safe drinking water to all Californians, the protection of water quality and the environment, and the improvement of water supply reliability.

75021. (a) The sum of ten million dollars (\$10,000,000) shall be available to the Department of Health Services for grants and direct expenditures to fund emergency and urgent actions to ensure that safe drinking water supplies are available to all Californians. Eligible projects include, but are not limited to, the following:

- (1) Providing alternate water supplies including bottled water where necessary to protect public health.
- (2) Improvements in existing water systems necessary to prevent contamination or provide other sources of safe drinking water including replacement wells.
- (3) Establishing connections to an adjacent water system.
- (4) Design, purchase, installation and initial operation costs for water treatment equipment and systems.

(b) Grants and expenditures shall not exceed \$250,000 per project.

(c) Direct expenditures for the purposes of this section shall be exempt from contracting and procurement requirements to the extent necessary to take immediate action to protect public health and safety.

75022. The sum of one hundred eighty million dollars (\$180,000,000) shall be available to the Department of Health Services for grants for small community drinking water system infrastructure improvements and related actions to meet safe drinking water standards. Priority shall be given to projects that address chemical and nitrate contaminants, other health hazards and by whether the community is disadvantaged or severely disadvantaged. Special consideration shall be given to small communities with limited financial resources. Eligible recipients include public agencies and incorporated mutual water companies that serve disadvantaged communities. The Department of Health Services may make grants for the purpose of financing feasibility studies and to meet the eligibility requirements for a construction grant. Construction grants shall be limited to \$5,000,000 per project and not more than twenty five percent of a grant may be awarded in advance of actual expenditures. The Department of Health Services may expend up to \$5,000,000 of the funds allocated in this section for technical assistance to eligible communities.

75023. For the purpose of providing the state share needed to leverage federal funds to assist communities in providing safe drinking water, the sum of fifty million dollars (\$50,000,000) shall be available for deposit into the Safe Drinking Water State Revolving Fund (Section 116760.30 of the Health and Safety Code).

75024. For the purpose of providing the state share needed to leverage federal funds to assist communities in making those infrastructure investments necessary to prevent pollution of drinking water sources, the sum of eighty million dollars (\$80,000,000) shall be available for deposit into the State Water Pollution Control Revolving Fund (Section 13477 of the Water Code).

75025. The sum of sixty million dollars (\$60,000,000) shall be available to the Department of Health Services for the purpose of loans and grants for projects to prevent or reduce contamination of groundwater that serves as a source of drinking water. The Department of Health Services shall require repayment for costs that are subsequently recovered from parties responsible for the contamination. The Legislature may enact legislation necessary to implement this section.

75026. (a) The sum of one billion dollars (\$1,000,000,000) shall be available to the department for grants for projects that assist local public agencies to meet the long term water needs of the state including the delivery of safe drinking water and the protection of water quality and the environment. Eligible projects must implement integrated regional water management plans that meet the requirements of this section. Integrated regional water management plans shall identify and address the major water related objectives and conflicts within the region, consider all of the resource management strategies identified in the California Water Plan, and use an integrated, multi-benefit approach to project selection and design. Plans shall include performance measures and monitoring to document progress toward meeting plan objectives. Projects that may be funded pursuant to this section must be consistent with an adopted integrated regional water management plan or its functional equivalent as defined in the department's Integrated Regional Water Management Guidelines, must provide multiple benefits, and must include one or more of the following project elements:

- (1) Water supply reliability, water conservation and water use efficiency.
- (2) Storm water capture, storage, clean-up, treatment, and management.
- (3) Removal of invasive non-native species, the creation and enhancement of wetlands, and the acquisition, protection, and restoration of open space and watershed lands.
- (4) Non-point source pollution reduction, management and monitoring.
- (5) Groundwater recharge and management projects.
- (6) Contaminant and salt removal through reclamation, desalting, and other treatment technologies and conveyance of reclaimed water for distribution to users.
- (7) Water banking, exchange, reclamation and improvement of water quality.

(8) Planning and implementation of multipurpose flood management programs.

(9) Watershed protection and management.

(10) Drinking water treatment and distribution.

(11) Ecosystem and fisheries restoration and protection.

(b) The Department of Water Resources shall give preference to proposals that satisfy the following criteria:

(1) Proposals that effectively integrate water management programs and projects within a hydrologic region identified in the California Water Plan; the Regional Water Quality Control Board region or subdivision or other region or sub-region specifically identified by the department.

(2) Proposals that effectively integrate water management with land use planning.

(3) Proposals that effectively resolve significant water-related conflicts within or between regions.

(4) Proposals that contribute to the attainment of one or more of the objectives of the CALFED Bay-Delta Program.

(5) Proposals that address statewide priorities.

(6) Proposals that address critical water supply or water quality needs for disadvantaged communities within the region.

(c) Not more than 5% of the funds provided by this section may be used for grants or direct expenditures for the development, updating or improvement of integrated regional water management plans.

(d) The department shall coordinate the provisions of this section with the program provided in Chapter 8 of Division 26.5 of the Water Code and may implement this section using existing Integrated Regional Water Management Guidelines.

75027. (a) The funding provided in Section 75026 shall be allocated to each hydrologic region as identified in the California Water Plan and listed below. For the South Coast Region, the department shall establish three sub-regions that reflect the San Diego county watersheds, the Santa Ana River watershed, and the Los Angeles—Ventura County watersheds respectively, and allocate funds to those sub-regions. The North and South Lahontan regions shall be treated as one region for the purpose of allocating funds, but the department may require separate regional plans. Funds provided in Section 75026 shall be allocated according to the following schedule:

(1) North Coast	\$37,000,000
(2) San Francisco Bay	\$138,000,000
(3) Central Coast	\$52,000,000
(4) Los Angeles sub-region	\$215,000,000
(5) Santa Ana sub-region	\$114,000,000
(6) San Diego sub-region	\$91,000,000
(7) Sacramento River	\$73,000,000
(8) San Joaquin River	\$57,000,000
(9) Tulare/Kern (Tulare Lake)	\$60,000,000
(10) North/South Lahontan	\$27,000,000
(11) Colorado River Basin	\$36,000,000
(12) Inter-regional/Unallocated	\$100,000,000

(b) The interregional and unallocated funds provided in subdivision (a) may be expended directly or granted by the department to address multi-regional needs or issues of statewide significance.

75028. (a) The department shall allocate grants on a competitive basis within each identified hydrologic region or sub-region pursuant to Section 75027. The department may establish standards and procedures for the development and approval of local project selection processes within hydrologic regions and sub-regions identified in Section 75027. The department shall defer to approved local project selection, and review projects only for consistency with the purposes of Section 75026.

(b) If a hydrologic region or sub-region identified in Section 75027 does not have any adopted plan that meets the requirements of Section 75026 at the time of the department's grant selection process, the funds allocated to that hydrologic region or sub-region shall not be reallocated to another region but will remain unallocated until such time as an adopted plan from the hydrologic region or sub-region is submitted to the department.

75029. The sum of one hundred thirty million dollars (\$130,000,000)

shall be available to the department for grants to implement Delta water quality improvement projects that protect drinking water supplies. The department shall require a cost share from local agencies. Eligible projects are:

(a) Projects that reduce or eliminate discharges of salt, dissolved organic carbon, pesticides, pathogens and other pollutants to the San Joaquin River. Not less than forty million (\$40,000,000) shall be available to implement projects to reduce or eliminate discharges of subsurface agricultural drain water from the west side of the San Joaquin Valley for the purpose of improving water quality in the San Joaquin River and the Delta.

(b) Projects that reduce or eliminate discharges of bromide, dissolved organic carbon, salt, pesticides and pathogens from discharges to the Sacramento River.

(c) Projects at Franks Tract and other locations in the Delta that will reduce salinity or other pollutants at agricultural and drinking water intakes.

(d) Projects identified in the June 2005 Delta Region Drinking Water Quality Management Plan, with a priority for design and construction of the relocation of drinking water intake facilities for in-delta water users.

75029.5. The sum of fifteen million dollars (\$15,000,000) shall be available to the state board for grants to public agencies and non-profit organizations for projects that reduce the discharge of pollutants from agricultural operations into surface waters of the state.

CHAPTER 3. FLOOD CONTROL

75030. This chapter is intended to provide the funding needed to address short term flood control needs such as levee inspection and evaluation, floodplain mapping and improving the effectiveness of emergency response, and providing funding for critical immediate flood control needs throughout the state. It is also intended to provide a framework to support long term strategies that will require the establishment of more effective levee maintenance programs, better floodplain management and more balanced allocation of liability and responsibility between the federal, state and local governments.

75031. The sum of thirty million dollars (\$30,000,000) shall be available to the department for the purposes of floodplain mapping, assisting local land-use planning, and to avoid or reduce future flood risks and damages. Eligible projects include, but are not limited to:

- (a) Mapping floodplains.
- (b) Mapping rural areas with potential for urbanization.
- (c) Mapping and identification of flood risk in high density urban areas.
- (d) Mapping flood hazard areas.
- (e) Updating outdated floodplain maps.
- (f) Mapping of riverine floodplains, alluvial fans, and coastal flood hazard areas.
- (g) Collecting topographic and hydrographic survey data.

75032. The sum of two hundred seventy five million dollars (\$275,000,000) shall be available to the department for the following flood control projects:

(a) The inspection and evaluation of the integrity and capability of existing flood control project facilities and the development of an economically viable flood control rehabilitation plan.

(b) Improvement, construction, modification, and relocation of flood control levees, weirs, or bypasses including repair of critical bank and levee erosion.

(c) Projects to improve the department's emergency response capability.

(d) Environmental mitigation and infrastructure relocation costs related to projects under this section.

(e) To the extent feasible, the department shall implement a multi-objective management approach for floodplains that would include, but not be limited to, increased flood protection, ecosystem restoration, and farmland protection.

75032.4. Notwithstanding Section 13340 of the Government Code, the funds allocated in Sections 75031 and 75032 are continuously

appropriated to the department for the purposes of those sections.

75032.5. The sum of forty million dollars (\$40,000,000) shall be available to the department for Flood Protection Corridor projects that are consistent with Water Code Section 79037.

75033. The sum of two hundred seventy five million dollars (\$275,000,000) shall be available to the department for flood control projects in the Delta designed to increase the department's ability to respond to levee breaches and to reduce the potential for levee failures. The funds provided by this section shall be available for the following purposes:

(a) Projects to improve emergency response preparedness.

(b) Local assistance under the delta levee maintenance subventions program under Part 9 (commencing with Section 12980) of Division 6 of the Water Code.

(c) Special flood protection projects under Chapter 2 (commencing with Section 12310) of Part 4.8 of Division 6 of the Water Code, including projects for the acquisition, preservation, protection and restoration of Delta lands for the purpose of flood control and to meet multiple objectives such as drinking water quality ecosystem restoration and water supply reliability.

(d) All projects shall be subject to the provisions of Water Code Section 79050.

75034. The sum of one hundred eighty million dollars (\$180,000,000) shall be available to the department for the purposes of funding the state's share of the nonfederal costs of flood control and flood prevention projects for which assurances required by the federal government have been provided by a local agency and which have been authorized under the State Water Resources Law of 1945 (Chapter 1 (commencing with Section 12570) and Chapter 2 (commencing with Section 12639) of Part 6 of Division 6 of the Water Code), the Flood Control Law of 1946 (Chapter 3 (commencing with Section 12800) of Part 6 of Division 6 of the Water Code), and the California Watershed Protection and Flood Prevention Law (Chapter 4 (commencing with Section 12850) of Part 6 of Division 6 of the Water Code), including the credits and loans to local agencies pursuant to Sections 12585.3 and 12585.4, subdivision (d) of Section 12585.5, and Sections 12866.3 and 12866.4 of the Water Code, and to implement Chapter 3.5 (commencing with Section 12840) of Part 6 of Division 6 of the Water Code. Projects eligible for funding pursuant to this section shall comply with the requirements of AB 1147 (Statutes of 2000, Chapter 1071).

CHAPTER 4. STATEWIDE WATER PLANNING AND DESIGN

75041. The sum of sixty five million dollars (\$65,000,000) shall be available to the department for planning and feasibility studies related to the existing and potential future needs for California's water supply, conveyance and flood control systems. The studies shall be designed to promote integrated, multi-benefit approaches that maximize the public benefits of the overall system including protection of the public from floods, water supply reliability, water quality, and fish, wildlife and habitat protection and restoration. Projects to be funded include:

(a) Evaluation of climate change impacts on the state's water supply and flood control systems and the development of system redesign alternatives to improve adaptability and public benefits.

(b) Surface water storage planning and feasibility studies pursuant to the CALFED Bay-Delta Program.

(c) Modeling and feasibility studies to evaluate the potential for improving flood protection and water supply through coordinating groundwater storage and reservoir operations.

(d) Other planning and feasibility studies necessary to improve the integration of flood control and water supply systems.

CHAPTER 5. PROTECTION OF RIVERS, LAKES AND STREAMS

75050. The sum of nine hundred twenty eight million dollars (\$928,000,000) shall be available for the protection and restoration of rivers, lakes and streams, their watersheds and associated land, water, and other natural resources in accordance with the following schedule:

(a) The sum of one hundred eighty million dollars (\$180,000,000) shall be available to the Department of Fish and Game, in consultation with the department, for Bay-Delta and coastal fishery restoration projects. Of

the funds provided in this section, up to \$20,000,000 shall be available for the development of a natural community conservation plan for the CALFED Bay-Delta Program and up to \$45,000,000 shall be available for coastal salmon and steelhead fishery restoration projects that support the development and implementation of species recovery plans and strategies for salmonid species listed as threatened or endangered under state or federal law.

(b) The sum of ninety million dollars (\$90,000,000) shall be available for projects related to the Colorado River in accordance with the following schedule:

(1) Not more than \$36,000,000 shall be available to the department for water conservation projects that implement the Allocation Agreement as defined in the Quantification Settlement Agreement.

(2) Not more than \$7,000,000 shall be available to the Department of Fish and Game for projects to implement the Lower Colorado River Multi-Species Habitat Conservation Plan.

(3) \$47,000,000 shall be available for deposit into the Salton Sea Restoration Fund.

(c) The sum of fifty four million dollars (\$54,000,000) shall be available to the department for development, rehabilitation, acquisition, and restoration costs related to providing public access to recreation and fish and wildlife resources in connection with state water project obligations pursuant to Water Code Section 11912.

(d) The sum of seventy two million dollars (\$72,000,000) shall be available to the secretary for projects in accordance with the California River Parkways Act of 2004 Chapter 3.8 (commencing with Section 5750) of Division 5. Up to \$10,000,000 may be transferred to the Department of Conservation for the Watershed Coordinator Grant Program.

(e) The sum of eighteen million dollars (\$18,000,000) shall be available to the department for the Urban Streams Restoration Program pursuant to Water Code Section 7048.

(f) The sum of thirty six million dollars (\$36,000,000) shall be available for river parkway projects to the San Joaquin River Conservancy.

(g) The sum of seventy two million dollars (\$72,000,000) shall be available for projects within the watersheds of the Los Angeles and San Gabriel Rivers according to the following schedule:

(1) \$36,000,000 to the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy pursuant to Division 22.8 (commencing with Section 32600).

(2) \$36,000,000 to the Santa Monica Mountains Conservancy for implementation of watershed protection activities throughout the watershed of the Upper Los Angeles River pursuant to Section 79508 of the Water Code.

(h) The sum of thirty six million dollars (\$36,000,000) shall be available for the Coachella Valley Mountains Conservancy.

(i) The sum of forty five million dollars (\$45,000,000) shall be available for projects to expand and improve the Santa Ana River Parkway. Project funding shall be appropriated to the State Coastal Conservancy for projects developed in consultation with local government agencies participating in the development of the Santa Ana River Parkway. Of the amount provided in this paragraph the sum of thirty million dollars (\$30,000,000) shall be equally divided between projects in Orange, San Bernardino and Riverside Counties.

(j) The sum of fifty four million dollars (\$54,000,000) shall be available for the Sierra Nevada Conservancy.

(k) The sum of thirty six million dollars (\$36,000,000) shall be available for the California Tahoe Conservancy.

(l) The sum of forty five million dollars (\$45,000,000) shall be available to the California Conservation Corps for resource conservation and restoration projects and for facilities acquisition, development, restoration, and rehabilitation and for grants and state administrative costs, in accordance with the following schedule:

(1) The sum of twenty five million dollars (\$25,000,000) shall be available for projects to improve public safety and improve and restore watersheds including regional and community fuel load reduction projects on public lands, and stream and river restoration projects. Not less than 50% of these funds shall be in the form of grants to local conservation corps.

(2) The sum of twenty million dollars (\$20,000,000) shall be available for grants to local conservation corps for acquisition and

development of facilities to support local conservation corps programs, and for local resource conservation activities.

(m) The sum of ninety million dollars (\$90,000,000) to the state board for matching grants to local public agencies for the reduction and prevention of stormwater contamination of rivers, lakes, and streams. The Legislature may enact legislation to implement this subdivision.

(n) The sum of one hundred million dollars (\$100,000,000) shall be available to the secretary for the purpose of implementing a court settlement to restore flows and naturally-reproducing and self-sustaining populations of salmon to the San Joaquin River between Friant Dam and the Merced River. These funds shall be available for channel and structural improvements, and related research pursuant to the court settlement. The secretary is authorized to enter into a cost-sharing agreement with the United States Secretary of the Interior and other parties, as necessary, to implement this provision.

CHAPTER 6. FOREST AND WILDLIFE CONSERVATION

75055. The sum of four hundred fifty million dollars (\$450,000,000) shall be available for the protection and conservation of forests and wildlife habitat according to the following schedule:

(a) Notwithstanding Section 13340 of the Government Code, the sum of one hundred eighty million dollars (\$180,000,000) is continuously appropriated to the board for forest conservation and protection projects. The goal of this grant program is to promote the ecological integrity and economic stability of California's diverse native forests for all their public benefits through forest conservation, preservation and restoration of productive managed forest lands, forest reserve areas, redwood forests and other forest types, including the conservation of water resources and natural habitats for native fish, wildlife and plants found on these lands.

(b) (1) Notwithstanding Section 13340 of the Government Code, the sum of one hundred thirty five million dollars (\$135,000,000) is hereby continuously appropriated to the board for the development, rehabilitation, restoration, acquisition and protection of habitat that accomplishes one or more of the following objectives:

(A) Promotes the recovery of threatened and endangered species.

(B) Provides corridors linking separate habitat areas to prevent fragmentation.

(C) Protects significant natural landscapes and ecosystems such as old growth redwoods, mixed conifer forests and oak woodlands, riparian and wetland areas, and other significant habitat areas.

(D) Implements the recommendations of California Comprehensive Wildlife Strategy, as submitted October 2005 to the United States Fish and Wildlife Service.

(2) Funds authorized by this subdivision may be used for direct expenditures or for grants and for related state administrative costs, pursuant to the Wildlife Conservation Law of 1947, Chapter 4 (commencing with Section 1300) of Division 2 of the Fish and Game Code, the Oak Woodland Conservation Act, Article 3.5 (commencing with Section 1360) of Chapter 4 of Division 2 of the Fish and Game Code, and the California Rangeland, Grazing Land and Grassland Protection Act, commencing with Section 10330 of Division 10.4. Funds scheduled in this subdivision may be used to prepare management plans for properties acquired by the Wildlife Conservation Board and for the development of scientific data, habitat mapping and other research information necessary to determine the priorities for restoration and acquisition statewide.

(3) Up to twenty five million dollars (\$25,000,000) may be granted to the University of California for the Natural Reserve System for matching grants for land acquisition and for the construction and development of facilities that will be used for research and training to improve the management of natural lands and the preservation of California's wildlife resources.

(c) The sum of ninety million dollars (\$90,000,000) shall be available to the board for grants to implement or assist in the establishment of Natural Community Conservation Plans, Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code.

(d) The sum of forty five million dollars (\$45,000,000) shall be available for the protection of ranches, farms, and oak woodlands according to the following schedule:

(1) Grazing land protection pursuant to the California Rangeland, Grazing Land and Grassland Protection Act, commencing with Section

10330 of Division 10.4.....\$15,000,000.

(2) Oak Woodland Preservation pursuant to Article 3.5 (commencing with Section 1360) of Chapter 4 of Division 2 of the Fish and Game Code..... \$15,000,000.

(3) Agricultural land preservation pursuant to the California Farmland Conservancy Program Act of 1995, Article 1 (commencing with Section 10200) of Division 10.2..... \$10,000,000.

(4) To the board for grants to assist farmers in integrating agricultural activities with ecosystem restoration and wildlife protection..... \$5,000,000.

CHAPTER 7. PROTECTION OF BEACHES, BAYS AND COASTAL WATERS

75060. The sum of five hundred forty million dollars (\$540,000,000) shall be available for the protection of beaches, bays and coastal waters and watersheds, including projects to prevent contamination and degradation of coastal waters and watersheds, projects to protect and restore the natural habitat values of coastal waters and lands, and projects and expenditures to promote access to and enjoyment of the coastal resources of the state, in accordance with the following schedule:

(a) The sum of ninety million dollars (\$90,000,000) shall be available to the state board for the purpose of matching grants for protecting beaches and coastal waters from pollution and toxic contamination pursuant to the Clean Beaches Program, Chapter 3 (commencing with Section 30915) of Division 20.4. Not less than \$35,000,000 shall be for grants to local public agencies to assist those agencies to comply with the discharge prohibition into Areas of Special Biological Significance contained in the California Ocean Plan. Not less than 20% of the funds allocated by this subdivision shall be available to the Santa Monica Bay Restoration Commission.

(b) The sum of one hundred thirty five million dollars (\$135,000,000) shall be available for the State Coastal Conservancy for expenditure pursuant to Division 21.

(c) The sum of one hundred eight million dollars (\$108,000,000) shall be available for the San Francisco Bay Area Conservancy Program pursuant to Chapter 4.5 of Division 21. Not less than 20% of the funds allocated by this paragraph shall be expended on projects in watersheds draining directly to the Pacific Ocean.

(d) The sum of forty five million dollars (\$45,000,000) for the protection of the Santa Monica Bay and its watersheds shall be available as follows:

(1) To the Santa Monica Mountains Conservancy pursuant to Division 23 (commencing with Section 33000)..... \$20,000,000.

(2) To the Baldwin Hills Conservancy for the protection of the Ballona Creek/Baldwin Hills watershed..... \$10,000,000.

(3) To the Rivers and Mountains Conservancy..... \$15,000,000.

(e) The sum of forty five million dollars (\$45,000,000) for the protection of Monterey Bay and its watersheds shall be available to the State Coastal Conservancy.

(f) The sum of twenty seven million dollars (\$27,000,000) for the protection of San Diego Bay and adjacent watersheds shall be available to the State Coastal Conservancy.

(g) The sum of ninety million dollars (\$90,000,000) shall be allocated to the California Ocean Protection Trust Fund (Chapter 4 (commencing with Section 35650) of Division 26.5) and available for the purposes of projects consistent with Section 35650. Priority projects shall include the development of scientific data needed to adaptively manage the state's marine resources and reserves, including the development of marine habitat maps, the development and implementation of projects to foster sustainable fisheries using loans and grants, and the development and implementation of projects to conserve marine wildlife.

CHAPTER 8. PARKS AND NATURE EDUCATION FACILITIES

75063. The sum of five hundred million dollars (\$500,000,000) shall be available to provide public access to the resources of the State of California, including its rivers, lakes and streams, its beaches, bays and coastal waters, to protect those resources for future generations, and to increase public understanding and knowledge of those resources, in accordance with the following schedule:

(a) The sum of four hundred million dollars (\$400,000,000) shall be available to the Department of Parks and Recreation for development, acquisition, interpretation, restoration and rehabilitation of the state park system and its natural, historical, and visitor serving resources. The Department of Parks and Recreation shall include the following goals in setting spending priorities for the funds appropriated pursuant to this section:

(1) The restoration, rehabilitation and improvement of existing state park system lands and facilities.

(2) The expansion of the state park system to reflect the growing population and shifting population centers and needs of the state.

(3) The protection of representative natural resources based on the criteria and priorities identified in Section 75071.

(b) The sum of one hundred million dollars (\$100,000,000) shall be available to the Department of Parks and Recreation for grants for nature education and research facilities and equipment to non-profit organizations and public institutions, including natural history museums, aquariums, research facilities and botanical gardens. Eligible institutions include those that combine the study of natural science with preservation, demonstration and education programs that serve diverse populations, institutions that provide collections and programs related to the relationship of Native American cultures to the environment, and institutions for marine wildlife conservation research. Grants may be used for buildings, structures and exhibit galleries that present the collections to inspire and educate the public and for marine wildlife conservation research equipment and facilities.

CHAPTER 9. SUSTAINABLE COMMUNITIES AND CLIMATE CHANGE REDUCTION

75065. The sum of five hundred eighty million dollars (\$580,000,000) shall be available for improving the sustainability and livability of California's communities through investment in natural resources. The purposes of this chapter include reducing urban communities' contribution to global warming and increasing their adaptability to climate change while improving the quality of life in those communities. Funds shall be available in accordance with the following schedule:

(a) The sum of ninety million dollars (\$90,000,000) shall be available for urban greening projects that reduce energy consumption, conserve water, improve air and water quality, and provide other community benefits. Priority shall be given to projects that provide multiple benefits, use existing public lands, serve communities with the greatest need, and facilitate joint use of public resources and investments including schools. Implementing legislation shall provide for planning grants for urban greening programs. Not less than \$20,000,000 shall be available for urban forestry projects pursuant to the California Urban Forestry Act, Chapter 2 (commencing with Section 4799.06) of Part 2.5 of Division 1.

(b) The sum of four hundred million dollars (\$400,000,000) shall be available to the Department of Parks and Recreation for competitive grants for local and regional parks. Funds provided in this subdivision may be allocated to existing programs or pursuant to legislation enacted to implement this subdivision, subject to the following considerations:

(1) Acquisition and development of new parks and expansion of overused parks that provide park and recreational access to underserved communities shall be given preference.

(2) Creation of parks in neighborhoods where none currently exist shall be given preference.

(3) Outreach and technical assistance shall be provided to underserved communities to encourage full participation in the program or programs.

(4) Preference shall be given to applicants that actively involve community based groups in the selection and planning of projects.

(5) Projects will be designed to provide efficient use of water and other natural resources.

(c) The sum of ninety million dollars (\$90,000,000) shall be available for planning grants and planning incentives, including revolving loan programs and other methods to encourage the development of regional and local land use plans that are designed to promote water conservation, reduce automobile use and fuel consumption, encourage greater infill and compact development, protect natural resources and agricultural lands, and revitalize urban and community centers.

75066. Appropriation of the funds provided in subdivisions (a) and (c) of Section 75065 may only be made upon enactment of legislation to implement that subdivision.

CHAPTER 10. MISCELLANEOUS PROVISIONS

75070. Every proposed activity or project to be financed pursuant to this division shall be in compliance with the California Environmental Quality Act, Division 13 (commencing with Section 21000).

75070.4. Acquisitions of real property pursuant to Chapters 5, 6, 7, 8, and 9 shall be from willing sellers.

75070.5. Not more than 5% of the funds allocated to any program in this division may be used to pay the costs incurred in the administration of that program.

75071. In evaluating potential projects that include acquisition or restoration for the purpose of natural resource protection, the Department of Parks and Recreation, the board, and the State Coastal Conservancy shall give priority to projects that demonstrate one or more of the following characteristics:

(a) *Landscape/Habitat Linkages*: properties that link to, or contribute to linking, existing protected areas with other large blocks of protected habitat. Linkages must serve to connect existing protected areas, facilitate wildlife movement or botanical transfer, and result in sustainable combined acreage.

(b) *Watershed Protection*: projects that contribute to long-term protection of and improvement to the water and biological quality of the streams, aquifers, and terrestrial resources of priority watersheds of the major biological regions of the state as identified by the Resources Agency.

(c) *Properties that support relatively large areas of under-protected major habitat types*.

(d) *Properties that provide habitat linkages between two or more major biological regions of the state*.

(e) *Properties for which there is a non-state matching contribution toward the acquisition, restoration, stewardship or management costs. Matching contributions can be either monetary or in the form of services, including volunteer services.*

(f) *At least fourteen days before approving an acquisition project funded by this division, an agency subject to this section shall submit to the Resources Agency and post on its website an explanation as to whether and how the proposed acquisition meets criteria established in this section.*

75071.5. The Department of Parks and Recreation, the board, and the State Coastal Conservancy shall work with the United States Department of Defense to coordinate the development of buffer areas around military facilities that facilitate the continued operation of those facilities and promote the conservation and recreation goals of the state. To the extent consistent with this division, agencies may provide funding to support projects that meet the purposes of this section.

75072. Up to 10 percent of funds allocated for each program funded by this division may be used to finance planning and monitoring necessary for the successful design, selection, and implementation of the projects authorized under that program. This provision shall not otherwise restrict funds ordinarily used by an agency for "preliminary plans," "working drawings," and "construction" as defined in the Annual Budget Act for a capital outlay project or grant project. Water quality monitoring shall be integrated into the Surface Water Ambient Monitoring Program administered by the state board.

75072.5. For the purposes of Section 75060(e), "Monterey Bay and its watersheds" shall be considered to be watersheds of those rivers and streams in Santa Cruz and Monterey Counties flowing to the Monterey Bay southward to, and including, the Carmel River watershed.

75072.6. For purposes of Section 75060(f), "San Diego Bay and adjacent watersheds" includes the coastal and bay watersheds within San Diego County.

75072.7. For purposes of Section 75060(d), "Santa Monica Bay and watershed" includes the coastal and bay watersheds in Ventura and Los Angeles Counties from Calleguas Creek southward to the San Gabriel River.

75073. Funds scheduled in Chapter 5, 6, 7 and 8 of this division that are not designated for competitive grant programs may also be used

for the purposes of reimbursing the General Fund, pursuant to the Natural Heritage Preservation Tax Credit Act of 2000 (Division 28 (commencing with Section 37000)).

75074. In enacting Chapters 5, 6, 7 and 8 of this division it is the intent of the people that when a project or program is funded herein, funds for such program or project may be used to the full extent authorized by the statute governing the program or conservancy receiving such funds.

75075. The body awarding any contract for a public works project financed in any part from funds made available pursuant to this division shall adopt and enforce, or contract with a third party to enforce, a labor compliance program pursuant to subdivision (b) of Labor Code Section 1771.5 for application to that public works project.

75076. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to the development and adoption of program guidelines and selection criteria adopted pursuant to this chapter.

75077. Funds provided pursuant to this chapter, and any appropriation or transfer of those funds, shall not be deemed to be a transfer of funds for the purposes of Chapter 9 (commencing with Section 2780) of Division 3 of the Fish and Game Code.

75078. The Secretary shall provide for an independent audit of expenditures pursuant to this division to ensure that all moneys are expended in accordance with the requirements of this division. The secretary shall publish a list of all program and project expenditures pursuant to this division not less than annually, in written form, and shall post an electronic form of the list on the Resources Agency's Internet Website.

75079. The Secretary shall appoint a citizen advisory committee to review the annual audit and to identify and recommend actions to ensure that the intent and purposes of this division are met by the agencies responsible for implementation of this division.

CHAPTER 11. FISCAL PROVISIONS

75080. Bonds in the total amount of five billion three hundred and eighty eight million dollars (\$5,388,000,000), not including the amount of any refunding bonds issued in accordance with Section 75088, or so much thereof as is necessary, may be issued and sold to be used for carrying out the purposes set forth in this division and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bond proceeds shall be deposited in the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Fund of 2006 created by Section 75009. The bonds shall, when sold, be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of and interest on the bonds as they become due and payable.

75081. The bonds authorized by this division shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law, Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, and all provisions of that law shall apply to the bonds and to this division and are hereby incorporated in this division by this reference as though fully set forth in this division.

75082. (a) Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this division, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Finance Committee is hereby created. For purposes of this division, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Finance Committee is "the committee" as that term is used by the State General Obligation Bond Law. The committee shall consist of the Controller, the Director of Finance, and the Treasurer, or their designated representatives. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

(b) For purposes of this chapter and the State General Obligation Bond Law, the secretary is designated as "the board."

75083. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this division in order to carry out the actions specified in this division and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized

and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

75084. There shall be collected annually in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds maturing each year, and it is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do so and perform each and every act that is necessary to collect that additional sum.

75085. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund, for purposes of this division, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this division, as the principal and interest become due and payable.

(b) The sum which is necessary to carry out the provisions of Section 75086, appropriated without regard to fiscal years.

75086. For the purposes of carrying out this division, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds that have been authorized to be sold for the purpose of carrying out this division. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, plus the interest that the amounts would have earned in the Pooled Money Investment Account, from money received from the sale of bonds that would otherwise be deposited in that fund.

75087. All money derived from premium and accrued interest on bonds sold shall be reserved and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

75088. Any bonds issued or sold pursuant to this division may be refunded by the issuance of refunding bonds in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code. Approval by the electors of the state for the issuance of the bonds shall include approval of the issuance of any bonds issued to refund any bonds originally issued or any previously issued refunding bonds.

75090. The people of California hereby find and declare that inasmuch as the proceeds from the sale of bonds authorized by this division are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitation imposed by that article.

SEC. 2. If any provision of this Act or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 3. This Act is an exercise of the public power of the People of the State of California for the protection of their health, safety, and welfare and shall be liberally construed to effectuate those purposes.

PROPOSITION 85

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the California Constitution.

This initiative measure expressly amends the California Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Title

This measure shall be known and may be cited as the Parents' Right to Know and Child Protection Initiative.

SEC. 2. Declaration of Findings and Purposes

The people of California have a special and compelling interest in and responsibility for protecting the health and well-being of children, ensuring that parents are properly informed of potential health-related risks and medical decisions involving their children, and promoting and enabling parental care and responsibility.

SEC. 3. Parental Notification

Section 32 is added to Article I of the California Constitution, to read:

SEC. 32. (a) For purposes of this section, the following terms shall be defined to mean:

(1) "Abortion" means the use of any means to terminate the pregnancy of an unemancipated minor known to be pregnant, except for the purpose of producing a live birth. "Abortion" shall not include the use of any contraceptive drug or device.

(2) "Medical emergency" means a condition which, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant unemancipated minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(3) "Notice" means a written notification, signed and dated by a physician or his or her agent and addressed to a parent or guardian of an unemancipated minor, informing the parent or guardian that she is pregnant and that she has requested an abortion.

(4) "Parent or guardian" means a person who, at the time notice or waiver is required under this section, is either a parent if both parents have legal custody, or the parent or person having legal custody, or the legal guardian of an unemancipated minor.

(5) "Unemancipated minor" means a female under the age of 18 years who has not entered into a valid marriage and is not on active duty with the armed services of the United States and has not received a declaration of emancipation under state law. For the purposes of this section, pregnancy does not emancipate a female under the age of 18 years.

(6) "Physician" means any person authorized under the statutes and regulations of the State of California to perform an abortion upon an unemancipated minor.

(b) Notwithstanding Section 1 of Article I, or any other provision of this Constitution or law to the contrary and except in a medical emergency as provided for in subdivision (f), a physician shall not perform an abortion upon a pregnant unemancipated minor until the physician or the physician's agent has provided written notice to her parent or guardian personally as provided for in subdivision (c) and a reflection period of at least 48 hours has elapsed after personal delivery of notice; or until the physician can presume that notice has been delivered by mail as provided in subdivision (d) and a reflection period of at least 48 hours has elapsed after presumed delivery of notice by mail; or until the physician or the physician's agent has received a valid written waiver of notice as provided for in subdivision (e); or until the physician has received a copy of a waiver of notification from the court as provided in subdivision (h), (i), or (j). A copy of any notice or waiver shall be retained with the unemancipated minor's medical records. The physician or the physician's agent shall inform the unemancipated minor that her parent or guardian may receive notice as provided for in this section.

(c) The written notice shall be delivered to the parent or guardian personally by the physician or the physician's agent unless delivered by mail, as provided in subdivision (d). A form for the notice shall be prescribed by the State Department of Health Services. The notice form shall be bilingual, in English and Spanish, and also available in English and each of the other languages in which California Official Voter Information Guides are published.

(d) The written notice may be delivered by certified mail addressed to the parent or guardian at the parent's or guardian's last known address with return receipt requested and restricted delivery to the addressee. To help ensure timely notice, a copy of the written notice shall also be sent at the same time by first-class mail to the parent or guardian. Notice can only be presumed to have been delivered under the provisions of this subdivision at noon of the second day after the written notice sent by certified mail was postmarked, not counting any days on which regular mail delivery does not take place.

(e) Notice of an unemancipated minor's intent to obtain an abortion and the reflection period of at least 48 hours may be waived by her parent or guardian. The waiver must be in writing, on a form prescribed by the State Department of Health Services, signed by a parent or guardian, dated, and notarized. The parent or guardian shall specify on the form that the waiver is valid for 30 days, or until a specified date, or until the minor's eighteenth birthday. The written waiver need not be notarized if the parent

84

85

or guardian personally delivers it to the physician or the physician's agent. The form shall include the following statement:

“WARNING. It is a crime to knowingly provide false information to a physician or a physician's agent for the purpose of inducing a physician or a physician's agent to believe that a waiver of notice has been provided by a parent or guardian.” The waiver form shall be bilingual, in English and Spanish, and also available in English and each of the other languages in which California Official Voter Information Guides are published. For each abortion performed on an unemancipated minor pursuant to this subdivision, the physician or the physician's agent must receive a separate original written waiver that shall be retained with the unemancipated minor's medical records.

(f) Notice shall not be required under this section if the attending physician certifies in the unemancipated minor's medical records the medical indications supporting the physician's good-faith clinical judgment that the abortion is necessary due to a medical emergency.

(g) Notice shall not be required under this section if waived pursuant to this subdivision and subdivision (h), (i), or (j). If the pregnant unemancipated minor elects not to permit notice to be given to a parent or guardian, she may file a petition with the juvenile court. If, pursuant to this subdivision, an unemancipated minor seeks to file a petition, the court shall assist the minor or person designated by the minor in preparing the documents required pursuant to this section. The petition shall set forth with specificity the minor's reasons for the request. The court shall ensure that the minor's identity be kept confidential and that all court proceedings be sealed. No filing fee shall be required for filing a petition. The unemancipated minor shall appear personally in the proceedings in juvenile court and may appear on her own behalf or with counsel of her own choosing. The court shall, however, advise her that she has a right to court-appointed counsel upon request. The court shall appoint a guardian ad litem for her. The hearing shall be held by 5 p.m. on the second court day after filing the petition unless extended at the written request of the unemancipated minor, her guardian ad litem, or her counsel. If the guardian ad litem requests an extension, that extension may not be granted for more than one court day without the consent of the unemancipated minor or her counsel. The unemancipated minor shall be notified of the date, time, and place of the hearing on the petition. Judgment shall be entered within one court day of submission of the matter. The judge shall order a record of the evidence to be maintained, including the judge's written factual findings and legal conclusions supporting the decision.

(h) (1) If the judge finds, by clear and convincing evidence, that the unemancipated minor is sufficiently mature and well-informed to decide whether to have an abortion, the judge shall authorize a waiver of notice of a parent or guardian.

(2) If the judge finds, by clear and convincing evidence, that notice to a parent or guardian is not in the best interests of the unemancipated minor, the judge shall authorize a waiver of notice. If the finding that notice to a parent or guardian is not in the best interests of the minor is based on evidence of physical, sexual, or emotional abuse, the court shall ensure that such evidence is brought to the attention of the appropriate county child protective agency.

(3) If the judge does not make a finding specified in paragraph (1) or (2), the judge shall deny the petition.

(i) If the judge fails to rule within the time period specified in subdivision (g) and no extension was requested and granted, the petition shall be deemed granted and the notice requirement shall be waived.

(j) The unemancipated minor may appeal the judgment of the juvenile court at any time after the entry of judgment. The Judicial Council shall prescribe, by rule, the practice and procedure on appeal and the time and manner in which any record on appeal shall be prepared and filed and may prescribe forms for such proceedings. These procedures shall require that the hearing shall be held within three court days of filing the notice of appeal. The unemancipated minor shall be notified of the date, time, and place of the hearing. Judgment shall be entered within one court day of submission of the matter. The appellate court shall ensure that the unemancipated minor's identity be kept confidential and that all court proceedings be sealed. No filing fee shall be required for filing an appeal. Judgment on appeal shall be entered within one court day of submission of the matter.

(k) The Judicial Council shall prescribe, by rule, the practice and procedure for petitions for waiver of parental notification, hearings, and entry of judgment as it deems necessary and may prescribe forms for such

proceedings. Each court shall provide annually to the Judicial Council, in a manner to be prescribed by the Judicial Council to ensure confidentiality of the unemancipated minors filing petitions, a report of the number of petitions filed, the number of petitions granted under paragraph (1) or (2) of subdivision (h), deemed granted under subdivision (i), denied under paragraph (3) of subdivision (h), and granted and denied under subdivision (j), said reports to be publicly available unless the Judicial Council determines that the data contained in individual reports should be aggregated by county before being made available to the public in order to preserve the confidentiality of the unemancipated minors filing petitions.

(l) The State Department of Health Services shall prescribe forms for the reporting of abortions performed on unemancipated minors by physicians. The report forms shall not identify the unemancipated minor or her parent(s) or guardian by name or request other information by which the unemancipated minor or her parent(s) or guardian might be identified. The forms shall include the date of the procedure and the unemancipated minor's month and year of birth, the duration of the pregnancy, the type of abortion procedure, the numbers of the unemancipated minor's previous abortions and deliveries if known, and the facility where the abortion was performed. The forms shall also indicate whether the abortion was performed after personal delivery of a notice, pursuant to subdivision (c); or was an abortion performed after presumed delivery of a notice by mail, pursuant to subdivision (d); or was an abortion performed after receiving a waiver of notice, pursuant to subdivision (e); or was an abortion performed without notice, pursuant to subdivision (f); or was an abortion performed after receiving any judicial waiver of notice, pursuant to subdivision (h), (i), or (j).

(m) The physician who performs an abortion on an unemancipated minor shall within one month file a dated and signed report concerning it with the State Department of Health Services on forms prescribed pursuant to subdivision (l). The identity of the physician shall be kept confidential and shall not be subject to disclosure under the California Public Records Act.

(n) The State Department of Health Services shall compile an annual statistical report from the information specified in subdivision (l). The annual report shall not include the identity of any physician who filed a report as required by subdivision (m). The compilation shall include statistical information on the numbers of abortions by month and by county where performed, the minors' ages, the duration of the pregnancies, the types of abortion procedures, the numbers of prior abortions or deliveries where known, and the numbers of abortions performed after personal delivery of a notice, pursuant to subdivision (c); the numbers of abortions performed after presumed delivery of a notice by mail, pursuant to subdivision (d); the numbers of abortions performed after a waiver of notice, pursuant to subdivision (e); the numbers of abortions performed without notice, pursuant to subdivision (f); and the numbers of abortions performed after any judicial waivers, pursuant to subdivision (h), (i), or (j). The annual statistical report shall be made available to county public health officials, Members of the Legislature, the Governor, and the public.

(o) Any person who performs an abortion on an unemancipated minor and in so doing knowingly or negligently fails to comply with the provisions of this section shall be liable for damages in a civil action brought by the unemancipated minor, her legal representative, or by a parent or guardian wrongfully denied notification. A person shall not be liable under this section if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the unemancipated minor or other persons regarding information necessary to comply with this section were bona fide and true. At any time prior to the rendering of a final judgment in an action brought under this subdivision, the parent or guardian may elect to recover, in lieu of actual damages, an award of statutory damages in the amount of ten thousand dollars (\$10,000). In addition to any damages awarded under this subdivision, the plaintiff shall be entitled to an award of reasonable attorney fees. Nothing in this section shall abrogate, limit, or restrict the common law rights of parents or guardians, or any right to relief under any theory of liability that any person or any state or local agency may have under any statute or common law for any injury or damage, including any legal, equitable, or administrative remedy under federal or state law, against any party, with respect to injury to an unemancipated minor from an abortion.

(p) Other than an unemancipated minor who is the patient of a physician, or other than the physician or the physician's agent, any person who knowingly provides false information to a physician or a physician's

agent for the purpose of inducing the physician or the physician's agent to believe that pursuant to this section notice has been or will be delivered, or that a waiver of notice has been obtained, or that an unemancipated minor patient is not an unemancipated minor, is guilty of a misdemeanor punishable by a fine of up to one thousand dollars (\$1,000).

(q) Notwithstanding any notices delivered pursuant to subdivision (c) or (d) or waivers received pursuant to subdivision (e), (h), (i), or (j), except where the particular circumstances of a medical emergency or her own mental incapacity precludes obtaining her consent, a physician shall not perform or induce an abortion upon an unemancipated minor except with the consent of the unemancipated minor herself.

(r) Notwithstanding any notices delivered pursuant to subdivision (c) or (d) or waivers received pursuant to subdivision (e), (h), (i), or (j), an unemancipated minor who is being coerced by any person through force, threat of force, or threatened or actual deprivation of food or shelter to consent to undergo an abortion may apply to the juvenile court for relief. The court shall give the matter expedited consideration and grant such relief as may be necessary to prevent such coercion.

(s) This section shall not take effect until 90 days after the election in which it is approved. The Judicial Council shall, within these 90 days, prescribe the rules, practices, and procedures and prepare and make available any forms it may prescribe as provided in subdivision (k). The State Department of Health Services shall, within these 90 days, prepare and make available the forms prescribed in subdivisions (c), (e), and (l).

(t) If any one or more provision, subdivision, sentence, clause, phrase or word of this section or the application thereof to any person or circumstance is found to be unconstitutional or invalid, the same is hereby declared to be severable and the balance of this section shall remain effective notwithstanding such unconstitutionality or invalidity. Each provision, subdivision, sentence, clause, phrase, or word of this section would have been approved by voters irrespective of the fact that any one or more provision, subdivision, sentence, clause, phrase, or word might be declared unconstitutional or invalid.

(u) Except for the rights, duties, privileges, conditions, and limitations specifically provided for in this section, nothing in this section shall be construed to grant, secure, or deny any other rights, duties, privileges, conditions, and limitations relating to abortion or the funding thereof.

PROPOSITION 86

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds sections to the California Constitution and the Health and Safety Code, the Insurance Code, the Revenue and Taxation Code, and the Welfare and Institutions Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

THE TOBACCO TAX ACT OF 2006

SECTION 1. Statement of Findings

(a) Cigarette smoking and other uses of tobacco are leading causes of many serious health problems, including cancer, heart disease and respiratory diseases. The treatment of tobacco-related diseases imposes a significant burden upon California's already overstressed health care system. Prior efforts to curb the use of tobacco have not sufficiently eased the health care burden on the taxpayers of California.

(b) Tobacco use costs Californians billions of dollars a year in medical expenses and lost productivity.

(c) Currently, the state imposes a tax on cigarettes and tobacco products. Funds from that tax are used in part by the state to fund programs to offset the adverse health consequences of tobacco use. The tobacco tax is an appropriate source to fund prevention, research and treatment of chronic diseases, including improved access to health care for children and adults.

(d) The tax on tobacco products in California has not been raised since 1998. As a consequence, the total tax levied on tobacco products is much less than in many other states. Yet the health consequences to our citizens, particularly children and young adults, and the corresponding

burden on our state's health care system continue.

(e) The deterioration of the state's hospital emergency services network has left many communities unable to adequately cope with the normal flow of emergency services. This emergency services crisis imposes a significant burden on our community clinics and keeps them from fulfilling their important health care function for low income children and adults.

(f) Funds which could be used to provide pioneering research into the prevention and treatment of chronic diseases, and health insurance for our most vulnerable children, are increasingly diverted to address the health care crisis caused, in part, by tobacco-related illnesses.

(g) Almost 80% of adult smokers become addicted to tobacco before age 18. Increasing the cost of cigarettes and other tobacco products and providing a comprehensive tobacco control program have proven to be two of the most effective ways to reduce smoking among youth and the associated health problems and economic costs.

(h) The establishment of programs designed to (1) reduce the consumption of tobacco in the first instance, (2) fund research, early detection and treatment of chronic diseases, and (3) preserve access to emergency hospital services performed by well-trained doctors and nurses, is vital to the public's interest.

SEC. 2. Statement of Purpose

(a) The people of California hereby increase the tax on tobacco to reduce the economic costs of tobacco use in California and to provide supplemental funding to:

- (1) promote medical research into chronic diseases, particularly cancer;
- (2) reduce the impact of chronic diseases through prevention, early detection, treatment and comprehensive health insurance; and
- (3) improve access to and delivery of health care, particularly emergency health services.

SEC. 3. Tobacco Tax

Article 4 (commencing with Section 30132) is added to Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, to read:

Article 4. The Tobacco Tax of 2006 Trust Fund

30132. The Tobacco Tax of 2006 Trust Fund ("Tobacco Trust Fund") is hereby created in the State Treasury. The fund shall consist of all revenues deposited therein pursuant to this Article, including interest and investment income. Moneys deposited into the Tobacco Tax of 2006 Trust Fund shall be allocated and are continuously appropriated for the exclusive purpose of funding the programs and services in Section 30132.3 and shall be available for expenditure without regard to fiscal years.

30132.1. (a) In addition to the taxes imposed upon the distribution of cigarettes by Article 1 (commencing with Section 30101) and Article 2 (commencing with Section 30121) and Article 3 (commencing with Section 30131) and any other taxes in this Chapter, there shall be imposed an additional tax upon every distributor of cigarettes at the rate of one hundred thirty mills (\$0.130) for each cigarette distributed.

(b) For purposes of this Article, the term "cigarette" has the same meaning as in Section 30003, as it read on January 1, 2005.

(c) The tax imposed by this Section, and the resulting increase in the tax on tobacco products required by subdivision (b) of Section 30123, shall be imposed on every cigarette and on all tobacco products in the possession or under the control of every dealer, wholesaler, and distributor on and after 12:01 a.m. on January 1, 2007, pursuant to rules and regulations promulgated by the State Board of Equalization.

30132.2. The State Board of Equalization shall determine within one year of the passage of this Act, and annually thereafter, the effect that the additional tax imposed on cigarettes by this Act, and the resulting increase in the tax on tobacco products required by subdivision (b) of Section 30123, have on the consumption of cigarettes and tobacco products in this state. To the extent that a decrease in consumption is determined by the State Board of Equalization to be a direct result of the additional tax imposed by this Act, or the resulting increase in the tax on tobacco products required by subdivision (b) of Section 30123, the State Board of Equalization shall determine the fiscal effect the decrease in consumption has on the California Children and Families Trust Fund created by Proposition 10 (1998). Funds shall be transferred from the

85

86

Tobacco Trust Fund to the California Children and Families Trust Fund as necessary to offset the revenue decrease directly resulting from imposition of the additional tax imposed by this Act, and the resulting increase in the tax on tobacco products required by subdivision (b) of Section 30123. The reimbursements shall occur, and at such times, as determined necessary to further the intent of this Section.

30132.3. Except for payments of refunds made pursuant to Article 1 (commencing with Section 30361) of Chapter 6, reimbursement of the State Board of Equalization for expenses incurred in the administration and collection of the tax imposed by Section 30132.1 and the resulting increase in the tax on tobacco products required by subdivision (b) of Section 30123, and transfers of funds in accordance with Section 30132.2, all moneys raised pursuant to the tax imposed by Section 30132.1, and the resulting increase in the tax on tobacco products required by subdivision (b) of Section 30123, shall be deposited in the Tobacco Trust Fund. Moneys shall be allocated and appropriated from the Tobacco Trust Fund, as follows:

(a) To the Health and Disease Research Account, which is hereby created, five percent (5%), allocated to the following Sub-Accounts for the purposes stated therein:

(1) Thirty-four percent (34%) shall be deposited in a Tobacco Control Research Sub-Account, which is hereby created. All funds in the Tobacco Control Research Sub-Account shall be continuously appropriated to the University of California to be used solely to supplement the Tobacco Related Disease Research Program described in Article 2 (commencing with Section 104500) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code. The research funded by the Tobacco-Related Disease Research Program with these supplementary funds shall include, but not be limited to:

(A) Research to improve the effectiveness of tobacco control efforts in California, including programs and strategies for governmental and other organizations to reduce tobacco use and exposure to secondhand smoke; and

(B) Research on the prevention, causes, and treatment of tobacco-related diseases, including, but not limited to coronary heart disease, cerebrovascular disease, chronic obstructive lung disease, and cancer.

(2) Fourteen and one-half percent (14.50%) shall be deposited in a Cancer Registry Sub-Account, which is hereby created. All funds in the Cancer Registry Sub-Account shall be continuously appropriated to the State Department of Health Services to be used solely for a statewide population-based cancer surveillance system as provided for in Chapter 2 (commencing with Section 103875) of Part 2 of Division 102 of the Health and Safety Code.

(3) Twenty-five and three-fourths percent (25.75%) shall be deposited in a Breast Cancer Research Sub-Account, which is hereby created. All funds in the Breast Cancer Research Sub-Account shall be continuously appropriated to the University of California to be used solely for the Breast Cancer Research Program provided for in Article 1 (commencing with Section 104145) of Chapter 2 of Part 1 of Division 103 of the Health and Safety Code.

(4) Fourteen and three-fourths percent (14.75%) shall be deposited in a Cancer Research Sub-Account, which is hereby created. All funds in the Cancer Research Sub-Account shall be continuously appropriated to the State Department of Health Services to be used solely for the Cancer Research Program described in Section 104181 of the Health and Safety Code, with a focus on applied research, which includes but is not limited to, research that is geared towards the accelerated transfer of recent laboratory and clinical technologic advances into primary care, public health and community settings so that the majority of California's population may benefit. This research should be focused on converting recent discoveries into interventions and technologies, proving that they work, and learning how best to apply them.

(5) Eleven percent (11%) shall be deposited in the Lung Cancer and Lung Disease Research Sub-Account, which is hereby created. All funds deposited in the Lung Cancer and Lung Disease Research Sub-Account shall be continuously appropriated to the University of California to be used solely to provide research grants to develop and advance the understanding, causes, techniques, and modalities effective in the prevention, care, treatment, and cure of lung disease. For purposes of this Section, the lung disease research areas shall include, but not be limited to lung cancer, asthma, tuberculosis, and chronic obstructive pulmonary

disease, which includes chronic bronchitis and emphysema.

(b) To the Health Maintenance and Disease Prevention Account, which is hereby created, forty-two and one-fourth of one percent (42.25%), allocated to the following Sub-Accounts for the purposes stated therein:

(1) Six and three-fourths percent (6.75%) shall be deposited in the Tobacco Control Media Campaign Sub-Account, which is hereby created. All funds in the Tobacco Control Media Campaign Sub-Account shall be continuously appropriated to the State Department of Health Services to be used solely for media advertisements and public relations programs to prevent and reduce the use of tobacco products as described in paragraph (1) of subdivision (e) of Section 104375 of the Health and Safety Code.

(2) Four and one-half percent (4.50%) shall be deposited in a Tobacco Control Competitive Grants Sub-Account, which is hereby created. All funds in the Tobacco Control Competitive Grants Sub-Account shall be continuously appropriated to the State Department of Health Services to be used solely for the competitive grants program directed at the prevention of tobacco-related diseases as described in Section 104385 of the Health and Safety Code.

(3) Four and one-fourths percent (4.25%) shall be deposited in a Local Health Department Tobacco Prevention Sub-Account, which is hereby created. All funds in the Local Health Department Tobacco Prevention Sub-Account shall be continuously appropriated to the State Department of Health Services to be used solely for local-health-department-based programs to prevent tobacco use as described in Section 104400 of the Health and Safety Code. Notwithstanding Section 104380 of the Health and Safety Code, funds from the Local Health Department Tobacco Prevention Sub-Account shall be appropriated to local lead agencies based on each county's proportion of the statewide population.

(4) One-half percent (0.50%) shall be deposited in a Tobacco Control Evaluation Sub-Account, which is hereby created. All funds in the Tobacco Control Evaluation Sub-Account shall be continuously appropriated to the State Department of Health Services to be used solely for evaluation of tobacco control programs as required by subdivisions (b) and (c) of Section 104375 of the Health and Safety Code.

(5) Three and one-half percent (3.50%) shall be deposited in a Tobacco Education Sub-Account, which is hereby created. All funds in the Tobacco Education Sub-Account shall be continuously appropriated to the State Department of Education to be used solely for programs to prevent or reduce the use of tobacco products as described in Section 104420 of the Health and Safety Code. Any program receiving funds pursuant to this section must participate in program evaluations conducted by the State Department of Health Services pursuant to Article 1 (commencing with Section 104350) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code. At least two percent (2%) of the money in the Tobacco Education Sub-Account shall be used solely for administration of the department's tobacco prevention education program as described in Sections 104420 and 104425 of the Health and Safety Code.

(6) Two and one-fourths percent (2.25%) shall be deposited in the Tobacco Control Enforcement Sub-Account, which is hereby created. All funds in the Tobacco Control Enforcement Sub-Account shall be used solely for programs to enforce tobacco-related statutes and policies, to enforce legal settlement provisions, and to conduct law enforcement training and technical assistance activities, and shall be appropriated as follows:

(A) Fifty percent (50%) of the funds in the Tobacco Control Enforcement Sub-Account is continuously appropriated to the State Department of Health Services to be used to support programs, including, but not limited to: providing grants to local law enforcement agencies to provide training and funding for the enforcement of state and local tobacco-related laws and policies, including, but not limited to the illegal sales of tobacco to minors, tobacco retailer licensing and exposure to secondhand smoke; and increasing investigative activities, compliance checks and other appropriate activities to reduce illegal sales of tobacco products to minors under the Stop Tobacco Access to Kids Enforcement (STAKE) Act, pursuant to Section 22952 of the Business and Professions Code.

(B) Twenty-five percent (25%) of the funds in the Tobacco Control Enforcement Sub-Account is continuously appropriated to the California Office of the Attorney General to be used for activities including, but not limited to: enforcing laws that regulate the distribution and sale of cigarettes and other tobacco products, such as laws that prohibit cigarette smuggling, counterfeiting, selling untaxed tobacco, selling tobacco without a proper license and selling tobacco to minors; enforcing tobacco-related

laws, court judgments, and settlements, such as the Tobacco Master Settlement Agreement and the Smokeless Tobacco Master Settlement Agreement, entered into on November 23, 1998, by the State of California and leading United States tobacco product manufacturers, including tracking tobacco industry advertising, marketing, and promotional activities in California, and bringing actions against violators; and assisting local law enforcement agencies in the enforcement of tobacco-related statutes and local ordinances through technical assistance and training activities.

(C) Twenty-five percent (25%) of the funds in the Tobacco Control Enforcement Sub-Account is continuously appropriated to the State Board of Equalization to be used to enforce laws that regulate the distribution and sale of cigarettes and other tobacco products, such as laws that prohibit cigarette smuggling, counterfeiting, selling untaxed tobacco, and selling tobacco without a proper license.

(7) Eight percent (8%) shall be deposited in a Breast and Cervical Cancer Early Detection Sub-Account, which is hereby created. All funds in the Breast and Cervical Cancer Early Detection Sub-Account shall be continuously appropriated to the State Department of Health Services to be used solely for breast and cervical cancer prevention and early detection services that result in the reduction of breast and cervical cancer morbidity and mortality in California. These early detection services shall be part of a program that includes a significant quality assurance and improvement component, including patient and provider education, community outreach, and program evaluation.

(8) Eight and one-half percent (8.50%) shall be deposited in a Heart Disease and Stroke Prevention Sub-Account, which is hereby created. All funds in the Heart Disease and Stroke Prevention Sub-Account shall be continuously appropriated to the State Department of Health Services to be used solely for the California Heart Disease and Stroke Prevention Program provided for in Section 104142 of the Health and Safety Code. The intent of this program is to reduce the risk, disability and death from heart disease and stroke.

(9) Seven and three-fourths percent (7.75%) shall be deposited in an Obesity Prevention, Nutrition and Physical Activity Promotion Sub-Account, which is hereby created. All funds in the Obesity Prevention, Nutrition and Physical Activity Promotion Sub-Account shall be appropriated as follows:

(A) Seventy percent (70%) shall be continuously appropriated to the State Department of Health Services to support programs and activities to be used solely to prevent obesity, diabetes, and chronic diseases through the promotion of community norm change, healthy eating, and physical activity. The department shall design, develop and enhance a comprehensive program that includes, but need not be limited to: media advertisements and public relations programs; competitive grants to community based organizations and agencies; grants to local health departments; research and evaluation of program effectiveness; and those provisions contained in Section 104650 of the Health and Safety Code.

(B) Thirty percent (30%) shall be continuously appropriated to the State Department of Education to be used solely to design, develop, and support programs and activities to prevent obesity, diabetes and chronic diseases through the promotion of, and access to, healthy eating and physical activity for children and their families within the context of coordinated school health. Such programs and activities shall include but need not be limited to, promotion of, and access to, fruits, vegetables and other healthy foods; promotion of moderate and vigorous physical activity; promotion of health education and physical education; research, surveillance and evaluation of program effectiveness; professional development for teachers and other appropriate staff in health education and physical education; and monitoring local educational agencies' compliance with state laws for nutrition and physical education.

(C) The State Department of Health Services, in consultation with the State Department of Education, shall establish an Oversight Committee composed of 13 members selected for their expertise in nutrition, physical activity and education, and related disciplines pertinent to the purposes of this Sub-Account. Membership shall include, but need not be limited to, representation from the following: health and education organizations, public health and local education agencies, advocacy groups, and healthcare professionals and organizations.

The Oversight Committee shall advise the State Department of Health Services and the State Department of Education with respect to policy

development and evaluation and provide guidance on strategic priorities, coordination, and collaboration among state agencies with regard to the programs funded by the Obesity Prevention and Nutrition and Physical Activity Promotion Sub-Account.

(10) Four and one-fourths percent (4.25%) shall be deposited in an Asthma Prevention and Control Sub-Account, which is hereby created. All funds in the Asthma Prevention and Control Sub-Account shall be used solely to support asthma assessment, community intervention strategies, training and technical assistance, surveillance, evaluation of asthma prevention and control activities, translational research to implement effective interventions, and school-based asthma education, training and coordination activities. These funds shall be appropriated as follows:

(A) Sixty percent (60%) of the funds in the Asthma Prevention and Control Sub-Account is continuously appropriated to the State Department of Health Services to fund programs and services including, but not limited to those described in Chapter 6.5 (commencing with Section 104316) of Part 1 of Division 103 of the Health and Safety Code, including community childhood asthma programs within the California Asthma Public Health Initiative and asthma surveillance within the Environmental Health Investigations Branch, and to support media advertisements, public relations and other public education activities. Areas in the state that have the highest asthma prevalence, and areas with low socioeconomic status populations shall receive priority consideration in the expenditure of these funds.

(B) Forty percent (40%) of the funds in the Asthma Prevention and Control Sub-Account is continuously appropriated to the State Department of Education to improve the management of asthma within the school setting. Funds shall be for activities and programs, including, but not limited to: statewide coordination of asthma programs and services, the development or purchase and dissemination of educational and training materials, delivery of asthma education and training to school personnel, and the reduction of asthma triggers in the indoor and outdoor school environments. Schools in areas of the state that have the highest asthma prevalence, schools serving low socioeconomic status students and school districts that do not have school nurses shall receive priority consideration in the expenditure of these funds.

(11) Four and one-fourths percent (4.25%) shall be deposited in a Colorectal Cancer Sub-Account, which is hereby created. All funds in the Colorectal Cancer Sub-Account shall be continuously appropriated to the State Department of Health Services to be used solely for the Colorectal Cancer Prevention, Detection and Treatment Program described in Article 2.7 (commencing with Section 104195) of Chapter 2 of Part 1 of Division 103 of the Health and Safety Code. The intent of this program is to reduce the incidence, morbidity, and mortality due to colorectal cancer. This program shall include various public health components, including a significant quality assurance and improvement component, patient and provider education, community outreach, and program evaluation. No less than forty percent (40%) of the funds for this program shall be used for those non-clinical public health components.

(12) Forty-five and one-half percent (45.50%) of the Fund shall be deposited in the California Healthy Kids Sub-Account, which is hereby created to ensure that every child in California is eligible for comprehensive, affordable health insurance and has access to needed health care. All moneys in the California Healthy Kids Sub-Account shall be continuously appropriated to the California Health and Human Services Agency only for implementation by the State Department of Health Services and the Managed Risk Medical Insurance Board of Chapter 17 (commencing with Section 12693.99) of Part 6.2 of Division 2 of the Insurance Code pursuant to the provisions and restrictions thereof. No less than ninety percent (90%) of the funds appropriated from this Sub-Account shall be used for implementation of Section 12693.99 of the Insurance Code. No more than ten percent (10%) of the funds appropriated from this Sub-Account shall be used for implementation of Section 12693.991 of the Insurance Code.

(c) To the Health Treatment and Services Account, which is hereby created, fifty-two and three-fourths percent (52.75%), allocated to the following Sub-Accounts for the purposes stated therein:

(1) One and three-fourths percent (1.75%) shall be deposited in a Tobacco Cessation Services Sub-Account, which is hereby created. All funds in the Tobacco Cessation Services Sub-Account shall be continuously appropriated to the State Department of Health Services to be used solely to provide tobacco cessation programs and services to assist adult and

minor tobacco users to quit tobacco. It is the intent of this Act that this appropriation supports programs and services including, but not limited to counseling, referral and support services, pharmaceutical tobacco cessation products, and training and technical assistance activities.

(2) One and three-fourths percent (1.75%) shall be deposited in a Prostate Cancer Treatment Sub-Account, which is hereby created. All funds in the Prostate Cancer Treatment Sub-Account shall be continuously appropriated to the State Department of Health Services to be used solely to provide for prostate cancer prevention and treatment for low income and uninsured men.

(3) Five and three-fourths percent (5.75%) shall be deposited in the Community Clinics Uninsured Sub-Account, which is hereby created to fund nonprofit clinic corporations providing vital health care service to the uninsured in accordance with Article 6 (commencing with Section 1246) of Chapter 1 of Division 2 of the Health and Safety Code. All funds in the Community Clinics Uninsured Sub-Account shall be continuously appropriated to the State Department of Health Services solely for implementation of Article 6 (commencing with Section 1246) of Chapter 1 of Division 2 of the Health and Safety Code.

(4)(i) Five and three-fourths percent (5.75%) to the Emergency Care Physician Services Sub-Account, which is hereby created. All funds in the Emergency Care Physician Services Sub-Account shall be continuously appropriated to the State Department of Health Services to be administered and allocated for distribution through the California Healthcare for Indigents Program (CHIP), Chapter 5 (commencing with Section 16940) of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(ii) Three-fourths percent (0.75%) to the Rural Emergency Care Physician Services Sub-Account, which is hereby created. All funds in the Rural Emergency Care Physician Services Sub-Account shall be continuously appropriated to the State Department of Health Services to be administered and allocated for distribution through the Rural Health Services Program (RHSP), Chapter 4 (commencing with Section 16930) of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(iii) Funds allocated to the Emergency Care Physician Services Sub-Account and Rural Emergency Care Physician Services Sub-Account shall be used only for reimbursement of physicians for losses incurred in providing uncompensated emergency services in general acute care hospitals providing basic, comprehensive, or standby emergency services, as defined in Section 16953 of the Welfare and Institutions Code. Funds shall be transferred annually by the Department to the Physician Services Accounts in the county Emergency Medical Services Fund established pursuant to Sections 16951 and 16952 of the Welfare and Institutions Code, and shall be paid only to physicians who directly provide emergency medical services to patients, based on claims submitted or a subsequent reconciliation of claims. Payments shall be made as provided in Sections 16951 to 16959, inclusive, of the Welfare and Institutions Code, and payments shall be made on an equitable basis, without preference to any particular physician or group of physicians. Funds allocated by this Section to counties that have not established an Emergency Medical Services Fund pursuant to Section 16951 shall be deposited into the Department of Health Services EMSA Contract Back Program, to be used only for the reimbursement of uncompensated emergency services, as defined in Section 16953, and payments made, based on claims submitted, in accordance with the procedures and policies established in Sections 16952 through 16959 of the Welfare and Institutions Code.

(5) Three-fourths percent (0.75%) to the Medically Underserved Account created by Business and Professions Code section 2154.4. All funds in the Medically Underserved Account shall be continuously appropriated to the Medical Board of California to promote the practice of medicine in areas of the state underserved by physicians to low-income patients pursuant to the Steven M. Thompson Physician Corps Loan Repayment Program set forth in Article 7.7 (commencing with Section 2154) of Chapter 5 of Division 2 of the Business and Professions Code.

(6) Nine percent (9%) to the Nursing Workforce Education Sub-Account, which is hereby created. All funds in the Nursing Workforce Education Sub-Account shall be continuously appropriated to the Office of Statewide Health Planning and Development to be used solely to expand nursing education opportunities and capabilities to meet nursing workforce demands pursuant to Section 128225.5 of the Health and Safety Code. Expenditures from the Nursing Workforce Education Sub-Account shall be made according to the following formula:

(A) Eighty-six percent (86%) shall be used to support the expansion of California Board of Registered Nursing (“BRN”) -approved registered nurse education pre-licensure programs in the California Community Colleges, the California State University and the University of California, and to support the expansion of graduate nursing education programs (MSN, DNSc/Ph.D.), and to support California Advanced Practice Registered Nurse Programs at the California State University and the University of California.

(B) Fourteen percent (14%) shall be used to support the expansion of BRN-approved privately operated registered nurse education pre-licensure programs, the expansion of privately operated graduate nursing education programs (MSN, DNSc/Ph.D.), and to support the expansion of privately operated California Advanced Practice Registered Nurse Programs.

(7) Seventy-four and one-half percent (74.50%) to the Emergency and Trauma Hospital Services Sub-Account, which is hereby created. All funds in the Emergency and Trauma Hospital Services Sub-Account shall be continuously appropriated to the State Department of Health Services to further the provision of hospital and medical services to emergency patients in California pursuant to Chapter 4.5 (commencing with Section 1797.300) of Division 2.5 of the Health and Safety Code.

30132.4. All moneys allocated to and deposited in the specific Accounts and Sub-Accounts of the Tobacco Tax of 2006 Trust Fund shall be expended as set forth pursuant to the requirements specific to each Account or Sub-Account as set forth in Section 30132.3. Notwithstanding Government Code Section 13340, any moneys allocated and appropriated to any of the Accounts or Sub-Accounts of the Tobacco Tax of 2006 Trust Fund that are not encumbered or expended within any applicable period prescribed by law shall, together with the accrued interest on the amount, revert to and remain in the same Account or Sub-Account for encumbrance and expenditure for the next fiscal period.

30132.5. (a) All moneys raised pursuant to the tax imposed by Section 30132.1, and all moneys raised by the resulting increase in the tax on tobacco products required by subdivision (b) of Section 30123, shall be appropriated and expended only for the purposes expressed in this Act. Funds appropriated pursuant to this Act shall be used only to supplement existing levels of service and not to supplant funding for existing levels of service. Funds may be used to match available state, federal, or local funds. Except as specified in subdivision (b), no moneys in the Tobacco Tax of 2006 Trust Fund shall be used to supplant state or local General Fund money for any purpose, including back-filling state or local General Fund obligations.

(b) In addition to the provisions of subdivision (a), all moneys raised pursuant to the tax imposed by Section 30132.1, and all moneys raised by the resulting increase in the tax on tobacco products required by subdivision (b) of Section 30123, shall not supplant the following:

(1) Local funds used to secure state or federal matching funds for any children’s health services, children’s health, or medical assistance programs, including but not limited to, the following: (A) Healthy Families, (B) Medi-Cal, whether full-scope or emergency or pregnancy-related care only, and (C) the Child Health and Disability Prevention Program; but not including funds generated by or expended from the California Children and Families Trust Fund (Division 108 (commencing with Section 130100) of the Health and Safety Code) or from the County Health Initiative Matching Fund (Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code);

(2) State funds used to secure federal matching funds for any children’s health services, children’s health, or medical assistance programs, including but not limited to the following:

(A) Healthy Families,
 (B) Medi-Cal, whether full-scope or emergency or pregnancy-related care only, and
 (C) The Child Health and Disability Prevention Program; or

(3) State or federal funds to continue or maintain the amount, duration, scope and structure of benefits that existed as of September 30, 2005 for any children’s health services, children’s health, or medical assistance programs, including but not limited to the following:

(A) Healthy Families,
 (B) Medi-Cal, whether full-scope or emergency or pregnancy-related care only, and

(C) *The Child Health and Disability Prevention Program.*

(c) *It is the intent of the people of the State of California that the Tobacco Tax Act of 2006 shall, in accordance with the purposes and intent of this Act, maximize, and not reduce, federal matching funds made available to the State for children's health coverage under Title XIX and/or Title XXI of the Social Security Act.*

(d) *No state or local government agency shall consider the revenue supporting emergency services to hospitals provided by this Act in its determination of the amount or rate of payment to hospitals on behalf of patients who are government-sponsored or the responsibility of a governmental agency or body.*

30132.6. *Notwithstanding any other provision of law, money deposited in the Tobacco Tax of 2006 Trust Fund may not be loaned to, or borrowed by, any other special fund or the General Fund, or a county general fund or any other county fund, for any purpose other than those authorized by the Tobacco Tax Act of 2006.*

30132.7. *Due to the necessity to rapidly and efficiently implement the mandates of the Tobacco Tax Act of 2006, any contract made pursuant to paragraphs (7) through (11) of subdivision (b), and paragraph (2) of subdivision (c) of Section 30132.3, shall not be subject to Part 2 (commencing with Section 10100) of the Public Contract Code for the first five full years after enactment.*

30132.8. *At least two percent (2%) of the money appropriated to the State Department of Health Services pursuant to paragraphs (1) through (4) and paragraph (6) of subdivision (b) of Section 30132.3, and paragraph (1) of subdivision (c) of Section 30132.3, shall be used solely for administration of the department's tobacco control programs.*

30132.9. *Moneys in the Tobacco Tax of 2006 Trust Fund and any Account or Sub-Account therein, may be used to maximize federal matching funds, so long as all moneys are expended in a manner fully consistent with the Tobacco Tax Act of 2006.*

30132.10. *To provide full public accountability concerning the uses to which moneys in the Tobacco Tax of 2006 Trust Fund are put, and to ensure full compliance with the Tobacco Tax Act of 2006:*

(a) *Beginning with the first full fiscal year after the adoption of the Tobacco Tax Act of 2006, and annually thereafter, the State Department of Health Services shall prepare a report describing all programs that received Tobacco Tax of 2006 Trust Fund moneys in the previous fiscal year, and describing in detail the uses to which fund moneys were put during the previous fiscal year. This report shall be made available to the public on the department's web site, no later than March 31.*

(b) *All programs and departments receiving moneys from the Tobacco Tax of 2006 Trust Fund are subject to audits by the Bureau of State Audits.*

(c) *No more than five percent (5%) of the funds appropriated to any Account or Sub-Account created by the Tobacco Tax Act of 2006 may be used for administration, unless a lower amount is specified elsewhere in this Act.*

SEC. 4. Article 2.7 (commencing with Section 104195) is added to Chapter 2 of Part 1 of Division 103 of the Health and Safety Code, to read:

Article 2.7. Colorectal Cancer Prevention, Detection, and Treatment

104195. *The Colorectal Cancer Prevention, Detection, and Treatment Program shall be established within the State Department of Health Services.*

104195.1. *The program shall apply to both of the following groups:*

(a) *Uninsured and underinsured persons 50 years of age and older with incomes at or below two hundred percent (200%) of the federal poverty level.*

(b) *Uninsured and underinsured persons below 50 years of age who are at high risk for colorectal cancer according to the most recently published colorectal cancer screening guidelines of the U.S. Preventive Services Task Force and who have incomes at or below two hundred percent (200%) of the federal poverty level.*

104195.2. *Services provided under this Article shall include, but are not limited to, all of the following:*

(a) *Screening of men and women for colorectal cancer as an early detection health care measure, in accordance with the most recent cancer*

screening guidelines of the U.S. Preventive Services Task Force.

(b) *After screening, medical referral of the screened person and services necessary for a definitive diagnosis.*

(c) *If a positive diagnosis is made, then assistance and advocacy shall be provided to help the person obtain necessary treatment.*

(d) *Necessary treatment in accordance with the most recent cancer treatment guidelines of the National Comprehensive Cancer Network.*

(e) *Outreach and health education activities to ensure that uninsured and underinsured persons are aware of, and appropriately utilize, the services provided by the program.*

104195.3. *The department shall award one or more contracts to provide colorectal cancer screening and treatment through private or public nonprofit organizations, which may include, but shall not be limited to, community-based organizations, local health care providers, and the University of California medical centers.*

SEC. 5. *Heart Disease and Stroke Prevention Program*

Section 104142 is added to Chapter 1 of Part 1 of Division 103 of the Health and Safety Code, to read:

104142. *The California Heart Disease and Stroke Prevention Program (CHDSP) is hereby created in the State Department of Health Services. The CHDSP program that is hereby created is consistent with the existing CHDSP program within the department and shall not be duplicated by another cardiovascular disease (CVD) program.*

(a) *The CHDSP program shall do, but is not limited to, all of the following:*

(1) *Conduct programs to prevent and reduce risk factors for CVD including, but not limited to, high blood pressure, as provided for in Section 104100, and high cholesterol.*

(2) *Design, implement, and support programs to improve disease treatment and management, including quality of care for CVD.*

(3) *Promote and support medical professional development for the prevention and treatment of CVD.*

(4) *Collect, analyze, and publish data on CVD, which may include the establishment of a heart disease and stroke registry to track the incidence and prevalence of CVD.*

(5) *Guide the development of public health policies, including linkages with appropriate state agencies, to improve health outcomes from CVD.*

(6) *Conduct a statewide public education campaign that focuses on the incidence, signs, symptoms, and risk factor reduction strategies for CVD.*

(b) *The department shall consider, as a priority, the recommendations of the Heart Disease and Stroke Prevention and Treatment Task Force, as provided for in Section 104141.*

(c) *The department may authorize CVD research, including pilot demonstration projects.*

(d) *Nothing in this section shall duplicate other programs in the department.*

SEC. 6. Chapter 17 (commencing with Section 12693.99) is added to Part 6.2 of Division 2 of the Insurance Code, to read:

CHAPTER 17. *CHILDREN'S HEALTH*

12693.99. (a) *To ensure that every child in California is eligible for comprehensive, affordable health insurance and has access to needed health care, all children described in subdivision (b) shall be eligible for the California Healthy Families Program (Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code (hereinafter "Healthy Families").*

(b) *All children under 19 years of age shall be eligible for the services and benefits provided under this Chapter, notwithstanding paragraph (4) of subdivision (a) of Section 12693.70 and Section 12693.73, if they meet all of the following:*

(1) *Are in families with countable household income up to and including 300 percent of the federal poverty level. In a family with annual or monthly household income greater than 300 percent of the federal poverty level, any income deduction that is applicable under Medi-Cal shall be applied in determining annual or monthly household income under this Section;*

(2) *Meet the state residency requirements of Healthy Families in*

place as of September 30, 2005, as set forth in paragraph (5) of subdivision (a) of Section 12693.70;

(3) Are in compliance with Sections 12693.71 and 12693.72; and

(4) Are not eligible for Healthy Families, or for full-scope Medi-Cal (Chapter 7 (commencing at Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) without a share of cost, under the eligibility rules in place as of September 30, 2005.

(c) The confidentiality and privacy protections set forth in Sections 10500 and 14100.2 of the Welfare and Institutions Code shall apply to all children seeking, applying for or enrolled in Healthy Families.

(d) Families of children enrolled in Healthy Families through this Chapter shall be required to contribute premiums equal to those required of families of children enrolled in Healthy Families not through this Chapter, subject to the following exceptions:

(1) Families of children up to and including 18 years of age who apply for or are enrolled in Healthy Families and whose countable household incomes are up to and including 100 percent of the federal poverty level shall not be required to contribute any premiums; families of children up to one year of age who apply for or are enrolled in Healthy Families and whose countable household incomes are up to and including 200 percent of the federal poverty level shall not be required to contribute any premiums; and families of children up to and including six years of age who apply for or are enrolled in Healthy Families and whose countable household incomes are up to and including 133 percent of the federal poverty level shall not be required to contribute any premiums.

(2) Families of children who are enrolled in Healthy Families whose countable household incomes are greater than 250 percent and up to and including 300 percent of the federal poverty level shall be required to contribute premiums at 150 percent of the premiums required for children who are enrolled in Healthy Families whose countable household incomes are greater than 200 percent and up to and including 250 percent of the federal poverty level. The same premium discounts available to children enrolled in Healthy Families whose families have countable incomes of 200 through 250 percent of the federal poverty level shall be available on the same terms to children enrolled in Healthy Families whose families' countable incomes are greater than 250 percent of the federal poverty level.

(e) Less restrictive Healthy Families eligibility requirements than those established at subdivision (b) may be established by the Legislature at any time before or after adoption of this Section. If the Legislature adopts less restrictive eligibility criteria for Healthy Families at any time, such a change shall supersede the eligibility requirements of this Section. Nothing in this Section shall preclude a child from eligibility for Medi-Cal or Healthy Families if less restrictive eligibility criteria are enacted. For purposes of this subdivision, requirements or criteria are considered to be "less restrictive" if, under such requirements or criteria, additional individuals may be eligible for medical assistance and no individuals who are otherwise eligible are made ineligible for such assistance.

12693.991. (a) The Managed Risk Medical Insurance Board and the State Department of Health Services (hereinafter "administering agencies") shall continue to administer the Healthy Families and Medi-Cal programs, respectively, for all eligible children. The administering agencies shall coordinate their respective administrations of each program in a cost-effective, coordinated and seamless manner with respect to children seeking, applying for or enrolled in Medi-Cal or Healthy Families. Both administering agencies shall coordinate enrollment, renewal, eligibility, and outreach, and shall assign clear lines of responsibility for all associated agency activities with enforceable accountability. Implementation of duties and responsibilities that require the participation of both agencies shall be done jointly, as coordinated between them by agreement.

(b) The administering agencies, in consultation with the Healthy Kids Oversight and Accountability Commission, shall design and implement streamlined application, enrollment and retention procedures and mechanisms for all benefits available under Healthy Families and Medi-Cal. From the child's perspective there shall appear to be a single program, though the details are handled by two programs and administering agencies. The administering agencies shall implement strategies including at least the following to ensure that all children who are eligible for Healthy Families or Medi-Cal under the eligibility rules in place on September 30, 2005, and all children who are eligible for Healthy Families under this Chapter, receive health insurance:

(1) Simplify paperwork requirements for families to enroll their children and retain coverage as long as they remain eligible by requesting documentation and verifying information only to the extent required under federal law.

(2) Expedite and streamline enrollment by offering enrollment, which may be known as "express lane" or "gateway" enrollment, through entry points such as the National School Lunch Program, the California Supplemental Special Nutrition Program for Women, Infants and Children, the Food Stamp Program, and the Child Health and Disability Prevention Program or similar programs; by utilizing the enrollment information provided by families to these other programs, with families' consent and ensuring confidentiality pursuant to subdivision (c) of Section 12693.99 for all children seeking, applying for, and enrolled in Healthy Families or Medi-Cal; and by implementing an electronic gateway system to process that enrollment.

(3) Develop a plan to ensure that eligible, enrolled children do not experience a gap in benefits and to ensure continuity of medical care for children when renewing or transferring between Medi-Cal and Healthy Families, or from a local children's health insurance program (hereinafter "local CHI"). The plan shall include simplifying renewal forms and renewal and transition processes.

(4) Facilitate outreach and education to current and potential beneficiaries, applicants, health care providers, and insurers.

(5) In coordination with the Healthy Kids Oversight and Accountability Commission, and while preserving confidentiality in accordance with subdivision (c) of Section 12693.99, undertake a pilot research demonstration project to test effective strategies, and gather data about the impact of specific efforts, to increase coverage for uninsured children in families with incomes above 300 percent of the federal poverty level; and recommend to the Legislature strategies for increasing coverage for this population based upon the pilot research demonstration project results.

(6) In coordination with the Healthy Kids Oversight and Accountability Commission, design and implement a process for ensuring a smooth transition for local CHI enrollees to Healthy Families. The transition shall provide that any child who applies for and is determined eligible for Healthy Families pursuant to this Chapter, and who is enrolled in a local CHI both as of enactment of this Chapter and as of his or her Healthy Families eligibility determination, shall be automatically rolled over into his or her existing local CHI health plan under Healthy Families, if the health plan is a participating plan in Healthy Families. For good cause or upon the child's next annual renewal, a child may switch plans or otherwise remain in his or her existing plan. Nothing in this paragraph is intended to delay immediate implementation of this Chapter, including eligibility for Healthy Families.

(7) Maximize federal matching funds available for eligible children's health insurance under Medi-Cal and Healthy Families and implement strategies that coordinate and integrate existing children's health insurance programs to maximize available federal and state matching funds, such as matching funds available for emergency or pregnancy-related Medi-Cal benefits, for all eligible children.

(8) Take any additional steps necessary to ensure that from a child's perspective, Medi-Cal and Healthy Families operate as a single program.

(c) The Healthy Kids Oversight and Accountability Commission is hereby established to guide the implementation and administration of this Chapter; advise the administering agencies on how best to provide affordable health insurance for all children; review financial audits of the children's Medi-Cal and Healthy Families programs by the Bureau of State Audits; and identify inefficient practices or waste in the administration or operation of Healthy Families and Medi-Cal and direct anticipated savings back into providing health insurance for more children.

(1) The Commission shall consist of 15 members with expertise in children's health, health insurance and health insurance programs, and shall include representatives from the following categories:

(A) Consumers;

(B) Consumer advocates, including representatives of specific child populations;

(C) Health care providers, including physicians and public hospitals;

(D) Health plans, including local CHIs; and

(E) Other stakeholders, including but not limited to schools, business and organized labor, and county agencies.

(2) The Speaker of the Assembly, the Senate President Pro Tempore, and the Governor shall each appoint five commissioners such that each appoints one commissioner from each of the five categories.

(3) Members shall serve without compensation, but shall be reimbursed for all actual and necessary expenses incurred in the performance of their duties.

(4) The term of each member shall be three years, to be staggered so that approximately one-third of the appointments expire in each year.

(5) In carrying out its duties and responsibilities, the Commission may do all of the following:

(A) Meet at least once each quarter at any time and location convenient to the public as it may deem appropriate. All meetings of the Commission shall be open to the public.

(B) Establish technical advisory committees such as a committee of parents and guardians.

(C) Advise the Governor and the Legislature regarding actions the state may take to improve access to, enrollment in, retention of, and use of health coverage for children and their families.

(D) Recommend strategies to increase the efficiency of Medi-Cal and Healthy Families, reduce paperwork requirements for benefit administration, and implement electronic gateways and other “express lanes” for increasing enrollment.

(E) Recommend strategies for transitioning children among and between local CHIs, Medi-Cal and Healthy Families.

(F) Recommend voluntary strategies with employers to maintain or increase employer-sponsored health coverage for employees’ dependents under the age of 19 years.

(G) Provide guidance in the development of the pilot research demonstration project for pursuing affordable health insurance or assistance options for uninsured children whose families have incomes over 300 percent of the federal poverty level and, based on the results of the pilot research projects, recommend to the Legislature strategies for increasing coverage for this population.

(H) Study the adequacy of the provider network and seek broad participation from traditional and safety-net providers by recommending strategies to ensure adequate provider reimbursement rates.

(I) Employ all other appropriate strategies necessary or convenient to enable it to fully and adequately perform its duties and exercise the powers expressly granted.

12693.992. (a) For the purposes specified in this Chapter and subject to Section 30132.5 of the Revenue and Taxation Code, funds appropriated from the California Healthy Kids Sub-Account established at paragraph (12) of subdivision (b) of Section 30132.3 of the Revenue and Taxation Code shall be used only for:

(1) The provision of children’s health insurance, through Healthy Families, only for children defined in subdivision (b) of Section 12693.99; and

(2) Implementation of those measures contained in Section 12693.991.

(b) Funds expended or transferred from the California Healthy Kids Sub-Account shall supplement and not supplant the following:

(1) Local funds used to secure state or federal matching funds for any children’s health services, children’s health, or medical assistance programs, including but not limited to the following: (A) Healthy Families; (B) Medi-Cal, whether full-scope or emergency or pregnancy-related care only; and (C) the Child Health and Disability Prevention Program; but not including funds generated by or expended from the California Children and Families Trust Fund (Division 108 (commencing at Section 130100) of the Health and Safety Code) or from the County Health Initiative Matching Fund (Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code).

(2) State funds used to secure federal matching funds for any children’s health services, children’s health, or medical assistance programs, including but not limited to the following:

(A) Healthy Families;

(B) Medi-Cal, whether full-scope or emergency or pregnancy-

related care only; and

(C) The Child Health and Disability Prevention Program.

(3) State or federal funds to continue or maintain the amount, duration, scope and structure of benefits that existed as of September 30, 2005 for any children’s health services, children’s health, or medical assistance programs, including but not limited to the following:

(A) Healthy Families;

(B) Medi-Cal, whether full-scope or emergency or pregnancy-related care only; and

(C) The Child Health and Disability Prevention Program.

(c) The state may not increase a county’s share of costs for children’s health services unless the state includes adequate funding to fully compensate for such increased costs.

12693.993. (a) Nothing in this Chapter is intended to:

(1) Reduce or restrict any existing entitlement under Medi-Cal;

(2) Reduce or restrict the existing eligibility levels or the amount, duration, scope or structure of benefits in place as of September 30, 2005 under either Healthy Families or Medi-Cal;

(3) Create a new entitlement for children enrolled in Healthy Families;

(4) Preclude a child from eligibility for any other children’s health insurance, medical service or medical assistance program, including but not limited to restricted Medi-Cal or Medi-Cal with a share of cost;

(5) Preclude a child from eligibility for Healthy Families or Medi-Cal if less restrictive eligibility criteria are enacted;

(6) Reduce or erode children’s existing employer-sponsored health insurance coverage;

(7) Restrict any public appropriations or private contributions for the provision of children’s health insurance through Medi-Cal or Healthy Families, such as federal financial match for state or county Medi-Cal funding; county, regional or local funding; private foundation grants, and family premium contributions;

(8) Prohibit eligibility for Medi-Cal or Healthy Families based on concurrent eligibility for a local CHI; nor

(9) Create or require creation of a new state department or agency.

(b) The State Department of Health Services and the Managed Risk Medical Insurance Board may explore and utilize any options available under federal law to allow the use of charitable or other funding by private and public not-for-profit organizations as a match for federal funds for use in the provision of coverage consistent with the provisions of this Chapter.

SEC. 7. Article 6 (commencing with Section 1246) is added to Chapter 1 of Division 2 of the Health and Safety Code, to read:

Article 6. Community Clinics

1246. (a) Funds in the Community Clinics Uninsured Sub-Account established at paragraph (3) of subdivision (c) of Section 30132.3 of the Revenue and Taxation Code shall be administered by the State Department of Health Services solely for the purposes of this Section. The department shall allocate the funds for eligible non-profit clinic corporations providing vital health care services, including services related to smoking cessation programs to assist smokers to quit smoking, and educational efforts related to tobacco prevention, to the uninsured. The funds shall be allocated by the Department pursuant to the provisions of this Section.

(b) Annually, commencing August 1, 2007, the Department shall allocate to each eligible non-profit clinic corporation a percentage of the balance present in the Community Clinics Uninsured Sub-Account as of July 1 of the year the allocations are made based on the formula provided for in subdivision (c) and subject to subdivision (d).

(c) Funds in the Community Clinics Uninsured Sub-Account shall be allocated only to eligible non-profit clinic corporations. Funds in the Community Clinics Uninsured Sub-Account shall be allocated to eligible non-profit clinic corporations on a percentage basis based on the total number of uninsured patient encounters.

(1) For purposes of this Section, an “eligible non-profit clinic corporation” shall meet both of the following requirements:

(A) The corporation shall consist of non-profit free and community

clinics licensed pursuant to subdivision (a) of Section 1204 or of clinics operated by a federally recognized Indian tribe or tribal organization and exempt from licensure pursuant to subdivision (c) of Section 1206.

(B) The corporation must provide at least 1,000 uninsured patient encounters based on data submitted to the Office of Statewide Health Planning and Development pursuant to the reporting procedures established under Section 1216 for the year the allocations are made.

(2) The total number of uninsured patient encounters shall be based on data submitted by each eligible non-profit clinic corporation to the Office of Statewide Health Planning and Development pursuant to the reporting procedures established under Section 1216. Beginning August 1, 2007 and every year thereafter, the allocations shall be made by the department based on data submitted by each eligible non-profit clinic corporation to the Office of Statewide Health Planning and Development by February 15 of the year the allocations are made.

(3) For purposes of this Section, except as otherwise provided in paragraph (4), an uninsured patient encounter shall be defined as an encounter for which the patient has no public or private third party coverage. An uninsured patient encounter shall also include encounters involving patients in programs operated by counties pursuant to Part 4.7 (commencing with Section 16900) and Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code. An uninsured patient encounter must consist of a primary and preventive health care service, including tobacco cessation and prevention services, and specialty care services traditionally provided by comprehensive primary care providers.

(4) Each uninsured patient encounter shall count as one encounter, except that the encounters involving patients in programs operated pursuant to paragraph (1) of subdivision (aa) of Section 14132 and Division 24 (commencing with Section 24000) of the Welfare and Institutions Code, and pursuant to Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code shall count as 0.15 encounter for purposes of determining the total number of uninsured patient encounters for each eligible non-profit clinic corporation.

(5) The Department shall compute each eligible non-profit clinic corporation's percentage of total uninsured patient encounters for all eligible non-profit clinic corporations. The Department shall then apply these percentages to the available funds in the Sub-Account to compute a preliminary allocation amount for each eligible non-profit clinic corporation. Final allocation amounts will be created pursuant to paragraph (6).

(6) Final allocation amounts shall be determined as follows:

(A) If the preliminary allocation for an eligible non-profit clinic corporation is equal to or less than twenty-five thousand dollars (\$25,000), the allocation for that eligible non-profit corporation shall be twenty-five thousand dollars (\$25,000).

(B) For all eligible non-profit clinic corporations with preliminary allocations of more than twenty-five thousand dollars (\$25,000), the Department shall compute each such eligible non-profit clinic corporation's percentage of the total uninsured patient encounters and apply the percentage to the remaining funds available to determine the final allocation amount for each such eligible non-profit clinic corporation, subject to subparagraph (c).

(C) No eligible non-profit clinic corporation shall receive an allocation in excess of two percent (2%) of the total monies distributed to all eligible non-profit clinic corporations in that year. Allocations that are subject to the two percent (2%) limit shall be reallocated to those other eligible non-profit clinic corporations receiving allocations under subparagraph (B) utilizing the methodology in paragraphs (3) and (4), but provided that reallocations shall not make any final allocation surpass the two percent (2%) limit.

(d) The State Department of Health Services shall be reimbursed from the Community Clinics Uninsured Sub-Account for the Department's actual cost of administration. The total amount available for reimbursement of the Department's administrative costs shall not exceed one percent (1%) of the monies credited to the Sub-Account during the fiscal year.

SEC. 8. Nursing Workforce Education Investment

Section 128224.5 is added to the Health and Safety Code, to read:

128224.5. (a) The California Healthcare Workforce Policy Commission shall oversee the plan for and distribution of funds in the

Nursing Workforce Education Sub-Account created by paragraph (6) of subdivision (c) of Section 30132.3 of the Revenue and Taxation Code. A state nursing contract program with accredited schools and programs that educate students seeking degrees in nursing, including associate degree programs ("ADN"), bachelor of science degree programs ("BSN"), master's degree programs ("MSN"), programs for Advanced Practice Registered Nurses, and higher graduate nursing education programs ("DNSc/Ph.D."), shall be developed to create, expand and improve programs to educate students to become practicing registered nurses, nurses with advanced clinical skills, nurse managers, and faculty for schools of nursing. Priority shall be given to programs that increase the number and types of nursing student graduates and educators most likely to meet the state's most pressing needs for registered nurses.

(b) The California Healthcare Workforce Policy Commission shall recommend to the director the California Board of Registered Nursing ("BRN")-approved registered nurse education programs and California graduate nursing education programs (MSN, DNSc/Ph.D.) that shall be funded under subdivision (a). For purposes of this section the term "Advanced Practice Registered Nurse Programs" refers to programs that educate nurses with advanced clinical skills, including, but not limited to, nurse anesthetists, clinical nurse specialists, nurse practitioners, nurse midwives, and public health nurses.

Section 128225.5 is added to the Health and Safety Code, to read:

128225.5. The director shall utilize the funds appropriated to implement the recommendations of the California Healthcare Workforce Policy Commission pursuant to Section 128224.5; and to reimburse the office and the commission for all reasonable, actual, direct administrative costs incurred to implement this Section, not to exceed one percent (1%) of the amount deposited into the Nursing Workforce Education Sub-Account for the same period. The director shall utilize all funds appropriated to the extent reasonably possible. To the extent any funds appropriated are not utilized, or after being committed are returned or remain unspent for any reason, such funds shall remain in or shall be re-deposited into the Nursing Workforce Education Sub-Account for appropriation and use for the same purpose as provided in paragraphs (6)(A) or (6)(B) of subdivision (c) of Section 30132.3 of the Revenue and Taxation Code, as appropriate.

SEC. 9. Emergency and Trauma Hospital Services

Chapter 4.5 (commencing with Section 1797.300) is added to Division 2.5 of the Health and Safety Code, to read:

CHAPTER 4.5. HOSPITAL EMERGENCY SERVICES

Article 1. The Emergency and Trauma Hospital Services Sub-Account

1797.300. To support the public's need for hospital emergency services, the department shall administer funds made available to hospitals for such services as provided by this Chapter.

1797.301. (a) The department shall calculate each eligible hospital's funding percentage to be used for the next calendar year based upon the information submitted by such hospital pursuant to Section 1797.302 and notify each eligible hospital of its proposed funding percentage no later than June 15 of each calendar year.

(b) The department shall receive and review the accuracy and completeness of information submitted by eligible hospitals pursuant to Section 1797.302. The department shall develop a standard form to be utilized for reporting such information by eligible hospitals, but shall accept information from eligible hospitals that is not reported on such standard form. The department shall allow hospitals to report such information electronically no later than April 30, 2008.

(c) The department shall notify each hospital submitting the information specified under subdivision (a) of Section 1797.302 in writing through a communication delivered by no later than April 30 each year confirming the information it has from such hospital and of any apparent discrepancies in the accuracy, completeness, or legibility of information submitted by such hospital pursuant to Section 1797.302. Unless such written notice is timely delivered to an eligible hospital, the information it reports pursuant to Section 1797.302 shall be deemed to be complete and accurate, but shall be subject to audit under subdivision (f).

(d) A hospital that receives notice from the department that the information it reported was not accurate, complete, or legible shall have

30 days from the date the notice is received to provide the department with correct, complete and legible information. Such corrected or supplemental information shall be used by the department to make the calculation required by subdivision (a), but shall be subject to audit under subdivision (f). A hospital that does not provide sufficient legible information to establish that it qualifies as an eligible hospital or to allow the department to make the calculation required under subdivision (a) shall not be an eligible hospital.

(e) The department may enter into an agreement with the Office of Statewide Health Planning and Development or another state agency or private party to assist it in analyzing information reported by eligible hospitals and making the hospital funding allocation computations as provided under this Chapter.

(f) To ensure that the funds received by hospitals are utilized for the purpose specified in this Article, the department shall audit the use by eligible hospitals of any funds received pursuant to Section 1797.304, and the accuracy of data on emergency department patient encounters and other information any hospital reports under this Article, as follows: the department shall randomly select twenty percent (20%) of all eligible hospitals each year for audit of the information they submit. Additionally, the department may conduct a field audit of the use of funds or information submitted by any hospital. If the department determines upon audit that any funds received were improperly used, or that inaccurate data were reported by the eligible hospital resulted in an allocation of excess funds to the eligible hospital, the department shall recover any excess amounts allocated to, or any funds improperly used by, the eligible hospital. The department may impose a fine of not more than twenty-five percent (25%) of any funds received by the eligible hospital that were improperly used, or the department may impose a fine of not more than two times any amounts improperly used or received by the eligible hospital if it finds such amounts were the result of gross negligence or intentional misconduct in reporting data or improperly using allocated funds under this Article on the part of the hospital. Any fines imposed by the department shall be stayed if appealed by the hospital pursuant to subdivision (g) until judgment by a court of final jurisdiction. In no event shall a hospital be subject to multiple penalties for both improperly using and receiving the same funds.

(g)(1) A licensed hospital owner shall have the right to appeal the imposition of any fine by the department, or a determination by the department that its hospital is not an eligible hospital, for any reason, or an alleged computational or typographical error by the department resulting in an incorrect allocation of funds to its hospital under Section 1797.304. A hospital shall not be entitled to be reclassified as an eligible hospital or to have an increase in funds received under this Chapter based upon subsequent corrections to its own final reporting of incorrect data used to determine funding allocations under this Article.

(2) Any such appeal shall be heard before an administrative law judge employed by the Office of Administrative Hearings. The hearing shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The decision of the administrative law judge shall be in writing; shall include findings of fact and conclusions of law; shall be final; and shall be subject to appeal as provided by Section 11523 of the Government Code. The decision of the administrative law judge shall be made within 60 days after the conclusion of the hearing and shall be effective upon filing and service upon the petitioner.

(3) The appeal rights of hospitals under this subdivision (g) shall not be interpreted to preclude any other legal or equitable relief that may be available.

(h) Any fines or other recoveries collected by the department shall be deposited in the Emergency and Trauma Hospital Services Sub-Account within the Tobacco Tax Fund for allocation to eligible hospitals in accordance with the provisions of Section 1797.304. Such funds shall not be used for administrative costs, and shall be supplemental to, and shall not supplant, any other funds available to be allocated from such Sub-Account to eligible hospitals.

(i) In the event it is determined, upon a final adjudicatory decision that is no longer subject to appeal, that a hospital has been incorrectly determined to not qualify as an eligible hospital, or was allocated an amount less than the amount to which it is entitled under Section 1797.304, the department shall, from the next allocation of funds to hospitals under Section 1797.304, allocate to such hospital the additional amount to which it is entitled, and

reduce the allocation to all other eligible hospitals pro rata.

1797.302. (a) Each hospital seeking designation as an eligible hospital shall submit the following information to the department by no later than February 15 of each year, commencing the first February 15 following the operative date of this Act:

(1) The number of emergency department encounters that took place in the hospital's emergency department during the preceding calendar year;

(2) The total amount of charity care costs of the hospital for the preceding calendar year;

(3) The total amount of bad-debt costs of the hospital for the preceding calendar year;

(4) The total amount of county indigent program effort costs of the hospital for the preceding calendar year;

(5) If requested, a photocopy of the hospital's operating license from the State Department of Health Services or equivalent documentation establishing that it operates a licensed emergency department;

(6) A declaration of commitment to provide emergency services and training as required by subdivision (a) of Section 1797.303.

(b) Both pediatric and adult patients shall be included in the data submitted. The accuracy of the data shall be attested to in writing by an authorized senior hospital official. No other data or information shall be required by the department to be reported by eligible hospitals for purposes of this Chapter.

(c) Each hospital seeking status as an eligible hospital under this Chapter that receives a preponderance of its revenue from a single associated comprehensive group practice prepayment health care service plan shall report information required by this section for all patients, and not just for patients who are not enrolled in an associated health care service plan.

1797.303. (a) An eligible hospital shall, throughout each calendar quarter in which it receives an allocation pursuant to Section 1797.304:

(1) Maintain an operational emergency department available within its capabilities and licensure to provide emergency care and treatment, as required by law, to any pediatric or adult member of the public who has an emergency medical condition.

(2) Do all of the following:

(A) Participate in a minimum of two disaster-training exercises annually;

(B) Provide training and information as appropriate to the hospital's medical staff, nurses, technicians and administrative personnel regarding the identification, management, and reporting of emergency medical conditions and communicable diseases, as well as triage procedures in cases of mass casualties;

(C) Collaborate with state and local emergency medical services agencies and public health authorities in establishing communications procedures in preparation for and during a disaster situation; and

(D) Establish and maintain an emergency and disaster management plan. This plan shall include response preparations to care for victims of terrorist attacks and other disasters. The plan shall be made available by the hospital for public inspection.

(b) It is the policy of the state to encourage hospitals to work cooperatively to develop regional plans for assuring maximum availability of emergency services to all patients, and to share equitably in the provision of emergency services to uninsured and low income underinsured patients in achieving such maximum availability of emergency services.

(1) Each hospital receiving funds under this Chapter that operates a basic or comprehensive licensed emergency department may participate in the development of a regional or other local plan for equitably sharing responsibility for providing emergency services to uninsured and low-income underinsured patients arriving at the hospital via ambulance. Any such plan may be developed under the auspices of a hospital association or through other cooperative arrangements, and shall be submitted to the county or other local emergency services authority for approval and continuing oversight of implementation.

(2) Each hospital receiving funds under this Chapter may work cooperatively with one or more other hospitals to develop a plan for providing maximum coverage of specialty medical services. Any such plan may include such items as coordinated coverage of particular medical

specialty services; alternate coverage of particular medical specialty services; and joint programs for the payment of coverage fees to physician specialists for providing on-call coverage of emergency services. Any such plan shall be submitted to and approved by the county or other local emergency services authority for approval and continuing oversight of implementation.

(3) To the extent that any hospital or hospitals work cooperatively in developing and implementing the plans for providing emergency services described in this Section, the people intend that such hospital or hospitals shall incur no liability under federal or state antitrust or other anti-competition laws prohibiting combinations in restraint of trade, including, without limitation, the provisions of Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code.

(c) Any funds received by an eligible hospital under this Article shall not be used in the determination of uncompensated costs for the purpose of the limitation on payment adjustments described in Section 1923(g) of the Social Security Act and any provision of state law which incorporates such limitation, to the extent consistent with federal law.

1797.304. (a) Funds deposited in the Emergency and Trauma Hospital Services Sub-Account, together with all interest and investment income earned thereon, shall be continuously appropriated without regard to fiscal years to and administered by the state Department of Health Services. The department shall allocate the funds solely to eligible hospitals as provided by this Article.

(b) Quarterly, commencing June 30 following the operative date of this Chapter, the department shall allocate to each eligible hospital a percentage of the balance of the Hospital Sub-Account equal to such hospital's funding percentage, as determined by the department pursuant to Section 1797.301, except as follows:

(1) The annual aggregate allocation to all hospitals that receive a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan shall not exceed forty million dollars (\$40,000,000.00) during any calendar year, and the department shall reduce the quarterly allocation to each such hospital pro rata, if and to the extent necessary, to contain the aggregate allocation to all such hospitals within any calendar year to a maximum of forty million dollars (\$40,000,000.00). The maximum annual aggregate allocation shall be applied by the department in increments of no more than ten million dollars (\$10,000,000.00) to each of the first three quarterly distributions of each calendar year, but no specific portion of the limit on maximum annual aggregate distributions provided by this subsection shall apply to other quarterly distributions to such hospitals.

(2) The maximum aggregate annual allocation of forty million dollars (\$40,000,000.00) to all hospitals that receive a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan set forth in paragraph (1) above shall be adjusted upward or downward annually, together with corresponding changes in any quarterly limits, commencing on January 1, 2009, by the same percentage increase or decrease in the aggregate amount deposited in the Hospital Sub-Account for the immediate prior calendar year against the aggregate amount deposited in the Hospital Sub-Account during the 2007 calendar year. Any adjustment that increases or decreases the maximum aggregate annual allocation to such hospitals shall be applied only to the then current calendar year.

(3) After making the adjustment to the maximum aggregate annual allocation to hospitals that receive a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan provided by paragraph (2) above, the department shall further adjust such maximum aggregate annual allocation by increasing or decreasing it by a percentage factor equal to the percentage increase or decrease in the aggregate funding percentage by all hospitals receiving a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan in the 2007 calendar year against the aggregate funding percentage of all hospitals associated with the same health care service plan for the most recent calendar year.

(4) After making the adjustments to the allocation of funds as provided by paragraphs (1) through (3) above, the department shall allocate any funds remaining in the Hospital Sub-Account to hospitals that do not receive a preponderance of their revenue from the same associated comprehensive group practice prepayment health care service plan pro rata based upon their respective funding percentages.

(c) Prior to each allocation under subdivision (b), the actual costs of the department (including any costs to the department resulting from the charges under Section 11527 of the Government Code) for administering the provisions of this Chapter shall be reimbursed from the Hospital Sub-Account. The aggregate funds withdrawn for all administrative costs under this subdivision shall not exceed one half of one percent (0.5%) of the total amounts deposited in the Hospital Sub-Account (not including any fines collected under subdivision (h) of Section 1797.301) during the prior quarter.

(d) An eligible hospital shall use the funds received under this Section only to further the provision of emergency services by such means as payment for the unreimbursed cost of providing emergency services and improving or expanding emergency services, facilities, or equipment. Such funds may not be used to pay for more than the hospital's unreimbursed costs of providing emergency services, and no funds may be used to pay the hospital for providing emergency services where it receives payment for providing such services and has agreed to accept such payment as payment in full. No funds may be used for the compensation of hospital management executives, except for personnel who work full time in hospital emergency departments. No funds may be used for equipment or capital improvements not directly related to the improvement of hospital emergency department facilities or critical care units. An eligible hospital owned by a public entity may use funds it receives under this Chapter to secure federal matching funds under the Medi-Cal program, or any other federal or state health program that includes coverage of emergency services and reduces the burden of providing uncompensated emergency services by hospitals and physicians.

(e)(1) A hospital may not utilize funds received under this Article to supplement payments physicians receive for services to patients enrolled in the Medicare or Medi-Cal programs, but may use such funds to provide payments to physicians for on-call coverage of emergency services to all patients, including those enrolled in the Medicare or Medi-Cal programs, as provided by subparagraph (2) below. Such payments to physicians for on-call coverage shall not be considered payments for services.

(2) A hospital, in its sole discretion, may utilize funds it receives under this Chapter to provide compensation to a physician that is fair and reasonable for providing on-call coverage of emergency services only if the governing board of the hospital makes the following findings:

(A) The amount or rate of payment is reasonable and necessary for the hospital to maintain coverage of medical services to care for patients entering the hospital through the emergency department, or patients who have emergent conditions requiring the services of on-call physicians while in the hospital; and

(B) The method and amount of compensation to any physician or physicians is in compliance with applicable law.

(3) The governing board of a hospital, in its sole discretion, prior to entering into an agreement to compensate one or more physicians for on-call coverage of emergency services may obtain the opinion of an independent financial analyst with expertise in the hospital industry that the proposed amount or rate of payment to compensate physicians under the proposed agreement is fair and reasonable under the circumstances. If a hospital governing board elects to obtain such an opinion, it shall notify the department in writing, and the department shall, within ten days of receiving the hospital's written request, provide the hospital with the names of three independent financial analysts (which may be individuals or firms) from a list of such independent financial analysts qualified to issue such an opinion it establishes and maintains. The hospital shall provide the list of the independent financial analysts it receives from the department to the Executive Committee of the hospital's organized medical staff, and the medical staff Executive Committee shall have fifteen (15) days to review the list and make a peremptory challenge of one of the independent financial analysts by notifying the hospital's governing board in writing. The hospital governing board may make a peremptory challenge to one of the independent financial analysts. If two of the three independent financial analysts are subject to a peremptory challenge, the hospital governing board may retain only the remaining independent financial analyst. If more than one independent financial analyst is not subject to a peremptory challenge, the hospital shall so notify the department, and the department shall select one of the remaining independent financial analysts by lottery. In such event, the hospital may retain only the independent financial analyst selected by lottery, unless the

governing board of the hospital and the medical staff Executive Committee agree upon the retention by the hospital of one of the other independent financial analysts on the list of the three financial analysts provided to the hospital by the department. The selected independent financial analyst may charge the hospital a reasonable fee to issue a written opinion to the hospital governing board as to whether the proposed amount or rate of payment is fair and reasonable under the circumstances. In the event such independent financial analyst opines that the proposed amount or rate of payment is not fair and reasonable, upon request, the independent financial analyst may describe a range of payment amounts and rates that are fair and reasonable, under the circumstances, for the hospital to pay various types of physicians for on-call coverage. The hospital may not pay an amount or rate for on-call coverage of emergency services by a physician that is higher than any amount or rate determined to be fair and reasonable by the opinion of such independent financial analyst, nor shall the hospital pay less than its highest written offer to the physician or physicians that is fair and reasonable.

(4) A hospital may compensate a physician for providing on-call emergency services coverage only through a written agreement.

(5) The requirements of this subdivision relate only to the use of funds eligible hospitals received under this Article, and do not apply to the use of other funds by hospitals to pay for on-call coverage of emergency services by physicians.

(f) Nothing in this Chapter shall be construed to prevent a hospital, in its sole discretion, from providing reasonable compensation to a physician for providing emergency physician staffing for the emergency department in a manner consistent with the Medical Practice Act, Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(g) The hospital governing board, in consultation with the hospital's medical staff, shall ensure the appropriate coverage of medical services within its capabilities to meet the emergency services needs of its patients as required by law.

1797.305. The following definitions shall apply to terms utilized in this Chapter:

(a) "Bad-debt cost" means the aggregate amount of accounts and notes receivable accounted for during a calendar year by an eligible hospital as credit losses, using any method generally accepted for estimating such amounts on the date this Act became effective, based on patients' unwillingness to pay, and multiplied by the eligible hospital's cost-to-charges ratio.

(b) "County indigent program effort cost" means the amount of care during a calendar year by an eligible hospital, expressed in dollars and based upon the hospital's full established rates, provided to indigent patients for whom a county is responsible, whether the hospital is a county hospital or a non-county hospital providing services to indigent patients under arrangements with a county, multiplied by the eligible hospital's cost-to-charges ratio.

(c) "Charity care" means that portion of care provided by a hospital to a patient for which a third party payer is not responsible and the patient is unable to pay, and for which the hospital has no expectation of payment.

(d) "Charity-care cost" means amounts actually written off, using any method generally accepted for determining such amounts on the date this Act became effective, by an eligible hospital during a calendar year for that portion of care provided to a patient for whom a third party payer is not responsible and the patient is unable to pay, multiplied by the hospital's cost-to-charges ratio.

(e) "Charity care policy" means a policy adopted by the hospital establishing eligibility criteria for charity care services provided by the hospital.

(f) "Cost-to-charges ratio" means a ratio determined by dividing an eligible hospital's operating expenses less other operating revenue by gross patient revenue for its most recent reporting period.

(g) "Operating expenses" means the total expenses incurred for providing patient care by the hospital. Operating expenses include (without limitation) salaries and wages, employee benefits, professional fees, supplies, purchased services, depreciation, leases, interest and other expenses.

(h) "Other operating revenue" means revenue generated by health care operations from non-patient care services to patients and others.

(i) "Gross patient revenue" means the total charges at the hospital's full established rates for the provision of patient care services and includes charges related to hospital-based physician professional services.

(j) "Eligible hospital" or "hospital" means a hospital licensed to a public or private entity or person under subdivision (a) of Section 1250 of the Health and Safety Code, including without limitation, any hospital licensed to any county, city, hospital district, or the Regents of the University of California (but not including any hospital licensed to a department of the State of California, or to the federal government) which either operates an emergency department or is a children's hospital as defined in Section 10727 of the Welfare and Institutions Code.

(k) "Emergency department encounter" or "emergency department visit" means a face-to-face contact between a patient and the provider who has primary responsibility for assessing and treating the patient in an emergency department and exercises independent judgment in the care of the patient. An emergency department encounter or visit is counted for each patient of the emergency department, regardless of whether the patient is admitted as an inpatient or treated and released as an outpatient. An emergency department encounter or visit shall not be counted where the patient received triage services only.

(l) "Emergency services" or "hospital emergency services" means all services provided to patients in a hospital emergency department and all other patient services related to treatment of an emergent medical condition in any department or unit of a hospital, including, without limitation, any procedures necessary to avoid loss of life, serious disability, or severe pain until the patient has been stabilized and transferred to another health facility or discharged.

(m) "Office" means the Office of Statewide Health Planning and Development.

(n) "Department" means the state Department of Health Services.

(o) "Funding percentage" means the sum of (1) an eligible hospital's percentage of hospital emergency care (as defined in subdivision (s) below) multiplied by a factor of .50, added to (2) such hospital's percentage of effort (as defined in subdivision (p) below) multiplied by a factor of .50, the sum to be expressed as a percentage.

(p) "Hospital Sub-Account" or "Emergency and Trauma Hospital Services Sub-Account" means the Emergency and Trauma Hospital Services Sub-Account of the Tobacco Tax Fund established pursuant to paragraph (7) of subdivision (c) of Section 30132.3 of the Revenue and Taxation Code.

(q) "Tobacco Tax Fund" means the Tobacco Tax of 2006 Trust Fund established pursuant to Section 30132 of the Revenue and Taxation Code.

(r) "Percentage of effort" means the sum of an eligible hospital's total amount of charity care cost plus that hospital's total amount of bad-debt cost plus that hospital's county indigent program effort cost, as a percentage of the sum of the total amount of charity care cost plus the total amount of bad-debt cost plus the total county indigent program effort cost reported in final form to the department by all eligible hospitals for the same calendar year.

(s) "Percentage of hospital emergency care" means an eligible hospital's total emergency department encounters for the most recent calendar year for which such data has been reported to the department in final form, as a percentage of all emergency department encounters reported in final form by all eligible hospitals for the same calendar year. In the case of a children's hospital that does not operate an emergency department and provides emergency treatment to a patient under twenty-one years of age under arrangements with an emergency department of a hospital that is: (1) located within 1,000 yards of the children's hospital; and (2) is either (A) under common ownership or control with the children's hospital, or (B) has contracted with the children's hospital to provide emergency services to its patients under twenty-one years of age, the children's hospital providing emergency services to such patient shall receive credit for the emergency department encounter, and not the hospital operating the emergency department.

(t) "Unreimbursed cost of providing emergency service" means the difference between the hospital's cost of providing emergency services, determined by multiplying its gross patient charges for providing such services by its cost-to-charges ratio, and the amount it actually receives for providing such services, where the hospital has not agreed to accept the payment it receives as payment in full.

(u) “Physician” means a physician and surgeon licensed under the Medical Practice Act, Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

1797.306. A hospital receiving funds under this Chapter shall maintain a written record of its use of all such funds, which shall be available to the department upon request, and available for inspection upon written request by the public. A hospital shall return to the department any funds it receives under this Chapter that it does not use for the purposes specified within one year of receipt or, in the case of a capital project, are not committed within two years of receipt by the governing board for a specific use. Any unused funds returned to the department shall be deposited in the Emergency and Trauma Hospital Services Sub-Account within the Tobacco Tax of 2006 Trust Fund for allocation to eligible hospitals in accordance with the provisions of Section 1797.304.

1797.307. The department may promulgate and adopt regulations to implement, interpret and make specific the provisions of this Article pursuant to the provisions of the Administrative Procedures Act as set forth in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall have no authority to promulgate quasi-legislative rules, or to adopt any rule, guideline, criterion, manual, order, standard, policy, procedure or interpretation that is inconsistent with the provisions of this Chapter. This Section shall not be interpreted to allow the department to adopt regulations (as defined by Section 11342.600 of the Government Code) in contravention of Section 11340.5 of the Government Code.

1797.308. No hospital may receive funds under this Chapter unless it complies with the provisions of Article 2 (commencing with Section 1797.309), relating to financial assistance to certain low-income patients.

Article 2. Hospital Charity Care and Financial Assistance Policies

1797.309. For purposes of this Article the following definitions shall apply:

(a) “Allocation” means an allocation of funds received by a hospital under Article 1 (commencing with Section 1797.300) of this Chapter.

(b) “Discounted payment” means the payment amount after application of a discount from its full charges for services offered by a hospital to patients who have no or inadequate insurance and qualify under the hospital’s discount payment policy.

(c) “Discount payment policy” means a policy adopted by the hospital establishing eligibility criteria for receiving services for a discounted payment.

(d) “Federal poverty level” means the most recent poverty guidelines periodically adopted by the federal Department of Health and Human Services for determining financial eligibility for participation in various programs based upon family size as applicable to California.

(e) “Hospital” means an “eligible hospital,” as defined by subdivision (j) of Section 1797.305.

1797.309.5. Each hospital shall comply with the provisions of this Article throughout each calendar year in which it receives an allocation. The requirements of this Article are applicable only to hospitals receiving an allocation, and shall not be construed to limit the ability of the Legislature to enact charity care or discount payment policies applicable to all acute hospitals as a condition of licensure or participation in any other state program.

1797.310. (a) Each hospital shall maintain an understandable, written charity care policy and discount payment policy for low-income patients with no or inadequate insurance.

(b) Each hospital’s charity care policy and discount payment policy shall clearly state eligibility criteria based upon the income and monetary assets of the patient, or consistent with the application of the federal poverty level, the patient’s family. In determining such eligibility, a hospital may consider income and monetary assets of the patient, or the family of the patient. For purposes of such determination, monetary assets shall not include retirement or deferred-compensation plans qualified under the Internal Revenue Code, or non-qualified deferred compensation plans. Furthermore, the first ten thousand dollars (\$10,000) of a patient’s or a patient’s family’s monetary assets shall not be counted in determining eligibility; nor shall fifty percent (50%) of such assets over the first ten thousand dollars be counted in determining eligibility. The policy shall

also state the process used by the hospital to determine whether a patient is eligible for charity care or discounted payment.

(c) Patients who are at or below three hundred fifty percent (350%) of the federal poverty level shall be eligible to apply for participation under each hospital’s charity care policy or discount payment policy. However, rural hospitals, as defined by Section 124840, may establish eligibility levels for financial assistance and charity care at less than three hundred fifty percent (350%) of the federal poverty level as appropriate to maintain their financial and operational integrity.

(d) Absent any regulatory prohibition, each hospital shall limit expected payment for services it provides to any patient at or below three hundred fifty percent (350%) of the federal poverty level eligible under its discount payment policy to the greater of the amount of payment the hospital would receive for providing such services from Medicare or any other government-sponsored health program of health benefits in which the hospital participates. If the hospital provides a service for which there is no established payment by Medicare or any other government-sponsored program of health benefits in which the hospital participates, the hospital shall establish an appropriate discounted payment.

(e) A hospital shall use its best efforts to ensure all financial assistance policies are applied consistently.

(f) Any patient, or the patient’s legal representative, seeking either charity care or discounted payment shall provide the hospital with information concerning health benefits coverage, financial status and other information that is reasonable and necessary for the hospital to make a determination regarding the patient’s status relative to the hospital’s charity care policy, discount payment policy, or eligibility for government-sponsored programs. For purposes of proving income, a patient or the patient’s legal representative, must provide verification of the patient’s or the patient’s family’s income. Reasonable and necessary information on monetary assets may include account numbers for all monetary assets, but shall not include statements on retirement or deferred compensation plans qualified under the Internal Revenue Code, or non-qualified deferred compensation plans. Hospitals may require waivers or releases from the patient, or the patient’s family, authorizing the hospital to obtain account information from the financial or commercial institutions, or other entities that hold or maintain the monetary assets to verify their value.

(g) Eligibility for charity care and discounted payments may be determined at any time the hospital is in receipt of all the information needed to determine the patient’s eligibility under its applicable policies.

(h) In determining a patient’s eligibility for financial assistance, a hospital shall assist the patient in determining if he or she is eligible for government-sponsored programs.

1797.311. (a) Each hospital shall post notices regarding the availability of its discount payment policy and charity care policy. These notices shall be posted in visible locations throughout the hospital, including, but not limited to, patient admissions and registration, the billing office, the emergency department and other outpatient settings.

(b) Every posted notice regarding financial assistance policies shall contain brief instructions on how to apply for charity care or a discounted payment. Each notice shall include a contact telephone number that a patient or family member can call to obtain more information.

(c) A hospital shall train appropriate staff members about the hospital’s discount payment policy. Training shall be provided to all staff members who directly interact with patients regarding their hospital bills.

(d) Each hospital shall make its charity care and discount payment policies available to appropriate community health and human services agencies and other organizations that assist low-income patients.

1797.312. (a) Each hospital shall have a written policy about when and under whose authority patient debt is advanced for collection, and shall use its best efforts to ensure that patient accounts are processed fairly and consistently.

(b) Each hospital shall establish a written policy defining standards and practices for the collection of debt, and shall obtain a written agreement from any agency that collects hospital receivables that it will adhere to the hospital’s standards and scope of practices. In determining the amount of a debt a hospital may seek to recover from patients eligible under its charity care policy or discount payment policy, the hospital may consider only income and monetary assets as limited by subdivision (b) of Section 1797.310.

(c) At time of billing, each hospital shall provide to all low-income and uninsured patients, as the same are defined in policies adopted by the hospital regarding eligibility for charity care and discounted payment, the same information concerning services and charges provided to all other patients who receive care at the hospital.

(d) When sending a bill to a patient, each hospital shall include: (1) a statement that indicates that if the patient meets certain low-income requirements the patient may be eligible for a government-sponsored program or for financial assistance from the hospital; and (2) a statement that provides the patient with the name and telephone number of a hospital employee or office from whom or which the patient may obtain information about the hospital's financial assistance policies for patients and how to apply for such assistance.

(e) For patients who have a completed application pending for either government-sponsored coverage or for eligibility under the hospital's own charity care or discount payment policies, a hospital shall not knowingly send that patient's bill to a collection agency prior to 120 days from time of initial billing, and without first having made more than one attempt to collect the bill, or while the completed application is being processed by a governmental agency or the hospital.

(f) If a patient qualifies for eligibility under the hospital's charity care or discount payment policy and is attempting in good faith to settle an outstanding bill with the hospital by negotiating a reasonable payment plan or by making regular partial payments of a reasonable amount, the hospital shall not send the unpaid bill to any collection agency if the hospital knows that doing so may negatively impact a patient's credit.

(g) The hospital or collection agency operating on behalf of the hospital shall not, in dealing with patients eligible under the hospital's charity care or discount payment policies, use wage garnishments or liens on primary residences as a means of collecting unpaid hospital bills. This requirement does not preclude hospitals from pursuing reimbursement from third-party liability settlements or tortfeasors or other legally responsible parties.

(h) Any extended payment plans offered by a hospital to assist patients eligible under the hospital's charity care or discount payment policy, or any other policy adopted by the hospital for assisting low-income patients with no or inadequate insurance in settling past due outstanding hospital bills, shall be interest free.

1797.313. (a) Notwithstanding any other provision of law, the amounts paid by parties for services resulting from reduced or waived charges under a hospital's discount payment or charity care policy shall not constitute the hospital's uniform, published, prevailing, or customary charges, its usual fees to the general public, or its charges to non-Medi-Cal purchasers under comparable circumstances, and shall not be used to calculate a hospital's median non-Medicare or Medi-Cal charges, for purposes of any payment limit under the federal Medicare program, the Medi-Cal program or any other federal or state-financed health care program.

(b) Nothing in this Article shall be construed to prohibit a hospital from uniformly imposing charges from its established charge schedule or published rates, nor shall this Article preclude the recognition of a hospital's established charge schedule or published rates for purposes of applying any payment limit, interim payment amount, or other payment calculation based upon a hospital's rates or charges under the Medi-Cal, Medicare, worker's compensation, or other federal, state or local public program of health benefits.

(c) To the extent that any requirement of this Article results in a federal determination that a hospital's established charge schedule or published rates are not the hospital's customary or prevailing charges for services, the requirement in question shall be inoperative. The department shall seek federal guidance regarding modification to the requirement in question. All other requirements in this Article shall remain operative.

SEC. 10. Preservation of Existing Funding

Section 16950.2 is added to Article 3 of Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code, to read:

16950.2. (a) An amount, equal to the amount appropriated and allocated pursuant to Section 39.1 of Chapter 80 of the Statutes of 2005, twenty-four million eight hundred three thousand dollars (\$24,803,000), shall be transferred and allocated pursuant to subdivision (b) from accounts within the Cigarette and Tobacco Products Surtax Fund (commencing with

Section 30122 of the Revenue and Taxation Code) as follows:

(1) Twenty million two hundred twenty-seven thousand dollars (\$20,227,000) from the Hospital Services Account.

(2) Four million five hundred seventy-six thousand dollars (\$4,576,000) from the Physician Services Account.

(b) The funds specified in subdivision (a) shall be allocated proportionately as follows:

(1) Twenty-two million three hundred twenty-four thousand dollars (\$22,324,000) shall be administered and allocated for distribution through the California Healthcare for Indigents Program (CHIP), Chapter 5 (commencing with Section 16940) of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(2) Two million four hundred seventy-nine thousand dollars (\$2,479,000) shall be administered and allocated through the Rural Health Services Program, Chapter 4 (commencing with Section 16930) of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(c) This transfer shall be made on June 30 of the first fiscal year following adoption of this Act, and on June 30 of each fiscal year thereafter. Funds transferred are continuously appropriated without regard to fiscal years for the purposes so stated for each such account.

(d)(1) Funds allocated pursuant to this Section from the Physician Services Account and the Hospital Services Account in the Cigarette and Tobacco Products Surtax Fund shall be used only for reimbursement of physicians for losses incurred in providing uncompensated emergency services in general acute-care hospitals providing basic, comprehensive, or standby emergency services, as defined in Section 16953 of the Welfare and Institutions Code. Funds shall be transferred to the Physician Services Account in the county Emergency Medical Services Fund established pursuant to Sections 16951 and 16952 of the Welfare and Institutions Code, and shall be paid only to physicians who directly provide emergency medical services to patients, based on claims submitted or a subsequent reconciliation of claims. Payments shall be made as provided in Sections 16951 to 16959, inclusive, of the Welfare and Institutions Code, and payments shall be made on an equitable basis, without preference to any particular physician or group of physicians.

(2) If a county has an EMS Fund Advisory Committee that includes both emergency physicians and emergency department on-call back-up panel physicians, and if the committee unanimously approves, the administrator of the EMS Fund may create a special fee schedule and claims submission criteria for reimbursement for services rendered to uninsured trauma patients, provided that no more than fifteen percent (15%) of the tobacco tax revenues allocated to the county's EMS Fund is distributed through this special fee schedule, that all physicians who render trauma services are entitled to submit claims for reimbursement under this special fee schedule, and that no physician's claim may be reimbursed at greater than fifty percent (50%) of losses under this special fee schedule.

SEC. 11. Amendment

(a) Except as hereafter provided, this Act may only be amended by the electors pursuant to Article II, Section 10(c) of the California Constitution.

(b) Notwithstanding subdivision (a), the Legislature may amend Sections 8 and 9 of this Act to further its purposes by a statute passed in each house by roll-call vote entered in the journal, four-fifths of the membership concurring.

(c) Notwithstanding subdivisions (a) and (b), the Legislature may amend Article 2 (commencing with Section 1797.309) of Chapter 4.5 of Division 2.5 of the Health and Safety Code to further its purposes by a statute passed in each house by roll-call vote entered in the journal, two-thirds of the membership concurring.

(d) Notwithstanding subdivisions (a), (b), and (c), the Legislature may amend Sections 6 and 7 of this Act to further its purposes by a statute passed in each house by roll-call vote entered in the journal, a majority of the membership concurring, except that the Legislature may not amend subdivision (b) of Section 12693.992 of the Insurance Code added by Section 6 of this Act or subdivision (a) or paragraph (1) of subdivision (c) of Section 1246 of the Health and Safety Code added by Section 7 of this Act.

SEC. 12. Statutory References

Unless otherwise stated, all references in this act to existing statutes

are to statutes as they existed on December 31, 2005.

SEC. 13. Severability

If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

SEC. 14. Conflicting Measures

(a) This measure is intended to be comprehensive. It is the intent of the People that in the event that this measure and another initiative measure or measures relating to the same subject shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting ballot measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force of law.

SEC. 15. Conformity with State Constitution

Section 14 is added to Article XIII B of the California Constitution, to read:

SEC. 14. (a) "Appropriations subject to limitation" of each entity of government shall not include appropriations of revenue from the Tobacco Tax Act of 2006. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the Tobacco Tax of 2006 Trust Fund.

(b) The tax created by the Tobacco Tax Act of 2006 and the revenue derived therefrom shall not be considered General Fund revenues for the purposes of Section 8 of Article XVI.

(c) Distribution of moneys in the Tobacco Tax of 2006 Trust Fund or any of the Accounts or Sub-Accounts created therein, shall be made pursuant to the Tobacco Tax Act of 2006 notwithstanding any other provision of this Constitution.

PROPOSITION 87

This initiative measure is submitted to the people of California in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds provisions to the California Constitution, amends, repeals, and adds sections to the Public Resources Code, and adds sections to the Revenue and Taxation Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

THE CLEAN ALTERNATIVE ENERGY ACT

SECTION 1. TITLE.

This measure shall be known as the "Clean Alternative Energy Act."

SEC. 2. FINDINGS AND DECLARATIONS.

The people of California find and declare the following:

A. Californians are facing a severe energy crisis. In 2005, the price of oil nearly doubled and the cost of a gallon of gas soared to over \$3 in some areas, causing ordinary consumers extreme financial distress while the big oil companies reported record profits.

B. Our demand for energy is rising rapidly while our energy supply shrinks, and we continue to grow more dependent on foreign oil.

C. Our excessive dependence on fossil fuels is imposing economic, environmental, and social costs. High-polluting vehicles like diesel buses and trucks create significant air pollution that is threatening the health of our families and children with lung diseases and asthma. They can and should be replaced by clean alternative fuel vehicles.

D. California is the only major oil-producing state in the country that does not impose a comparable fee on oil produced at its wells. California's

oil producers are enjoying windfall profits at the expense of California consumers and taxpayers.

E. An assessment paid by California's big oil companies on their excess profits is a proven way to reclaim some of those revenues without raising prices for consumers. California is the only one of the nation's top five oil-producing states without a comparable assessment on oil producers. These assessments have proven to be impossible for the big oil companies to "pass along" to consumers in the form of higher gas prices at the pump because oil prices are set on the global market without regard to regional or local costs or assessments.

F. Consumers should be protected from any attempt at price gouging by big oil companies if they try to pass along their assessment costs by increasing gas prices at the pump.

G. The proceeds from the assessment on California oil companies' excess profits should be used to reduce the consumption of petroleum, foster the development and use of clean alternative fuels, clean alternative fuel vehicles, and renewable energy technologies, and improve energy efficiency in California.

H. A clean, environmentally-sound energy economy with greatly improved energy efficiency is a vital, pro-business goal. Given that fossil fuel reserves are finite, and that the global appetite for energy is growing, the only question is when—not if—we will make our economy significantly more energy efficient and switch to renewable energies and get more work out of less energy. But politicians in Washington have failed to offer visionary leadership for energy independence or to capture the economic rewards of early action in this critical technology sector.

I. The United States' dependence on foreign oil is a serious danger to U.S. national security, hampers U.S. foreign policy, and is a persistent threat to the U.S. economy. Because 60% of the petroleum the U.S. currently uses comes from foreign imports, and because California is the largest consumer of petroleum products, we must do our part to address these national problems.

J. Further delay in beginning the transition to clean, efficient, and renewable energy puts California and the U.S. at risk for economic upheaval, and cedes the opportunity for new energy technological and industrial leadership to other more pro-active countries, thereby perpetuating our dependence on foreign energy sources.

K. The transition to a renewable energy economy creates an opportunity for California to profit economically, socially, and environmentally. Clean alternative energy technologies like solar, wind, and hydrogen, and clean alternative fuel vehicles like hybrids and bio-fueled cars and trucks are available today and can help reduce our dependence on oil and gasoline.

L. California's history of technological innovation and entrepreneurship, international leadership in promoting energy efficiency, abundance of world-leading academic institutions, national leadership in environmental stewardship, and position as one of the United States' largest energy consumers uniquely qualifies us to lead the way into the renewable energy era.

SEC. 3. PURPOSE AND INTENT.

It is the intent of the people of California in enacting this measure to:

A. Invest approximately \$4 billion in projects and programs designed to enhance California's energy independence and to reduce our use of petroleum, including funding for: research, facility, and training grants to California's universities; vocational training grants to community colleges; and buydowns, loans, loan guarantees, and credits to accelerate the development and deployment of renewable energy technologies, energy efficiency technologies, clean alternative fuels, and clean alternative fuel vehicles;

B. Provide incentives to ordinary Californians to make clean alternative fuel vehicles and clean alternative fuels as affordable and easy to obtain as gasoline and diesel fuels and vehicles. Incentive programs like this have already succeeded in breaking other countries' oil dependence, and they can easily work in California today;

C. Create new industries, technologies, and jobs focused on renewable energy, energy efficiency, clean alternative fuels, and clean alternative fuel vehicles, expand our state's wealth, and ensure that any loan proceeds, royalties, or license fees the state receives as a result of the funding are reinvested in this program;

D. Reduce our dependence on foreign oil by developing renewable

sources of energy and clean alternative fuels, increasing their usage here in California, and improving our energy efficiency;

E. Improve our environment, public health, and quality of life by reducing emissions of carbon dioxide and other global warming gases;

F. Reduce by 25% our use of petroleum transportation fuels in California from the 2005 level of 16 billion gallons annually to begin conserving four billion gallons annually by 2017, and conserve a total of 10 billion gallons over ten years between 2007 and 2017;

G. Invest in energy education in California so that California workers can take advantage of the job opportunities that will open up for those trained in emerging energy systems, technologies, and management methods;

H. Make full use of California's internal resources and its capability for innovation to develop new ways to meet four of the state's important long-term goals: the Renewable Portfolio Standard, Control of Greenhouse Gas Emissions from Motor Vehicles, the Governor's Greenhouse Gas targets, and the petroleum reduction goals set forth in this Act;

I. Impose an assessment on oil extracted from California's oil wells to ensure that California consumers' future energy needs are met without raising gasoline prices for consumers today. By ensuring that oil producers in California finally pay their fair share, we will create a dedicated funding stream of approximately \$4 billion to secure California's future energy independence;

J. Ensure that California oil companies fully comply with the excess profits assessment and protect consumers by prohibiting the oil companies, consistent with U.S. Supreme Court precedent, from attempting to gouge consumers by using the assessment as a pretext to raise prices on oil, gasoline, and diesel fuels in California; and

K. Ensure that the revenues from the new assessment on California oil producers are invested wisely in the most promising research and technologies, and require mandatory independent audits and annual progress reports so that the leaders of this project are accountable to the people of California.

SEC. 4. Article XXXVI is added to the California Constitution, to read:

SECTION 1. There is hereby established in state government the Clean Alternative Energy Program.

SEC. 2. The Clean Alternative Energy Program shall be administered by the California Energy Alternatives Program Authority, which is established in Division 16 (commencing with Section 26000) of the Public Resources Code, and shall be funded by the California Energy Independence Fund Assessment, which is established in Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code.

SEC. 3. In addition to the powers set forth in Division 16 (commencing with Section 26000) of the Public Resources Code, the California Energy Alternatives Program Authority shall have the power, notwithstanding Article XVI, any other article of this Constitution, or any other provision of law, to use revenues produced by the California Energy Independence Fund Assessment to provide incentives including, but not limited to, grants, loans, loan guarantees, buydowns, and credits to universities, community colleges, research institutions, individuals, companies, associations, partnerships, and corporations pursuant to the Clean Alternative Energy Act or to secure the repayment of any bonds, bond anticipation notes, and other obligations and indebtedness of the authority issued pursuant to Division 16 (commencing with Section 26000) of the Public Resources Code, and any other costs associated with such bonds, that are used to fund such incentives.

SEC. 4. (a) Revenues produced by the California Energy Independence Fund Assessment shall be deposited in the California Energy Independence Fund, which is hereby created as a special fund in the State Treasury, to be held in trust for the purposes of the Clean Alternative Energy Act. Moneys held in the California Energy Independence Fund are hereby continuously appropriated, without regard to fiscal year, for those purposes alone.

(b) The California Energy Alternatives Program Authority shall be authorized to expend four billion dollars (\$4,000,000,000) from the California Energy Independence Fund for the purposes of the Clean Alternative Energy Act, as provided in subdivision (d) of Section 26045 of the Public Resources Code.

(c) The proceeds of any bonds, bond anticipation notes, and other

obligations and indebtedness of the authority issued pursuant to Division 16 (commencing with Section 26000) of the Public Resources Code, the revenues produced by any grants or loans made pursuant to the Clean Alternative Energy Act, and any royalties or license fees generated pursuant to the Clean Alternative Energy Act shall be deposited in the California Energy Independence Fund and are hereby continuously appropriated, without regard to fiscal year, for the purposes of the Clean Alternative Energy Act alone.

(d) The moneys in the California Energy Independence Fund may not be used for any purpose or program other than the purposes or programs authorized by the Clean Alternative Energy Act, and may not be loaned to the state General Fund, or to any other fund of the state, or to any fund of a county, or any other entity, or borrowed by the Legislature, or any other state or local agency, for any purpose other than the purposes authorized by the Clean Alternative Energy Act.

(e) Notwithstanding any other provision of this Constitution, revenues generated by the California Energy Independence Fund Assessment shall not be deemed to be "revenues" or "taxes" for purposes of computing any state expenditure or appropriation limit that is enacted on or after June 6, 2006, nor shall their expenditure or appropriation be subject to any reduction or limitation imposed pursuant to any provision enacted after that date.

SEC. 5. Section 14 is added to Article XIII B of the California Constitution, to read:

SEC. 14. (a) "Appropriations subject to limitation" of each entity of government shall not include appropriations of revenue from the California Energy Independence Fund, which is established in subdivision (a) of Section 4 of Article XXXVI. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the California Energy Independence Fund.

(b) Revenues generated by the California Energy Independence Fund Assessment shall not be considered General Fund revenues for the purposes of Section 8 and Section 8.5 of Article XVI.

SEC. 6. Section 26004 of the Public Resources Code is amended to read:

26004. (a) There is in the state government the ~~California Alternative Energy and Advanced Transportation Financing~~ California Alternative Energy and Advanced Transportation Financing California Energy Alternatives Program Authority. The authority constitutes a public instrumentality and the exercise by the authority of powers conferred by this division and Article XXXVI of the California Constitution is the performance of an essential public function.

(b) The authority shall consist of five ~~nine~~ members, as follows:

(1) ~~The Secretary for Environmental Protection~~ The Director of Finance.

(2) The Chairperson of the State Energy Resources Conservation and Development Commission.

(3) ~~The President of the Public Utilities Commission.~~ The Treasurer.

(4) ~~The Controller.~~ A Californian who has expertise in economics, energy markets, and energy efficiency technologies, appointed by the Governor.

(5) ~~The Treasurer, who shall serve as the chairperson of the authority.~~ A Californian who has expertise, and who has demonstrated leadership, in public health, appointed by the Governor.

(6) A Californian who has expertise in finance, start-ups, and venture capital, preferably with experience in enterprises comparable in scale and purpose to those that would be eligible for funding pursuant to the Clean Alternative Energy Act, appointed by the Controller.

(7) A renewable energy or energy efficiency expert from a California university that awards doctoral degrees in the sciences who is either a member of the National Academy of Sciences or the National Academy of Engineering, or a Nobel Prize laureate, appointed by the Speaker of the Assembly.

(8) The dean or a tenured faculty member of a major, nationally recognized California business school that awards post-graduate degrees who has significant experience in as many as possible of new technology ventures, entrepreneurship, consumer marketing, consumer adoption of new trends, and enterprises comparable in scale and purpose to those that would be eligible for funding pursuant to the Clean Alternative Energy Act, appointed by the Senate Committee on Rules.

(9) *A Californian who has expertise, and who has demonstrated leadership, in consumer advocacy, preferably with substantial experience in consumer marketing and business, appointed by the Attorney General.*

(c) *The members listed in paragraphs (1) to (5)(3), inclusive, of subdivision (b) may each designate a deputy or clerk in his or her agency to act for and represent the member at all meetings of the authority, who is employed under the member's authority, and, notwithstanding Section 7.5 of the Government Code, each such designee may act in his or her place and stead on the board. While serving on the board, the deputy may exercise the same powers that the member could exercise if he or she were personally present.*

(d) *The first meeting of the authority after the voters' enactment of the Clean Alternative Energy Act shall be convened by the Treasurer within 60 days of the effective date of the Act. At the first meeting, the members of the authority shall elect a chairperson, who shall serve a two-year term. No chairperson shall serve more than two consecutive two-year terms.*

(e) *Members of the authority and any entity controlled by a member shall not be eligible to apply for any incentive including, but not limited to, any grant, loan, loan guarantee, credit, or buydown awarded by the authority or any contract made by the authority.*

(f) *Members of the authority appointed pursuant to paragraphs (4) to (9), inclusive, of subdivision (b) shall serve four-year terms and shall be eligible to serve a maximum of two terms.*

(g) *Service as a member of the authority by a member of the faculty or administration of the University of California shall not, by itself, be deemed to be inconsistent, incompatible, in conflict with, or inimical to the duties of a member of the authority as a member of the faculty or administration of the University of California and shall not result in automatic vacation of either office. Service as a member of the authority by an employee of an entity that is eligible for funding from the authority shall not be deemed to be inconsistent, incompatible, in conflict with, or inimical to the duties of a member of the authority as an employee of an entity that is eligible for funding from the authority.*

SEC. 7. Section 26005 of the Public Resources Code is amended to read:

26005. All members of the authority shall serve thereon without compensation as members of the authority, *except for the members appointed pursuant to paragraphs (4) to (9), inclusive, of subdivision (b) of Section 26004, who shall be entitled to receive a per diem, established by the Department of Personnel Administration, based on comparable per diem paid to members of similar state boards and commissions, for each day actually spent in the discharge of the member's duties. All members of the authority shall be entitled to reasonable and necessary travel and other expenses incurred in the performance of the member's duties.*

SEC. 8. Section 26006 of the Public Resources Code is amended to read:

26006. The provisions of this division shall be administered by the authority which shall have and is hereby vested with all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed upon it under this division *and under Article XXXVI of the California Constitution.*

SEC. 9. Section 26008 of the Public Resources Code is amended to read:

26008. (a) ~~The authority may employ an executive director and any other persons as are necessary to enable it properly to perform the duties imposed upon it by this division shall appoint a chief executive officer with substantial business experience in the private sector at a senior management level, preferably with experience in new technology, to serve the authority, as soon as reasonably practicable. The executive director chief executive officer shall serve at the pleasure of the authority and shall receive such compensation as shall be fixed by the authority. The authority may delegate to the executive director the power to enter contracts on behalf of the authority. The chief executive officer's primary responsibilities shall be to hire, direct, and manage the authority's staff; to develop the authority's two-year and ten-year strategic plans pursuant to Section 26045; to develop and recommend standards and procedures, including a competitive selection process, to govern the authority's consideration and award of incentives including, but not limited to, grants, loans, loan guarantees, credits, and buydowns pursuant to Section 26045; to develop recommendations for the award of incentives including, but not limited to, grants, loans, loan guarantees, credits, and buydowns pursuant~~

~~to Section 26045; to develop and recommend procedures and standards to monitor recipients of incentives including, but not limited to, grants, loans, loan guarantees, credits, and buydowns awarded by the authority pursuant to Section 26045; and to execute and manage contracts on behalf of the authority.~~

~~(b) From time to time, the authority shall determine the total number of authorized employees for the authority.~~

~~(1) Notwithstanding Sections 19816, 19825, 19826, 19829, and 19832 of the Government Code, the authority shall fix and approve the compensation of the chief executive officer and other staff of the authority.~~

~~(2) When fixing and approving the compensation of the chief executive officer and other staff of the authority pursuant to paragraph (1), the authority shall be guided by the principles contained in Sections 19826 and 19829 of the Government Code, consistent with the authority's responsibility to recruit and retain highly qualified and effective employees.~~

SEC. 10. Section 26010 of the Public Resources Code is amended to read:

26010. (a) The Attorney General shall be the legal counsel for the authority, but with the approval of the Attorney General, the authority may employ such legal counsel as in its judgment is necessary or advisable to enable it to carry out the duties and functions imposed upon it by this division, including the employment of such bond counsel as may be deemed advisable in connection with the issuance and sale of bonds.

(b) ~~The Director of Finance Treasurer~~ shall be the treasurer of the authority.

SEC. 11. Section 26020 of the Public Resources Code is amended to read:

26020. (a) The authority may incur indebtedness and issue and renew negotiable bonds, notes, debentures, or other securities of any kind or class *to carry out its corporate purposes.* All indebtedness, however evidenced, shall be payable solely from revenues of the authority, *including the proceeds from the assessment imposed pursuant to Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code and the proceeds of its negotiable bonds, notes, debentures, or other securities; and shall not exceed the sum of one billion dollars (\$1,000,000,000) of total debt outstanding.*

(b) As used in this section, "total debt outstanding" does not include either of the following:

(1) A bond for which provisions have been made for prepayment through irrevocable escrow or other means, so that the bond is not considered outstanding under its authorizing document.

(2) Indebtedness that is incurred to refund existing debts, except to the extent that the indebtedness exceeds the amount of those debts.

SEC. 12. Section 26021 of the Public Resources Code is repealed.

~~26021. The Legislature may, by statute, authorize the authority to issue bonds, as defined in Section 26022, in excess of the amount provided in Section 26020.~~

SEC. 13. Section 26022 of the Public Resources Code is amended to read:

26022. (a) The authority is authorized from time to time to issue its negotiable bonds, notes, debentures, or other securities (hereinafter collectively called "bonds") for any of its purposes. The bonds may be authorized, without limiting the generality of the foregoing, to finance a single project for a single participating party, a series of projects for a single participating party, a single project for several participating parties, or several projects for several participating parties *and to finance expenditures authorized by the Clean Alternative Energy Act as set forth in Chapter 4 (commencing with Section 26043).* In anticipation of the sale of bonds as authorized by Section 26020, ~~or as may be authorized pursuant to Section 26021,~~ the authority may issue negotiable bond anticipation notes and may renew the notes from time to time. The bond anticipation notes may be paid from the proceeds of sale of the bonds of the authority in anticipation of which they were issued. Notes and agreements relating to the notes and bond anticipation notes, hereinafter collectively called notes, and the resolution or resolutions authorizing the notes may contain any provisions, conditions or limitations which a bond, agreement relating to the bond, and bond resolution of the authority may contain. However, a note or renewal of the note shall mature at a time not exceeding two years

from the date of issue of the original note.

(b) Except as may otherwise be expressly provided by the authority *and except as more particularly provided in subdivision (e)*, every issue of its bonds, notes, or other obligations shall be general obligations of the authority payable from any revenues or moneys of the authority available for these purposes and not otherwise pledged, subject only to any agreements with the holders of particular bonds, notes, or other obligations pledging any particular revenues or moneys and subject to any agreements with any participating party. Notwithstanding that the bonds, notes, or other obligations may be payable from a special fund, they are for all purposes negotiable instruments, subject only to the provisions of the bonds, notes, or other obligations for registration.

(c) ~~Subject to the limitations in Sections 26020 and 26021, the bonds~~ Bonds may be issued as serial bonds or as term bonds, or the authority, in its discretion, may issue bonds of both types. The bonds shall be authorized by resolution of the authority and shall bear the date or dates, mature at the time or times, not exceeding 50 years from their respective dates, bear interest at the rate or rates, be payable at the time or times, be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in a manner, be payable in lawful money of the United States of America at a place or places, and be subject to terms of redemption, as the resolution or resolutions may provide, *provided, however, that bonds issued for purposes of the Clean Alternative Energy Act shall have a maturity of not more than 25 years.* The bonds or notes shall be sold by the Treasurer within 60 days of receipt of a certified copy of the authority's resolution authorizing the sale of the bonds. However, the authority, at its discretion, may adopt a resolution extending the 60-day period. The sales may be a public or private sale, and for the price or prices and on the terms and conditions, as the authority shall determine ~~after giving due consideration to the recommendations of any participating party to be assisted from the proceeds of the bonds or notes.~~ Pending preparation of the definitive bonds, the Treasurer may issue interim receipts, certificates, or temporary bonds which shall be exchanged for the definitive bonds. The Treasurer may sell any bonds, notes, or other evidence of indebtedness at a price below their par value. ~~However, the discount on any security so sold shall not exceed 6 percent of the par value.~~

(d) Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to all of the following:

(1) Pledging the full faith and credit of the authority or pledging all or any part of the revenues of any project or any revenue-producing contract or contracts made by the authority with any individual, partnership, corporation, or association or other body, public or private, or other moneys of the authority, *including moneys deposited in the California Energy Independence Fund created by Article XXXVI of the California Constitution*, to secure the payment of the bonds or of any particular issue of bonds, subject to the agreements with bondholders as may then exist.

(2) The rentals, fees, purchase payments, loan repayments, and other charges to be charged, and the amounts to be raised in each year by the charges, and the use and disposition of the revenues.

(3) The setting aside of reserves or sinking funds, and the regulation and disposition of the reserves or sinking funds.

(4) Limitations on the right of the authority or its agent to restrict and regulate the use of the project or projects to be financed out of the proceeds of the bonds or any particular issue of bonds.

(5) Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging those proceeds to secure the payment of the bonds or any issue of the bonds.

(6) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured and the refunding of outstanding bonds.

(7) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which that consent may be given.

(8) Limitations on expenditures for operating, administrative, or other expenses of the authority.

(9) Defining the acts or omissions to act which constitute a default in the duties of the authority to holders of its obligations and providing the

rights and remedies of the holders in the event of a default.

(10) The mortgaging of any project and the site of the project for the purpose of securing the bondholders.

(11) The mortgaging of land, improvements, or other assets owned by a participating party for the purpose of securing the bondholders.

(12) Procedures for the selection of projects to be financed with the proceeds of the bonds authorized by the resolution, if the bonds are to be sold in advance of the designation of the projects and participating parties to receive the financing.

(e) Notwithstanding any other provision of this division, the authority may pledge all moneys which are deposited in the Debt Service Account of the California Energy Independence Fund, which is established by Article XXXVI of the California Constitution, to the payment of the principal of premium, if any, or interest on any bonds, bond anticipation notes or other obligations of the authority used to finance the Clean Alternative Energy Act, together with payment of all ancillary obligations, as that term is defined in Section 26048, or other costs of issuing or carrying such bonds. The authority shall determine from time to time and notify the State Board of Equalization in writing the amounts which must be deposited each month, or during the course of each fiscal year, in the Debt Service Account to provide for all the aforementioned payments and costs, and any coverage factors which are required by the bond documents. The lien of the pledge of the amounts in the Debt Service Account shall vest automatically upon the execution and delivery of the resolution, trust agreement, or other agreement relating to the bonds, bond anticipation notes, other obligations, or ancillary agreements, without requirement of any filing or notice. If moneys are deposited in the Debt Service Account which exceed the amounts necessary to pay current obligations for repayment of bonds, other obligations and ancillary obligations, the authority shall apply such excess funds to the early retirement of such bonds to the maximum extent fiscally prudent.

~~(e)~~ (f) Neither the members of the authority nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

(f) (g) The authority shall have power out of any funds available for these purposes to purchase its bonds or notes. The authority may hold, pledge, cancel, or resell those bonds, subject to and in accordance with agreements with bondholders.

SEC. 14. Section 26024 of the Public Resources Code is amended to read:

26024. Bonds issued under the provisions of this division shall not be deemed to constitute a debt or liability of the state or of any political subdivision thereof, other than the authority, or a pledge of the faith and credit of the state or of any such political subdivision, other than the authority, but shall be payable solely from the funds herein provided therefor. All such bonds shall contain on the face thereof a statement to the following effect:

"Neither the faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of or interest on this bond."

~~The~~ *Except as set forth in Sections 26022 and 26049, the issuance of bonds under the provisions of this division shall not directly or indirectly or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. Nothing contained in this section shall prevent nor be construed to prevent the authority from pledging its full faith and credit to the payment of bonds or issue of bonds authorized pursuant to this division.*

SEC. 15. Section 26029.4 of the Public Resources Code is amended to read:

26029.4. Subject to Section 26029.6, the existence of the authority may be terminated at any time by the Legislature *no sooner than January 1, 2027, or after the assets of the authority have been fully expended, whichever is later.* Upon dissolution of the authority, the title to all properties owned by it shall, subject to the interests of any participating parties therein, vest in and become the property of the State of California and shall not inure to the benefit of any private party. *Notwithstanding the foregoing, so long as any bonds or other obligations secured by the assessment imposed by Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code remain outstanding, neither*

the Legislature nor the people may reduce or eliminate the assessment, and this pledge may be included in the proceedings of any such bonds as a covenant with the holders of such bonds.

SEC. 16. Section 26033 of the Public Resources Code is amended to read:

26033. All moneys received pursuant to the provisions of this division, whether as proceeds from the sale of bonds, notes, or other evidences of indebtedness or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this division. Any bank or trust company with which such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as the resolution authorizing the bonds of any issue or the trust agreements securing such bonds may provide. *The proceeds from the assessment imposed pursuant to Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code, the proceeds from the sale of bonds, notes, or other evidences of indebtedness secured by the assessment, and any revenues generated by the Clean Alternative Energy Act shall be deposited in the California Energy Independence Fund, as established by Section 4 of Article XXXVI of the California Constitution, and shall be used solely for the purposes of the Clean Alternative Energy Act. Notwithstanding any other provision of law, proceeds of bonds issued pursuant to this division, including those deposited in the Clean Energy Independence Fund, may be held by a trustee outside the state treasury system as provided by this chapter.*

SEC. 17. Chapter 4 (commencing with Section 26043) is added to Division 16 of the Public Resources Code, to read:

CHAPTER 4. CLEAN ALTERNATIVE ENERGY PROGRAM

Article 1. General Provisions

26043. *This chapter implements the Clean Alternative Energy Act, including Article XXXVI of the California Constitution. As used throughout this chapter, "Act" refers to the Clean Alternative Energy Act.*

26044. *This chapter shall govern the expenditure of all revenues deposited in the California Energy Independence Fund.*

26045. *In addition to its other powers and duties, the authority shall perform the following functions:*

(a) *Within nine months of the effective date of the Act, and every two years thereafter, adopt or modify two-year and ten-year strategic plans to guide the authority's funding decisions in the areas of petroleum use reduction, academic research and vocational training, technology innovation, and public education in order to meet the goals of this Act within 10 years of the adoption of the authority's initial strategic plans.*

(b) *Adopt procedures and standards, including a competitive selection process, to govern the authority's consideration and award of incentives including, but not limited to, grants, loans, loan guarantees, credits, and buydowns. The incentives approved by the authority shall not be deemed to be contracts subject to the Public Contract Code.*

(c) *Award incentives including, but not limited to, grants, loans, loan guarantees, credits, and buydowns, through a competitive selection process designed to achieve the objectives of this Act within 10 years of the date of adoption of the authority's initial strategic plans. For loans and loan guarantees, to the extent permitted under California law, the authority shall use all prudent means to maximize the impact of the loans and loan guarantees by recycling funds or remarketing loans or loan guarantees.*

(d) *Expend four billion dollars (\$4,000,000,000) within ten years of the date of adoption of the authority's initial strategic plans to achieve the objectives of the Act from either the proceeds of bonds or other obligations of the authority or from the California Energy Independence Fund Assessment deposited in the accounts established pursuant to subdivision (b) of Section 26049. This amount shall not include the costs of repaying indebtedness associated with the Clean Alternative Energy Act, including principal, interest, ancillary obligations, and other costs of any bonds issued pursuant to Division 16 (commencing with Section 26000) of the Public Resources Code. The authority shall expend any additional amounts remaining in the California Energy Independence Fund in furtherance of the purposes of this Act.*

(e) *Adopt procedures and standards to monitor recipients of incentives including, but not limited to, grants, loans, loan guarantees, credits, and buydowns, awarded by the authority.*

(f) *Adopt objective standards to measure the authority's success in meeting the goals of this Act.*

(g) *Ensure the completion of an annual independent financial audit of the authority's operations and issue public reports regarding the authority's activities.*

(h) *Notwithstanding Section 11005 of the Government Code, accept additional revenue and real and personal property including, but not limited to, gifts, bequests, royalties, interest, and appropriations to supplement the authority's funding. Notwithstanding Section 26049, donors may earmark gifts for a particular purpose authorized by this Act.*

(i) *Appoint one advisory review committee of no more than nine members for each account established pursuant to subdivision (b) of Section 26049 to assist the authority in its review of applications for funding, if the authority determines that it is necessary to obtain expertise in market dynamics or technology that is not available within the authority. Members of review committees shall be entitled to receive a per diem, established by the Department of Personnel Administration, based on comparable per diem paid to members of similar state review committees, for each day actually spent in the discharge of the member's duties, plus reasonable and necessary travel and other expenses incurred in the performance of the member's duties. Members of the advisory review committees and any entity controlled by a member shall not be eligible to apply for any incentive including, but not limited to, any grant, loan, loan guarantee, credit, or buydown awarded by the authority or any contract made by the authority.*

(j) *Apply for federal matching funds where possible.*

(k) *Adopt regulations pursuant to the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.) as necessary to implement this Act. In order to expedite the commencement of the program mandated by this Act, however, the authority may adopt interim regulations, including standards, without complying with the procedures set forth in the Administrative Procedure Act. The interim regulations shall remain in effect for 270 days unless earlier superseded by regulations adopted pursuant to the Administrative Procedure Act.*

26046. *The authority shall take all actions authorized by this chapter by a majority vote of a quorum of the authority, except as required by subdivision (f) of Section 26050 and subdivision (c) of Section 26056.*

26047. *Section 1090 of the Government Code shall not apply to any incentive including, but not limited to, a grant, loan, loan guarantee, credit, or buydown, or contract awarded by the authority pursuant to this chapter except where both of the following conditions are met:*

(a) *The member has a financial interest in an incentive or contract.*

(b) *The member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the incentive or contract.*

Article 2. Definitions

26048. *As used in this Act, the following terms shall have the following meanings:*

(a) *"Ancillary obligation" means an obligation of the authority entered into in connection with any bonds issued under this division, including the following:*

(1) *A credit enhancement or liquidity agreement, including any credit enhancement or liquidity agreement in the form of bond insurance, letter of credit, standby bond purchase agreement, reimbursement agreement, liquidity facility, or other similar arrangement.*

(2) *A remarketing agreement.*

(3) *An auction agent agreement.*

(4) *A broker-dealer agreement or other agreement relating to the marketing of the bonds.*

(5) *An interest rate or other type of swap or hedging contract.*

(6) *An investment agreement, forward purchase agreement, or similar structured investment contract.*

(b) “Buydown” means a payment to cover up to 100 percent of the difference in the purchase price between a clean alternative fuel vehicle and a comparable dedicated gasoline or diesel vehicle.

(c) “Clean alternative fuels” means fuels for use in transportation including, but not limited to, hydrogen, methanol, natural gas, ethanol blends consisting of at least 85 percent ethanol, and biodiesel blends consisting of at least 20 percent biodiesel that, when used in vehicles, have been demonstrated, to the satisfaction of the authority, to have the ability to meet applicable vehicular emission standards and that, relative to petroleum use, produce no net material increase in air pollution, water pollution, or any other substances that are known to damage human health, and reduce global warming pollution considering the full fuel-cycle assessment. Any fuel not specifically mentioned above must significantly decrease global warming pollution emissions compared to petroleum, considering the full fuel-cycle assessment, in order to be considered a clean alternative fuel.

(d) “Clean alternative fuel infrastructure” means facilities and equipment dedicated to clean alternative fuel production, storage, and distribution.

(e) “Clean alternative fuel vehicles” means light-, medium-, and heavy-duty conversions, conversion systems, and vehicles powered by clean alternative fuels, flexible-fuel vehicles, plug-in hybrids powered primarily by electricity, and battery-powered electric vehicles, all of which have been demonstrated, to the satisfaction of the authority, to have the ability to meet applicable vehicular emission standards and that, relative to petroleum use, produce no net material increase in air pollution (including global warming pollution), water pollution, or any other substances that are known to damage human health and which meet all applicable safety certifications and standards necessary to operate in California.

(f) “Energy efficiency technologies” means methods of obtaining more or better services from less energy, compared with typical current practices in California.

(g) “Full fuel-cycle assessment” means evaluating and comparing the full environmental and health impacts of each step in the life cycle of a fuel, including, but not limited to, all of the following:

- (1) Feedstock extraction, transport, and storage.
- (2) Fuel production, distribution, transport, and storage.
- (3) Vehicle operation, including refueling, combustion or conversion, and evaporation.
- (4) Electricity generation, distribution, and storage, when used in vehicles for transportation.

(h) “Petroleum reduction” means methods of reducing total projected petroleum use in California either through increased energy efficiency, clean alternative fuels, or a combination of both.

(i) “Renewable energy technologies” means energy production techniques, products or systems, distribution techniques, products or systems, and transportation machinery, products or systems, all of which utilize solely energy resources that are naturally regenerated over a short time scale and delivered directly from the sun (such as thermal, photochemical, and photoelectric), indirectly from the sun (such as wind, hydropower facilities of 30MW or less that are consistent with subparagraph (D) of paragraph (3) of subdivision (b) of Section 25743 of the Public Resources Code, and photosynthetic energy stored in biomass consistent with subdivisions (d) and (f) of Section 25743 of the Public Resources Code), or from other natural movements or mechanisms of the environment, such as geothermal and tidal energy. Renewable energy technologies do not include technologies that use energy resources derived from fossil fuels, waste products from fossil sources, or waste products from inorganic sources.

Article 3. Allocation of Funds

26049. (a) From the revenues generated by the California Energy Independence Fund Assessment, there shall first be deposited in each calendar month into the Debt Service Account of the California Energy Independence Assessment Fund, which account is hereby created, moneys in such an amount as the authority determines and notifies the State Board of Equalization in writing is necessary and appropriate to pay the debt service on any outstanding bonds, bond anticipation notes, or other obligations and indebtedness of the authority, together with any ancillary obligations, any coverage factors required by the bond documents, any costs

associated with the issuance or carrying of any bonds, bond anticipation notes, or other obligations and indebtedness of the authority, and any other costs determined by the authority to be necessary to carry out the financing authorized by this chapter. Notwithstanding any other provision of law, moneys in the Debt Service Account are continuously appropriated, without regard to fiscal year, to the authority for the repayment of bonds, other obligations or indebtedness or ancillary obligations or other costs of the authority relating to outstanding bonds and may be held by a trustee as authorized by Section 26023.

(b) After funds have been deposited in the Debt Service Account pursuant to subdivision (a) in any month, all funds deposited in the California Energy Independence Fund for that month, except as otherwise provided by this Act, shall be allocated as follows:

- (1) Fifty-seven and one-half percent (57.5%) to the Gasoline and Diesel Use Reduction Account, which is hereby created.
- (2) Twenty-six and three-quarters percent (26.75%) to the Research and Innovation Acceleration Account, which is hereby created.
- (3) Nine and three-quarters percent (9.75%) to the Commercialization Acceleration Account, which is hereby created.
- (4) Two and one-half percent (2.5%) to the Vocational Training Account, which is hereby created.
- (5) Three and one-half percent (3.5%) to the Public Education and Administration Account, which is hereby created.

(c) Any funds allocated to the accounts established by paragraphs (1) to (5), inclusive, of subdivision (b) that are not encumbered or expended in any fiscal year shall remain in the same account for the next fiscal year, except as provided in subdivision (d) of Section 26058. Once all expenditures authorized by this Act have been made from the accounts established by paragraphs (1) to (5), inclusive, of subdivision (b), all proceeds from the California Energy Independence Fund Assessment shall be deposited in the Debt Service Account established by subdivision (a) until all obligations secured or payable from such account have been paid or payment has been provided for.

(d) Funds deposited in the accounts of the California Energy Independence Fund created in subdivision (b) shall be used to supplement, and not to supplant, existing state funding for research, vocational training, and technological development and deployment involving petroleum reduction, energy efficiency, and renewable energy. To maximize the use of available funds, the authority shall coordinate its expenditure of funds in the California Energy Independence Fund with other state agencies to avoid duplication and to ensure that the funds are expended efficiently and efficaciously.

26050. Based on the standards set forth in Section 26056, the authority may use the funds in the Gasoline and Diesel Use Reduction Account for the following categories of expenditures, based on the relative merit in petroleum reduction of transportation-related applications to the authority for funding from this account:

(a) Market-based incentives including, but not limited to, loans, loan guarantees, credits, and buydowns to fleets and individuals for the purchase of clean alternative fuel vehicles sold in California. For buydowns to state and local government agency fleets, the authority shall give preference to school bus, emergency services vehicle, waste disposal truck, and mass transit bus fleets. Other than these preference categories, buydowns will be market-based and subject to the authority determining that the buydown will significantly assist the technology to achieve unsubsidized market competitiveness. Demonstration projects are discouraged.

(b) Production incentives including, but not limited to, loans, loan guarantees, and credits for clean alternative fuel production in California, excluding the production of electricity, except clean fuel cell based electricity production.

(c) Incentives including, but not limited to, loans, loan guarantees, credits, and grants for the construction of publicly accessible clean alternative fuel refueling stations, including refueling stations that sell ethanol blends consisting of at least 85 percent ethanol (E-85) sufficient in number to match the existing supply of E-85 vehicles in California based on the ratio of diesel vehicles to diesel fuel stations, and electric vehicle chargers using similar criteria. The authority should consider issuing suitable requests for proposals for refueling stations as soon as practicable.

(d) Incentives including, but not limited to, loans, loan guarantees,

and grants for the installation of publicly accessible clean alternative fuel infrastructure.

(e) Grants and loans to private enterprises for research involving clean alternative fuels and clean alternative fuel vehicles in California.

(f) Other expenditures which the authority determines, by a vote of seven or more members of the authority, represent urgent or extraordinary opportunities involving vehicle or fuel technologies that will advance the goal of reducing the use of petroleum transportation fuels in California from 2005 levels by ten billion (10,000,000,000) gallons over 10 years.

26051. Based on the standards set forth in Section 26057, the authority shall use the funds in the Research and Innovation Acceleration Account to make grants to California universities for facilities, post-baccalaureate student research training grants, and research, performed and located wholly on the contiguous campus of the university, to improve the economic viability and accelerate the commercialization of renewable energy technologies, such as solar, geothermal, wind, and wave technologies, and energy efficiency technologies in buildings, equipment, electricity generation, and vehicles.

26052. Based on the standards set forth in Section 26058, the authority shall use the funds in the Commercialization Acceleration Account to provide incentives including, but not limited to, loans, loan guarantees, and grants to fund the one-time or start-up costs of introducing petroleum reduction and renewable energy technologies, energy efficiency technologies, clean alternative fuels, and clean alternative fuel vehicles including, but not limited to, the certification of products, vehicles, and distribution systems, and for other costs that will accelerate the production and distribution of commercially viable products and technologies to the market and that, preferably, will promote California-based job creation, employment, and economic development.

26053. Based on the standards in Section 26059, the authority shall use the funds in the Vocational Training Account to:

(a) Make grants through the Office of the Chancellor of Community Colleges to California community colleges for staff development and facilities to train students to work with renewable energy technologies, energy efficiency technologies, and clean alternative fuels, in buildings, equipment, electricity generation, and vehicles.

(b) Make grants through the Office of the Chancellor of Community Colleges to California community colleges for tuition assistance for low-income students and former fossil fuel energy workers and certified vehicle mechanics to obtain training to work with renewable energy technologies, such as solar, geothermal, wind, and wave technologies, clean alternative fuels, and energy efficiency technologies, in buildings, equipment, electricity generation, and vehicles.

26054. Based on the standards in Section 26060, the authority shall use the funds in the Public Education and Administration Account to:

(a) Educate the California public regarding the importance of energy efficiency technologies, renewable energy technologies, and full fuel-cycle petroleum reduction.

(b) Administer the authority.

(c) Monitor the implementation of the California Energy Independence Fund Assessment and refer any evidence that oil producers are attempting to gouge consumers by passing the assessment on to consumers in the form of higher prices for oil, gasoline, or diesel fuel to the Board of Equalization for investigation.

Article 4. Standards

26055. The authority shall establish the following standards:

(a) Intellectual Property Rights. The authority shall establish standards requiring that all research grants made pursuant to this Act shall be subject to intellectual property agreements that balance the opportunity of the State of California to benefit from the patents, royalties, and licenses that result from the research with the need to assure that such research is not unreasonably hindered by those intellectual property agreements.

(b) Oversight of Awards. The authority shall establish standards for the oversight of all incentives including, but not limited to, grants, loans, loan guarantees, credits, and buydowns made under this Act to ensure compliance with all applicable terms and requirements. The standards shall include periodic reporting, including financial and performance audits, by all recipients of incentives, excluding individuals who receive

buydowns, and shall permit the authority to discontinue funding or to take other action to ensure the purposes of this Act are being met.

26056. Standards for Gasoline and Diesel Use Reduction Account Expenditures.

(a) The authority shall make expenditures pursuant to Section 26050 consistent with the goal of reducing the rate of petroleum consumption in California by 25 percent within 10 years of the date of the authority's adoption of an initial strategic plan pursuant to this section, as compared with California's current sixteen billion (16,000,000,000) gallon annual rate of consumption, or roughly four billion (4,000,000,000) gallons of petroleum transportation fuels per year by 2017, and causing permanent and long-term reductions in petroleum consumption in California. The total reduction goal shall be ten billion (10,000,000,000) gallons of petroleum transportation fuels over 10 years. Prior to making any expenditure pursuant to Section 26050, the authority shall adopt a strategic plan pursuant to subdivision (a) of Section 26045, as follows:

(1) Within nine months of the effective date of this Act, the authority, in consultation with the California Air Resources Board, the California Energy Commission, and the Public Utilities Commission, shall adopt an Integrated Resource Plan for petroleum reduction in California. The Integrated Resource Plan shall be based on the best estimates of the potential for unsubsidized market acceptance of technologies, products, or services within 10 years of the date of the adoption of the initial Integrated Resource Plan.

(2) The Integrated Resource Plan shall outline a strategy for the allocation of funds to programs with the highest return opportunities, using the financing powers provided to the authority by this division. The Integrated Resource Plan shall maximize the petroleum use reduction while considering the greenhouse gas reduction benefits of clean alternative fuels and clean alternative fuel vehicles. The Integrated Resource Plan shall also evaluate the expenditure of funds for clean alternative fuel vehicles and shall consider allocating funds necessary to balance the deployment of clean alternative fuel vehicles with accessibility to clean alternative fuels.

(3) The Integrated Resource Plan shall be developed with input from interested parties at scheduled public hearings of the authority under the leadership of the Chief Executive Officer of the authority. The authority shall update the plan every two years and shall amend the plan to ensure that it remains consistent with California Air Resources Board regulations and consistent with the priorities and goals of this Act.

(4) The Integrated Resource Plan shall contain an assessment of the potential of expenditures to meet or exceed the goal of reducing petroleum consumption by ten billion (10,000,000,000) gallons over 10 years. Expenditures shall only be made for items consistent with meeting or exceeding this goal. Expenditures shall also be consistent with, and shall receive priority according to their potential to meet or exceed, the emissions targets and goals set forth in Executive Order S-3-05, as published, and the emissions targets and goals set forth in Sections 1900, 1961, and 1961.1 of Title 13 of the California Code of Regulations, in effect as of December 1, 2005. If these emissions targets and goals are replaced by more stringent emissions targets and goals prior to dissolution of the authority, the more stringent emissions targets and goals shall be used to establish priority for all subsequent expenditures under Section 26050. The full fuel-cycle assessment should be applied to all fuels, including electricity as a transportation fuel. Different methods of producing a specific fuel may have different greenhouse gas emission reductions, and the various methods should be duly considered in evaluating the full fuel-cycle for that fuel. In the case of two vehicles with equivalent full fuel-cycle greenhouse gas emissions, priority shall be given to that which involves the lowest cost to the account.

(5) All expenditures made by the authority under this section shall be consistent with the strategy outlined in the Integrated Resource Plan.

(b) All expenditures on clean alternative fuel infrastructure and electric vehicle chargers shall be restricted to those that support clean alternative fuel vehicles that are available for sale and are producible in substantial volumes.

(c) Expenditures for buydowns shall be limited to 25 percent of the total amount deposited in the Gasoline and Diesel Use Reduction Account, unless the authority determines, by a two-thirds vote, that additional expenditures are warranted in order to most cost-effectively achieve the goals of this Act.

(d) All expenditures made pursuant to Section 26050 shall be based upon a competitive selection process, established pursuant to subdivision (b) of Section 26045. Pursuant to the competitive selection process, the authority shall, at a minimum:

(1) Ensure that the expenditure does not supplant existing state funding for the reduction of petroleum consumption in California.

(2) Evaluate the quality of the proposal for funding, including the availability of private matching funds, and the potential for achieving significant results, including the level of petroleum reduction within the state that is expected to be achieved as a result of the expenditure. Proposals with significant business validation and leverage from private equity funding or subordinate debt funding from private sources will be prioritized and given preference to establish the market viability of the proposals.

(3) Evaluate the unit cost of petroleum reduction of the proposal and the potential of the proposal to achieve unsubsidized market competitiveness and pervasive acceptance, adjusted for the risk and time value of money.

(4) Evaluate the probability that the proposal will result in a sustained, unsubsidized market-competitive technology or technologies that can achieve substantial consumer or business acceptance beyond the subsidy or incentive period.

(5) Ensure that the expenditure is consistent with the two-year and ten-year strategic plans adopted by the authority.

26057. Standards for Research and Innovation Acceleration Account Expenditures.

(a) The authority shall make expenditures pursuant to Section 26051 consistent with the goal of improving the economic viability, and accelerating the commercialization, of renewable energy technologies, such as solar, geothermal, wind, and wave technologies, and energy efficiency technologies in buildings, equipment, electricity generation, and vehicles. Prior to making any expenditures pursuant to Section 26051, the authority shall adopt a strategic plan pursuant to subdivision (a) of Section 26045.

(b) All expenditures made pursuant to Section 26051 shall be based upon a competitive selection process, established pursuant to subdivision (b) of Section 26045. Pursuant to the competitive selection process, the authority shall, at a minimum:

(1) Ensure that the expenditure is for research in renewable energy technologies or energy efficiency technologies.

(2) Ensure that the expenditure does not supplant existing state funding for research in renewable energy technologies or energy efficiency technologies and that the authority coordinates its expenditures with other state agencies, including the Public Interest Energy Research, Demonstration, and Development Program, established by Chapter 7.1 (commencing with Section 25620) of Division 15, to maximize the effectiveness of the expenditures and to avoid duplication of effort.

(3) Evaluate the quality of the research proposal, the potential for achieving significant results, including consideration of how the expenditure will aid or result in the commercialization, or significant and permanent deployment, of renewable energy technologies or energy efficiency technologies in California, and the time frame for achieving that goal.

(4) Give funding priority to research proposals that utilize more abundant renewable energy resources and that offer the greatest potential for technological breakthroughs. Priority shall additionally be given to research proposals that offer the greatest potential to meet or exceed the goals set forth in: (a) Executive Order S-3-05; (b) Sections 1900, 1961, and 1961.1 of Title 13 of the California Code of Regulations, in effect as of December 1, 2005; or (c) Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, in effect as of December 1, 2005. Research proposals that offer the greatest potential to meet or exceed the goals set forth in subdivisions (a) to (c), inclusive, shall receive the highest priority for funding, followed by those research proposals that offer the greatest potential to meet or exceed the targets and goals set forth in two of subdivisions (a) to (c), inclusive, followed by those proposals that offer the greatest potential to meet or exceed the targets and goals set forth in one of subdivisions (a) to (c), inclusive.

(5) Ensure that all funds to support buildings and permanent facilities pursuant to Section 26051 are committed during the first two years of the program, and that such expenditures, in the aggregate, do not exceed

one hundred million dollars (\$100,000,000). The authority shall require all recipients of funding for facilities to pay all workers employed on the construction or modification of the facility the general prevailing rate of per diem wages for work of a similar character in the locality in which work on the facility is performed and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(6) Ensure that the expenditure is consistent with the two-year and ten-year strategic plans adopted by the authority.

26058. Standards for Commercialization Acceleration Account Expenditures.

(a) The authority shall make expenditures pursuant to Section 26052 consistent with the goal of accelerating the commercialization of economically viable, innovative renewable energy technologies, energy efficiency technologies, clean alternative fuels, and clean alternative fuel vehicles in California within 10 years of the effective date of this Act, by providing funding for the one-time or start-up costs of introducing renewable energy technologies, energy efficiency technologies, clean alternative fuels, and clean alternative fuel vehicles including, but not limited to, the certification of products, vehicles, and distribution systems, and for other costs that will accelerate the production and distribution of commercially viable products and technologies to the market. Prior to making any expenditures pursuant to Section 26052, the authority shall adopt a strategic plan pursuant to subdivision (a) of Section 26045.

(b) All expenditures made pursuant to Section 26052 shall be based upon a competitive selection process, established pursuant to subdivision (b) of Section 26045. Pursuant to the competitive selection process, the authority shall, at a minimum:

(1) Ensure that the expenditure will advance the goal of commercializing economically viable renewable energy technologies, energy efficiency technologies, clean alternative fuels, or clean alternative fuel vehicles in California.

(2) Evaluate the potential that the expenditure will achieve significant results, including how the expenditure will aid or result in bringing commercially viable renewable energy technologies, energy efficiency technologies, clean alternative fuels, or clean alternative fuel vehicles to the market in California, within a reasonable time frame from the date of the expenditure.

(3) Establish that it is reasonably likely that a significant share of the finished technology or product for which the funds are allocated will be available to, or will be deployed in, California or that a significant share of all components used in the finished technology or product will be manufactured in California.

(4) Evaluate the cost, adjusted for time value, of energy developed or saved by the proposal relative to its ability to advance the objectives of the Commercialization Acceleration Account.

(5) Evaluate the probability that the proposal will result in a sustained, unsubsidized market-competitive technology or technologies that can achieve substantial consumer or business acceptance.

(6) Ensure that the expenditure is consistent with the two-year and ten-year strategic plans adopted by the authority.

(c) All expenditures from the Commercialization Acceleration Account require the recipient of the expenditure to provide matching funds equal to at least 50 percent of the expenditure, except that in the case of loans and loan guarantees, the recipient may provide equity or subordinated debt equal to at least 25 percent of the loan or loan guarantee. This constraint will not be applicable to the distribution for a clean alternative fuel equal to approximately the first 15 percent of the distribution of the gasoline distribution system.

(d) Any funds that remain in the account after 10 years shall be divided equally between the Gasoline and Diesel Use Reduction Account and the Research and Innovation Acceleration Account.

26059. Standards for Vocational Training Account Expenditures.

(a) The authority shall make expenditures pursuant to Section 26053 consistent with the goal of training students to work with renewable energy technologies, such as solar, geothermal, wind, and wave technologies, or energy efficiency technologies, in buildings, equipment, electricity generation, clean alternative fuels, and clean alternative fuel vehicles. Prior to making any expenditures pursuant to Section 26053, the authority shall adopt a strategic plan pursuant to subdivision (a) of Section 26045.

(b) All expenditures made pursuant to Section 26053 shall be based upon a competitive selection process, established pursuant to subdivision (b) of Section 26045. Pursuant to the competitive selection process, the authority shall, at a minimum:

(1) Ensure that the expenditure is for training in renewable energy technologies, energy efficiency technologies, clean alternative fuels, or clean alternative fuel vehicles.

(2) Ensure that the expenditure does not supplant existing state funding for training in renewable energy technologies, energy efficiency technologies, clean alternative fuels, or clean alternative fuel vehicles.

(3) Evaluate the quality of the program, the potential for achieving significant results, including consideration of how the expenditure will aid or result in training workers in renewable energy technologies, energy efficiency technologies, clean alternative fuels, or clean alternative fuel vehicles in California, and the time frame for achieving that goal.

(4) Ensure that the expenditure is consistent with the two-year and ten-year strategic plans adopted by the authority.

26060. Standards for Public Education and Administration Account Expenditures.

(a) The authority shall make expenditures pursuant to Section 26054 consistent with the goal of educating the public regarding the importance of energy efficiency technologies, renewable energy technologies, and full life-cycle petroleum reduction, and reporting on the progress of the program, and of efficiently administering the authority.

(b) At least 28.5 percent of the funds in the Public Education and Administration Account shall be expended for the purpose of public education regarding funded technologies.

Article 5. Accountability

26061. (a) In addition to the report required by Section 26017, the authority shall issue an annual report to the Governor, the Legislature, and the public which sets forth its activities, its accomplishments, and future program directions. Each annual report shall include, but not be limited to, the following: the number and dollar amounts of incentives including, but not limited to, grants, loans, loan guarantees, credits, and buydowns; the recipients of incentives for the prior year; the authority's administrative expenses; a summary of research findings, including promising new research areas and technological innovations; and an assessment of the relationship between the authority's award of incentives and the authority's strategic plan.

(b) The authority shall annually commission an independent financial audit of its activities from a certified public accountant which shall be provided to the Controller, who shall review the audit and annually issue a public report of that review.

(c) There shall be a Citizens' Financial Accountability Oversight Committee chaired by the Controller. This committee shall review the annual financial audit and the Controller's report and evaluation of that audit. The Controller, the Treasurer, the President pro Tempore of the Senate, the Speaker of the Assembly, and the chairperson of the authority shall each appoint a public member of the committee. The committee shall provide recommendations regarding the authority's financial practices and performance. The Controller shall provide staff support. The committee shall hold a public meeting, with appropriate notice, and a formal public comment period. The committee shall evaluate public comments and include appropriate summaries in its annual report.

SEC. 18. Part 21 (commencing with Section 42000) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 21. CALIFORNIA ENERGY INDEPENDENCE FUND ASSESSMENT LAW

42000. This part shall be known and may be cited as the "California Energy Independence Fund Assessment Law."

42001. For purposes of this part, the following definitions shall apply:

(a) "Authority" means the California Energy Alternatives Program Authority, which is established in Division 16 (commencing with Section 26000) of the Public Resources Code.

(b) "Barrel of oil" means 42 United States gallons or 231 cubic inches per gallon computed at a temperature of 60 degrees Fahrenheit.

(c) "Board" means the State Board of Equalization.

(d) "Consumer" means an individual, firm, partnership, association, or corporation who buys for his, her, or its own use, or for the use of another, but not for resale.

(e) "First purchaser" means a person who purchases oil from a producer.

(f) "Gross value" means the sale price at the mouth of the well for oil, including any bonus, premium, or other thing in value paid for the oil. If oil is exchanged for something other than cash, or if there is no sale at the time of severance, or if the relation between the buyer and the seller is such that the consideration paid, if any, is not indicative of the true value or market price, then the board shall determine the value of the oil subject to the fee, based on the cash price paid to producers for like oil in the vicinity of the well.

(g) "Oil" means petroleum, or other crude oil, condensate, casing head gasoline, or other mineral oil that is mined, produced, or withdrawn from below the surface of the soil or water in this state.

(h) "Producer" means any person who takes oil from the earth or water in this state in any manner; any person who owns, controls, manages, or leases any oil well in the earth or water of this state; any person who produces or extracts in any manner any oil by taking it from the earth or water in this state; any person who acquires the severed oil from a person or agency exempt from property taxation under the Constitution or other laws of the United States or under the Constitution or other laws of the State of California; and any person who owns an interest, including a royalty interest, in oil or its value, whether the oil is produced by the person owning the interest or by another on his or her behalf by lease, contract, or other arrangement.

(i) "Production" means the total gross amount of oil produced, including the gross amount thereof attributable to a royalty or other interest.

(j) "Severed" or "severing" means the extraction or withdrawing from below the surface of the earth or water of any oil, whether extraction or withdrawal shall be by natural flow, mechanical flow, forced flow, pumping, or any other means employed to get the oil from below the surface of the earth or water and shall include the withdrawing by any means whatsoever of oil upon which the assessment has not been paid, from any surface reservoir, natural or artificial, or from a water surface.

(k) "Stripper well" means a well that has been certified by the board as an oil well incapable of producing an average of more than ten barrels of oil per day during the entire taxable month. Once a well has been certified as a stripper well, such stripper well shall remain certified as a stripper well until the well produces an average of more than 10 barrels of oil per day during an entire taxable month.

42002. Effective January 1, 2007, and except as provided for in Section 42007, there is hereby imposed the California Energy Independence Fund Assessment upon the privilege of severing oil from the earth or water in this state for sale, transport, consumption, storage, profit, or use. The assessment shall be borne ratably by all persons within the term "producer" as that term is defined in subdivision (h) of Section 42001. The fee shall be applied to all portions of the gross value of each barrel of oil severed as follows:

(a) One and one-half percent (1.5%) of the gross value of oil from \$10 to \$25 per barrel.

(b) Three percent (3.0%) of the gross value of oil from \$25.01 to \$40 per barrel.

(c) Four and one-half percent (4.5%) of the gross value of oil from \$40.01 to \$60 per barrel.

(d) Six percent (6.0%) of the gross value of oil from \$60.01 per barrel and above.

42003. Except as otherwise provided in this part, the assessment shall be upon the entire production in this state, regardless of the place of sale or to whom sold or by whom used, or the fact that the delivery may be made to points outside the state.

42004. (a) Producers or purchasers of oil, or both, are authorized and required to withhold from any payment due interested parties the proportionate amount of the assessment due.

(b) The assessment imposed by this part is the primary liability of

the producer and is a liability of the first purchaser and each subsequent purchaser. Failure of the producer to pay the assessment does not relieve the first purchaser or a subsequent purchaser from liability for the assessment. A purchaser of oil produced in this state shall satisfy himself or herself that the assessment on that oil has been or will be paid by the person liable for the assessment.

(c) The assessment imposed by this part shall not be passed on to consumers through higher prices for oil, gasoline, or diesel fuel. At the request of the authority, the board shall investigate whether a producer, first purchaser, or subsequent purchaser has attempted to gouge consumers by using the assessment as a pretext to materially raise the price of oil, gasoline, or diesel fuel.

42005. The assessment imposed by this part shall be in addition to any ad valorem taxes imposed by the state, or any of its political subdivisions, or any local business license taxes which may be incurred as a privilege of severing oil from the earth or doing business in that locality. No equipment, material, or property shall be exempt from payment of ad valorem tax by reason of the payment of the gross tax pursuant to this part.

42006. Two or more producers that are corporations and are commonly owned or controlled directly or indirectly, as defined in Section 25105, by the same interests, shall be considered as a single producer for purposes of application of the assessment prescribed by this part.

42007. The California Energy Independence Fund Assessment imposed pursuant to this part does not apply to:

(a) Oil owned or produced by any political subdivision of the state, including that political subdivision's proprietary share of oil produced under any unit, cooperative, or other pooling agreement.

(b) Oil produced by a stripper well in any month in which the average value of oil is less than \$50 per barrel. If in any month the average value of oil is \$50.01 or more per barrel, a stripper well shall be subject to a fee in the amount of 3 percent of the gross value of oil above \$50.01.

42008. The assessment imposed by this part shall be due and payable to the board on a monthly basis. The board has broad discretion in administering this part and may prescribe the manner in which all payments are made to the state under this part, and the board may prescribe the forms and reporting requirements as necessary to implement the assessment, including, but not limited to, information regarding the location of the well by county, the gross amount of oil produced, the price paid therefor, the prevailing market price of oil, and the amount of assessment due. The board may employ auditors, investigators, engineers, and other persons to engage in all activities necessary for the implementation of this part, including to verify reports and investigate the affairs of producers and purchasers to determine whether the assessment imposed by this part is properly reported and paid. In all proceedings under this part, the board may act on behalf of the people of the State of California.

42009. The board shall enforce the provisions of this part and may prescribe, adopt, and enforce rules and regulations, including, but not limited to, the payment of interest, the imposition of penalties, and any other action permitted by Sections 6451 to 7176, inclusive, or Sections 38401 to 38901, inclusive, whichever are most applicable as determined by the board, relating to the application, administration, and enforcement of this part.

42010. (a) All assessments, interest, penalties, and other amounts collected pursuant to this part shall be deposited in the California Energy Independence Fund, which is established by Article XXXVI of the California Constitution. Before allocating funds pursuant to subdivision (a) or (b) of Section 26049 of the Public Resources Code, the authority shall reimburse the board for expenses incurred in the administration and collection of the assessment imposed by this part. The board shall transfer moneys received from the aforementioned sources to the California Energy Independence Fund at least once per calendar month.

(b) This part shall become inoperative after the authority has expended four billion dollars (\$4,000,000,000) pursuant to subdivision (d) of Section 26045 of the Public Resources Code and after all indebtedness associated with the Clean Alternative Energy Act, including principal, interest, ancillary obligations, and other costs of any bonds issued pursuant to Division 16 (commencing with Section 26000) of the Public Resources Code, secured by a pledge of the assessment created by this part, has been paid or payment has been provided for, unless a later enacted statute, that becomes operative on or before the date this part becomes inoperative, deletes or extends the date on which it becomes inoperative. Notwithstanding the foregoing, so long as any bonds or other obligations

secured by the assessment created by this part remain outstanding, neither the Legislature nor the people may reduce or eliminate the assessment, and this pledge may be included in the proceedings of any such bonds as a covenant with the holders of such bonds.

SEC. 19. LEGAL CHALLENGE.

Any challenge to the validity of this Act must be filed within six months of the effective date of this Act.

SEC. 20. AMENDMENT.

The statutory provisions of this Act may be amended to carry out its purpose and intent by statutes approved by a two-thirds vote of each house of the Legislature and signed by the Governor.

SEC. 21. SEVERABILITY.

If any provision of this Act or the application thereof to any person or circumstances is held invalid, including subdivision (c) of Section 42004 of the Revenue and Taxation Code and subdivision (c) of Section 26054 of the Public Resources Code, that invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SEC. 22. CONFLICTING INITIATIVES.

In the event that this measure and another initiative measure or measures that impose an assessment, royalty, tax, or fee on the extraction of oil or that involve petroleum reduction shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure shall be null and void.

PROPOSITION 88

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure expressly amends the California Constitution by adding sections thereto; and amends a section of the Government Code, and adds sections to the Education Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Title

This measure shall be known and may be cited as the Classroom Learning and Accountability Act.

SEC. 2. Findings and Declaration of Purpose

The People of the State of California find and declare that:

(a) California students are falling behind, ranking among the bottom six states in reading and math. In the nation's five biggest states, only California students score below average on every national assessment of educational progress.

(b) Independent research indicates that California's poor student achievement is caused, in part, by inadequate resources for public education, including low funding levels, high class sizes, inadequate facilities, and students with relatively greater needs. Education funding in California is chronically below the national average, even though California students are expected to meet some of the highest academic standards in the country.

(c) California's economic and social prosperity depend on a well-educated workforce capable of competing in a global economy.

(d) In order to improve student achievement, new investment is needed to reduce class sizes, provide textbooks and other instructional materials, improve campus safety, and provide facilities for high-quality public charter schools with greater parental and community involvement.

(e) A parcel assessment for public schools will raise needed funds for student achievement, while protecting property owners against runaway taxes—especially seniors with fixed incomes. Parcel assessments have been approved by voters in dozens of California communities, and they are consistent with Proposition 13 of 1978.

87

88

(f) New funding for public education must come with safeguards against waste and mismanagement. The entirety of the Classroom Learning and Accountability Fund will be subject to oversight and annual independent audits. Annual audits will ensure that every penny goes into classrooms and student learning, where it is needed most.

(g) The Legislature is expressly prohibited from using money from the Fund to supplant other funding or redirect money to other, less critical needs. This act specifies that the Fund shall not be used to pay administrative overhead. Misuse of funds will result in criminal penalties, loss of credentials, and/or fines.

(h) Money from the Fund will be used to collect information that will evaluate the effectiveness of specific educational programs and investments. Schools, researchers, and other agencies will be better able to analyze the link between specific investments and the impact on student achievement.

(i) Homeowners 65 years of age or older are fully exempted from the provisions of this act. Senior citizens will not be burdened by the creation of the Fund.

(j) This act pays for itself. The Fund will improve education without affecting any state services or programs currently supported by the state General Fund.

Therefore, the People of the State of California hereby adopt the Classroom Learning and Accountability Act.

SEC. 3. Section 6.2 is added to Article IX of the Constitution of the State of California, to read:

SEC. 6.2. (a) *The Classroom Learning and Accountability Fund is hereby created in the State Treasury to be held in trust for the purposes set forth below and is continuously appropriated for the support of kindergarten through 12th grade educational programs.*

(b) *Classroom Learning and Accountability Funds shall not be used to pay for administrative overhead and shall be used for the following educational purposes only:*

(1) *One hundred seventy-five million dollars (\$175,000,000) to reduce class sizes in kindergarten and grades 1 to 12, inclusive.*

(2) *One hundred million dollars (\$100,000,000) for textbooks and other instructional materials approved by the State Board of Education as consistent with the state curriculum frameworks and academically rigorous content standards.*

(3) *One hundred million dollars (\$100,000,000) to enhance the safety and security of pupils, teachers, and school staff through school community policing, gang-risk intervention, afterschool and intersession student support and development, and school community violence prevention.*

(4) *Eighty-five million dollars (\$85,000,000) for academic success facility grants to any qualifying school district which has not received funding from the proceeds of a state general obligation bond for school construction or modernization. A school district receiving an academic success facility grant shall not be eligible for funding from the proceeds of a state general obligation bond for school construction or modernization unless the law authorizing the bond and approved by a vote of the people expressly provides that eligibility.*

(5) *Ten million dollars (\$10,000,000) for an integrated longitudinal teacher and pupil achievement data system that provides a better means of evaluating the efficiency and effectiveness of educational programs and investments.*

(c) *The amounts deposited in the Classroom Learning and Accountability Fund shall be used exclusively for the purposes set forth in this section. All moneys in the Classroom Learning and Accountability Fund shall be used to supplement and not supplant federal, state, or local funds used for educational programs. The Legislature shall set penalties, including loss of credentials and/or fines, for school districts, county offices of education, public charter schools, and any administrator that misuses funds appropriated and allocated pursuant to this section.*

(d) *Funds appropriated pursuant to paragraphs (1) to (3), inclusive, of subdivision (b) shall be apportioned directly to school districts, county offices of education, and public charter schools on a per-pupil basis. Using variables and data that are objective, measurable, and auditable, the Legislature shall weight the per-pupil allocation to account for differential pupil-level costs associated with achieving state and federal achievement*

standards based on disabilities, English proficiency, or socioeconomic status.

(e) *The allocation of funds under subdivision (b) shall be adjusted annually on a proportional basis to reflect actual revenues received and interest earned.*

(f) *None of the provisions of this section shall alter or affect any right to equal protection provided by this Constitution.*

SEC. 4. Section 21.5 is added to Article XIII A of the Constitution of the State of California, to read:

SEC. 21.5. (a) *An assessment of fifty dollars (\$50) shall be levied on each real property parcel that is not otherwise exempt from property taxation pursuant to this Article. The assessment shall be collected annually at the same time and in the same manner as the ad valorem property tax.*

(b) *A parcel shall be exempt from the assessment described in this section if the owner of the parcel (1) resides on the parcel, (2) is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII, and (3) is either a person 65 years of age or older, or is a severely and permanently disabled person as that term is defined by the Revenue and Taxation Code.*

(c) *For purposes of this section, "parcel" means any unit of real property in the State that receives a separate tax bill for ad valorem property taxes. Any property that is otherwise exempt from, or on which is levied, no ad valorem property taxes in any year shall also be exempt from the parcel tax levied by this section in that year.*

(d) *Each fiscal year, the revenue generated by the assessment described in this section shall be calculated and transferred as follows:*

(1) *No more than two tenths of one percent (.002) shall be appropriated to counties for the purpose of defraying the costs incurred in implementing this section.*

(2) *The amount necessary to offset any decrease in state personal and corporate income tax revenues caused by increased deductions taken as a result of the assessments described by this section shall be transferred to the state General Fund.*

(3) *After the transfer of the amounts calculated in paragraphs (1) and (2), the remainder, including any interest earned thereon, shall be transferred to the Classroom Learning and Accountability Fund established by Section 6.2 of Article IX.*

SEC. 5. Section 14 is added to Article XIII B of the Constitution of the State of California, to read:

SEC. 14. (a) *"Appropriations subject to limitation" of each entity of government shall not include appropriations of revenue from the Classroom Learning and Accountability Fund established by Section 6.2 of Article IX. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the Classroom Learning and Accountability Fund.*

(b) *For purposes of this article, "proceeds of taxes" shall not include the revenues derived from the taxes imposed pursuant to Section 21.5 of Article XIII A, but shall include those revenues described in paragraph (2) of subdivision (d) of Section 21.5 of Article XIII A.*

SEC. 6. Section 8.3 is added to Article XVI of the Constitution of the State of California, to read:

SEC. 8.3. (a) *With the exception of the revenue described in paragraph (2) of subdivision (d) of Section 21.5 of Article XIII A, revenues derived from the taxes imposed by Section 21.5 of Article XIII A shall not be deemed to be "General Fund revenues which may be appropriated pursuant to Article XIII B" as that phrase is used in paragraph (1) of subdivision (b) of Section 8 nor shall they be considered in the determination of "per capita General Fund revenues" as that term is used in paragraph (3) of subdivision (b) and in subdivision (e) of Section 8.*

(b) *Funds appropriated pursuant to Section 6.2 of Article IX shall not be deemed to be part of "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" as that phrase is used in paragraphs (2) and (3) of subdivision (b) of Section 8.*

SEC. 7. Section 14003 is added to the Education Code, to read:

14003. *No moneys distributed from the Classroom Learning and Accountability Fund shall be included in calculating and apportioning funds as provided in Section 2558, 42238, or 56836.08. Nor shall moneys*

distributed from the Classroom Learning and Accountability Fund be included in a school district's expenditures pursuant to Section 33128. With the exception of funds for academic success facility grants described in Section 52057.1, the Controller shall distribute the revenues in the Classroom Learning and Accountability Fund at least twice during the fiscal year.

SEC. 8. Section 41020.4 is added to the Education Code, to read:

41020.4. Each fiscal year, every school district shall provide for an annual independent audit of the moneys received from the Classroom Learning and Accountability Fund. The audit may be prepared as part of any annual audit already required, but it shall show how moneys received from the Classroom Learning and Accountability Fund were spent by category and program. The audit shall be reviewed by the applicable county superintendent of schools and the Superintendent of Public Instruction who shall, along with the school district, post the audit reports on their web sites.

SEC. 9. Section 52057.1 is added to the Education Code, to read:

52057.1. (a) It is the intent of this section that facility grants for school districts be directed towards all eligible schools, including charter schools. Therefore, funds for academic success facility grants appropriated pursuant to paragraph (4) of subdivision (b) of Section 6.2 of Article IX of the California Constitution shall be apportioned directly to qualifying school districts as defined by this section.

(b) For purposes of this section, the following definitions shall apply:

(1) A "qualifying school district" is an academically successful eligible charter school or a school district with one or more academically successful schools other than eligible charter schools. Neither a school district that is formed pursuant to Chapters 3 (commencing with Section 35500) or Chapter 4 (commencing with Section 35700) of Part 21, and whose former districts received funding from the proceeds of a state general obligation bond for school construction or modernization, nor a county office of education is a "qualifying school district."

(2) An "academically successful school" is a school ranked in deciles 6 to 10, inclusive, on the Academic Performance Index when compared to similar schools as reported for the prior academic year by the State Board of Education.

(3) An "eligible charter school" is a charter school operated and governed by or as a nonprofit public benefit corporation, formed and organized pursuant to the applicable nonprofit public benefit corporation law, where the majority of the certificated teachers at the school are employees of the nonprofit corporation.

(c) Academic success facility grants shall be distributed to qualifying school districts at the time of the second principal apportionment in the form of general purpose funding. Subject to subdivision (d), academic success facility grants shall be five hundred dollars (\$500) per pupil and shall be awarded on a per-pupil basis for each pupil enrolled in an academically successful school, provided, however, that pupils in academically successful eligible charter schools shall not be counted in calculating the amount of any academic success facility grant that is distributed to a school district.

(d) Notwithstanding subdivision (c), if at the time of the second principal apportionment there are insufficient moneys in that portion of the Classroom Learning and Accountability Fund described by paragraph (4) of subdivision (6) of Section 6.2 of Article IX of the California Constitution to provide for the per-pupil allocation specified in subdivision (c), the per-pupil allocation shall be adjusted on a proportional basis to ensure that all qualifying school districts receive an academic success facility grant in an equal amount per pupil.

(e) Any moneys remaining in that portion of the Classroom Learning and Accountability Fund described by paragraph (4) of subdivision (b) of Section 6.2 of Article IX of the California Constitution after apportionment of funds for academic success facility grants as required by this section shall remain in the Classroom Learning and Accountability Fund and shall be available for distribution to qualifying school districts in the following year.

SEC. 10. Section 60901 is added to the Education Code, to read:

60901. Each school district shall participate in the collection and reporting of data necessary for the creation and maintenance of the state's integrated longitudinal teacher and pupil data system as defined by the Legislature and described in paragraph (5) of subdivision (b) of Section

6.2 of Article IX of the California Constitution.

SEC. 11. Section 13340 of the Government Code is amended to read:

13340. (a) Except as provided in subdivision (b), on and after July 1, 2007, no moneys in any fund that, by any statute other than a Budget Act, are continuously appropriated without regard to fiscal years, may be encumbered unless the Legislature, by statute, specifies that the moneys in the fund are appropriated for encumbrance.

(b) Subdivision (a) does not apply to any of the following:

(1) The scheduled disbursement of any local sales and use tax proceeds to an entity of local government pursuant to Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code.

(2) The scheduled disbursement of any transactions and use tax proceeds to an entity of local government pursuant to Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code.

(3) The scheduled disbursement of any funds by a state or local agency or department that issues bonds and administers related programs for which funds are continuously appropriated as of June 30, 2007.

(4) Moneys that are deposited in proprietary or fiduciary funds of the California State University and that are continuously appropriated without regard to fiscal years.

(5) The scheduled disbursement of any motor vehicle license fee revenues to an entity of local government pursuant to the Vehicle License Fee Law (Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code).

(6) Moneys that are deposited in the Classroom Learning and Accountability Fund.

SEC. 12. Severability

The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 13. Amendment

This act shall be broadly construed to accomplish its purposes. Any of the statutory provisions of this act may be amended by a bill that complies with the single-subject rule expressed in Section 9 of Article IV of the California Constitution, and that is passed by a two-thirds vote of the Legislature and signed by the Governor, so long as the amendments are consistent with and further the intent of this act.

SEC. 14. Effective Date

This initiative shall go into effect on July 1, 2007.

PROPOSITION 89

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends, repeals, and adds sections to the Elections Code, the Government Code, and the Revenue and Taxation Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

CALIFORNIA NURSES CLEAN MONEY AND FAIR ELECTIONS ACT OF 2006

SECTION 1. Chapter 12 (commencing with Section 91015) is added to Title 9 of the Government Code, to read:

CHAPTER 12. CALIFORNIA CLEAN MONEY AND FAIR ELECTIONS ACT OF 2006

Article 1. General

91015. This chapter shall be known and may be cited as the California Clean Money and Fair Elections Act of 2006.

88

89

91017. *The people find and declare all of the following:*

(a) *The constitutional system of popular governance of the State of California is in serious jeopardy. The health of the state's democracy has been undermined by the state's campaign finance rules. Current regulation of campaign finance practices in California is insufficient. Nearly 60 percent of Californians have expressed their concern that California's campaign finance system needs major changes.*

(b) *The increasing costs of political campaigns have forced candidates to raise a larger percentage of their campaign funds from special interests that have a specific financial or commercial stake in the outcome of the elections.*

(c) *Unlimited corporate-funded election-related spending and unlimited contributions to ballot measure and general purpose committees controlled by California elected officials and candidates are leading to corruption, or the appearance of corruption, of the election process, have produced corrosive and distorting effects on the electoral process, and have created a loss of public confidence in the fairness of the electoral process.*

(d) *Corruption and the appearance of corruption is a major problem in California politics.*

Large campaign contributors and spenders are able to buy access to California's elected officials, thereby unduly influencing the legislative and executive agenda and policy choices. At the very least, there is a troublesome appearance of corruption when, for example, the Governor sponsors a \$500,000 per plate dinner with bond traders to raise funds supporting a bond-related ballot measure. Californians fear that in some instances large contributions are given to secure a political quid pro quo from current and potential officeholders.

(e) *The current campaign finance system burdens candidates with the incessant rigors of fundraising and thus decreases the time available to carry out their public responsibilities.*

(f) *The current campaign finance system diminishes the free speech rights of a majority of voters and candidates whose voices are drowned out by corporations with unlimited funds to expend for monopolizing the arena of paid political communications to further their own private commercial interests.*

(g) *The current campaign finance system fuels the public perception of corruption at worst and conflict of interest at best and undermines public confidence in the democratic process and democratic institutions.*

(h) *The ever-increasing costs of political campaigns in competitive races force most candidates to raise larger and larger percentages of their campaign funds from interest groups that have a specific financial stake in the outcome of the elections and in matters before our state government.*

(i) *Existing term limits place a greater demand on fundraising for the next election even for elected officials in safe seats.*

(j) *The rapidly increasing amounts of independent expenditures point to a growing trend of special interest groups to fund independent expenditures in an effort to skirt the contribution laws.*

(k) *The current campaign finance system undermines the First Amendment right of voters and candidates to be heard in the political process, undermines the First Amendment right of voters to hear all candidates' speech, and undermines the core First Amendment value of open and robust debate in the political process.*

(l) *The number of candidates and issues attracting campaign contributions varies widely among candidate races. The costs in some election races are minimal while others draw expenditures in excess of one million dollars (\$1,000,000). This act addresses the range of competitive election races by providing smaller amounts of public funds in noncompetitive races and much larger amounts in competitive contests. As a result, the act saves the taxpayers of California from unnecessarily expending large amounts of public funds.*

(m) *In states where the clean money and clean election laws have been enacted and used, election results show that more individuals, especially women and minorities, run as candidates; voter turnout increases and overall campaign costs decrease.*

(n) *The current campaign finance system creates a danger of actual corruption by encouraging elected officials to take funds from private interests that are directly affected by governmental actions.*

(o) *Under the state's current campaign finance rules, contributors*

may secure that political quid pro quo by making unlimited contributions to ballot measure and general purpose committees controlled, formally or informally, by candidates and state elected officials. More than \$84 million has poured into these committees since 1990, much of it from large corporate contributors, from those with important business with the state, and from wealthy contributors whose financial interests are affected by state decisions.

(p) *Powerful corporate and commercial interests have transformed initiative and referendum campaigns into a new arena for gaining commercial advantage and exploiting business opportunities at the expense of the public interest and welfare. Hundreds of millions of dollars are spent by corporate business interests in the initiative and referendum process to advance private, self-interested business plans, deregulate legal protections preserving the public health and welfare, and disable governmental institutions and programs essential to popular governance in the interests of the people. Established by the voters in 1911 as a means of curtailing the political influence of corporate interests, the initiative process now primarily serves corporate and commercial interests.*

(q) *Candidate elections and ballot measure elections in California are intertwined, not separate events. California state candidates, officeholders, and political parties often endorse, oppose, and actively campaign for and against ballot measures, and use those measures as part of an overall electoral strategy. Thus, the potential for candidate corruption and the appearance of corruption exists in all ballot measure campaigns in California.*

(r) *Campaign-related spending by business corporations is especially corrupting because of its corrosive and distorting effects. The immense aggregations of wealth that are accumulated with the help of the corporate form have little or no correlation to the public's support for the corporation's political ideas, and corporations should not be allowed to exert an undue influence on the outcome of candidate and ballot measure elections. Nearly 80 percent of Californians have complained that business corporations have too much influence on candidate elections and ballot initiatives.*

(s) *California's existing campaign finance rules that permit unchecked corporate spending are also undermining the public's confidence in the election process. A majority of Californians believe that campaign contributions are having a negative effect on the public policy made by state officials in Sacramento. Nearly 8 in 10 California voters say that their state government is run by a few big interests, and 92 percent of California voters believe the initiative process is controlled "some" or "a lot" by special interests.*

(t) *Corporate spending in the election process exerts an undue influence on the outcome of the vote, and—in the end—destroys the confidence of the people in the democratic process and in the integrity of government. Corporate advocacy threatens imminently to undermine democratic processes, thereby denigrating rather than serving First Amendment interests. However, contributions or expenditures by certain nonprofit organizations do not present these same dangers.*

(u) *Of particular concern are social science studies proving that large spending by corporations in ballot measure campaigns is very successful in blocking ballot measures that are otherwise popularly supported by the voters.*

(v) *Limits on corporate election-related spending and on contributions to candidate-controlled ballot measure committees do not violate the First Amendment. The Supreme Court has recognized that restrictions on direct corporate contributions and expenditures are constitutional when necessary to preserve voter confidence in the election process, to prevent candidate corruption or the appearance of corruption, or to prevent the distorting effect of corporate campaign contributions and expenditures. The Supreme Court has also recently recognized that corporate contributions are furthest from the core of political expression, since corporations' First Amendment speech and association interests are derived largely from those of their members and of the public in receiving information. Limits on direct corporate contributions leave individual officers, employees, and members of corporations free to make their own political contributions, and therefore deprive the public of little or no material information. The same rationale applies to restrictions on corporate political expenditures.*

(w) *Experience in the federal election process regarding the emergence of "sham issue advocacy" leads California voters to anticipate*

that corporations will attempt to circumvent any new limits on corporate express advocacy in candidate and ballot measure elections through the use of campaign advertising that avoids the “magic words” of express advocacy. A bright-line “electioneering communications” provision is therefore necessary to prevent corporations from exploiting a loophole in the law that would allow unlimited corporate spending on election-related campaign advertising.

(x) California’s initiative process was established to enable individual citizens to join together to act as lawmakers when elected officials are too beholden to corporate interests to take action on matters of public safety and necessity. Thus the initiative process was intended to provide citizens with a collective opportunity to make their views known and voices heard, so as to engage in self-government, when the views of corporate interests predominate in the Legislature. Corporations are not humans; they are creatures of the state that are licensed upon agreement to comply with the norms of conduct imposed upon them, in exchange for which they are accorded the right to do business in the state and numerous other privileges.

(y) Through the use of money, corporations have come to exercise enormous influence, and often outright control, over the actions of the executive and legislative branches in California. Money from various corporate interests has effectively paralyzed the Legislature from enacting laws that would protect the public. Similarly, through their use of their financial resources, corporations now overwhelmingly dominate the initiative process, either to prevent citizens from effectively exercising their right to promote ballot initiatives, or to enact legislation that the Legislature, paralyzed by competing special interests, will not enact. Indeed, business corporations now routinely employ “counter initiatives” designed not to pass the measures themselves, but to discourage voters from supporting or even voting upon citizen-sponsored ballot measures that the corporations oppose. Finally, elected officials and candidates for public office have begun to utilize the initiative process to both solicit funds from corporations whose financial interests would be served by proposed initiative legislation, and to escape the more stringent rules governing contributions to candidates for public office.

91019. The people enact this chapter to accomplish the following purposes:

- (a) To reduce the influence of large contributions on the decisions made by state government.
- (b) To remove wealth as a major factor affecting whether an individual chooses to become a candidate.
- (c) To provide a greater diversity of candidates to participate in the electoral process.
- (d) To reverse the escalating cost of elections that have increased far beyond the rate of inflation.
- (e) To permit candidates to pursue policy issues instead of being preoccupied with fundraising and allow officeholders to spend more time carrying out their public duties.
- (f) To diminish the danger of actual corruption and the public perception of corruption and strengthen public confidence in the governmental and election processes.
- (g) To ensure that independent expenditures are not used to evade contribution limits.
- (h) To foster more equal and meaningful participation in the political process.
- (i) To provide candidates who participate in the Clean Money program with sufficient resources with which to communicate with voters.
- (j) To increase the accountability of each elected official to the constituents who elect him or her, as opposed to the contributors who fund his or her campaigns.
- (k) To provide voters with timely information regarding the sources of campaign contributions, expenditures, and political advertising.
- (l) To prevent corruption, the appearance of corruption, and a decline in voter confidence in the integrity of the electoral and political process by imposing reasonable limits on contributions made to ballot measure committees controlled formally or informally by candidates.
- (m) To prevent the distorting effect of campaign contributions and expenditures by business corporations, which threaten imminently to undermine the democratic process, and to restore the confidence of the

people in the electoral process and in the integrity of government, by requiring that corporations desiring to engage in election-related spending in California do so through separate segregated funds that protect their First Amendment rights.

(n) To limit the opportunity for circumvention of important campaign finance rules enacted to avoid corruption, the appearance of corruption, distortion of the political process, and a decline in voter confidence by adopting reasonable restrictions governing electioneering communications, aggregate contribution limits, and inter-candidate and inter-committee transfers of campaign funds.

Article 2. Applicability to the Political Reform Act of 1974

91023. Unless specifically superseded by provisions of this chapter, the definitions and provisions of Chapters 1 to 11, inclusive, of this title (the Political Reform Act), shall govern the interpretation of this chapter.

Article 3. Definitions

91025. For purposes of the contribution limits of this chapter:

(a) The contributions of an entity whose contributions are directed and controlled by any individual shall be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual.

(b) If two or more entities make contributions that are directed and controlled by a majority of the same persons, the contributions of those entities shall be aggregated.

(c) Contributions made by entities that are majority-owned by any person shall be aggregated with the contributions of the majority owner and all other entities majority-owned by that person, unless those entities act independently in their decisions to make contributions.

91027. “Coordination” means a payment made for a communication or anything of value that is for the purpose of influencing the outcome of an election for elective state office and that is made by any one or more of the following methods:

(a) By a person in cooperation, consultation, or concert with, at the request or suggestion of, or pursuant to a particular understanding with, a candidate, a candidate’s controlled committee, or an agent acting on behalf of a candidate or a controlled committee.

(b) Based on specific information about the candidate’s plans, projects, or needs provided to the person making the payment by the candidate or the candidate’s agent who provides the information with a view toward having the payment made.

(c) By a person if, in the same primary or general election in which the payment is made, the person making the payment is serving as a member, employee, fundraiser, or agent of the candidate’s controlled committee in an executive or policymaking position.

91028. “District” means:

(a) In the case of an election for the Legislature or the Board of Equalization, the numeric district in which the candidate is seeking office.

(b) In the case of an election for statewide elective office, the State of California.

91029. “Entity” means any person other than an individual.

91031. “Excess expenditure amount” means the amount of funds spent or obligated to be spent by a nonparticipating candidate in excess of the Clean Money amount available to a participating candidate running for the same office. If a participating candidate has made the choice specified in subdivision (c) of Section 91097 in an election where there is more than one participating candidate, then the Clean Money amount available to the participating candidate shall be considered to be the actual amount paid by the Clean Money Fund to the candidate for that primary or general election period, including any increase or decrease effected by the choice.

91033. “Exploratory period” means the period beginning 18 months before the primary election and ending on the last day of the qualifying period. The exploratory period begins before, but extends to the end of, the qualifying period.

91035. “General election campaign period” means the period

beginning the day after the primary election and ending on the day of the general election.

91037. “Independent candidate” means a candidate for elective state office who does not represent a political party that has been granted ballot status for the general election and who has qualified to be on the general election ballot.

91041. “Majority-owned” means an ownership of 50 percent or more.

91043. “Nonparticipating candidate” means a candidate for elective state office who is on the ballot but has chosen not to apply for Clean Money campaign funding and a candidate who is on the ballot and has applied but has not satisfied the requirements for receiving Clean Money funding.

91045. “Office-qualified party” means a party whose gubernatorial nominee has received 10 percent or more of the votes at the last election or whose candidate for the same elective state office in the same district, whether statewide or legislative, as the current candidate seeking Clean Money funding received 10 percent or more of the votes at the last election.

91046. “Office-qualified candidate” is a candidate seeking nomination for an elective state office from an office-qualified party.

91047. “One party dominant legislative district” is a district in which the number of registered voters for the party with the highest number of registered voters exceeds the number of registered voters for each of the other parties by an amount no less than 20 percent of the total number of registered voters in the district.

91047.5. “Paid Circulator,” for the purpose of collecting qualifying contributions and as used in this chapter, means any person who is compensated with money or anything of value for collecting qualifying contributions. This definition shall not include a full-time campaign staff member who spends no more than 20 percent of his or her time gathering qualifying contributions. “Compensation,” for purposes of this chapter, means any economic consideration, including payments on the basis of the number of qualifying contributions gathered. “Compensation” does not include reimbursement of reasonable travel expenses such as expenses for transportation plus a reasonable sum for food and lodging.

91049. “Participating candidate” means a candidate for elective state office who qualifies for Clean Money campaign funding. These candidates are eligible to receive Clean Money funding during primary and general election campaign periods.

91051. “Party candidate” means a candidate for elective state office who represents a political party that has been granted ballot status and holds a primary election to choose its nominee for the general election.

91053. “Performance-qualified candidate” means a candidate for elective state office who has either won the primary nomination of an office-qualified party or shown a broad base of support by gathering twice the number of qualifying contributions as is required for an office-qualified candidate. Independent candidates may qualify for funding as performance-qualified candidates.

91054. “Person” means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, or any other organization or group of persons acting in concert.

91055. “Petty cash” means cash amounts of one hundred dollars (\$100) or less per day that are not drawn on the Clean Money Debit Card and used to pay expenses of no more than twenty-five dollars (\$25) each.

91057. “Political party committee” means the state central committee or county central committee of an organization that meets the requirements for recognition as a political party pursuant to Section 5100 of the Elections Code.

91059. “Primary election campaign period” means the period beginning 120 days before the primary election and ending on the day the primary election results are certified for all candidates for the relevant elective state office.

91061. “Qualified candidate” means a candidate seeking nomination for an elective state office from a party that is not an office-qualified party.

91063. “Qualifying contribution” means a contribution of five dollars (\$5) that is received during the designated qualifying period by a candidate for elective state office seeking to become eligible for Clean Money campaign funding from a legal resident of the district in which the

candidate is running for office.

91065. “Qualifying period” means the period during which candidates for elective state office are permitted to collect qualifying contributions in order to qualify for Clean Money funding. It begins 270 days before the primary election and ends 90 days before the day of the primary election for qualified party candidates and begins any time after January 1 of the election year and lasts 180 days but in no event ending later than 90 days before the general election for performance-qualified candidates who are running as independent candidates.

91067. “Seed money contribution” means a contribution of no more than one hundred dollars (\$100) made by a legal resident of California during the exploratory period.

91069. “Small contributor committee” means any committee that meets all of the following criteria:

- (a) The committee has been in existence for at least six months.
- (b) The committee has received contributions from 100 or more persons.
- (c) No person has contributed to the committee more than two hundred dollars (\$200) per calendar year.
- (d) The committee makes contributions to five or more candidates for elective state office.
- (e) The committee is not a candidate-controlled committee pursuant to Section 82016.

Article 4. Clean Money

91071. (a) An office-qualified candidate for elective state office qualifies as a participating candidate for the primary election campaign period if the following requirements are met:

(1) The candidate files a declaration with the Commission that the candidate has complied and will comply with all of the requirements of this act, including the requirement that during the exploratory period and the qualifying period the candidate not accept or spend private contributions from any source other than seed money contributions, Clean Money funds, and political party funds as specified in Section 91123.

(2) The candidate meets the following qualifying contribution requirements before the close of the qualifying period:

(A) The office-qualified party candidate collects at least the following number of qualifying contributions:

- (i) Seven hundred fifty qualifying contributions for a candidate running for the office of Member of the Assembly.
- (ii) One thousand five hundred qualifying contributions for a candidate running for the office of Member of the State Senate.
- (iii) Two thousand qualifying contributions for a candidate running for the office of member of the State Board of Equalization.
- (iv) Seven thousand five hundred qualifying contributions for a candidate running for any statewide office other than Governor.
- (v) Twenty-five thousand qualifying contributions for a candidate running for the office of Governor.

(B) No individual legal resident of California shall provide more than one qualifying contribution for each office in which an election is held covering the district in which he or she resides.

(C) Each qualifying contribution shall be acknowledged by a receipt to the contributor, with a copy submitted to the Commission by the candidate. The receipt shall include the contributor’s signature, printed name, and home address, the date, and the name of the candidate on whose behalf the contribution is made. In addition, the receipt shall indicate by the contributor’s signature that the contributor understands that he or she may contribute a qualifying contribution to only one candidate for each office for which the contributor is eligible to vote, that the purpose of the qualifying contribution is to help the candidate qualify for Clean Money campaign funding, and that the contribution is made without coercion or reimbursement.

(D) A contribution submitted as a qualifying contribution that does not include a signed and fully completed receipt shall not be counted as a qualifying contribution.

(E) All five-dollar (\$5) qualifying contributions, whether in the form of cash, check, or money order made out to the candidate’s campaign account, shall be deposited by the candidate in the candidate’s campaign account.

(F) All qualifying contributions' signed receipts shall be sent to the Commission and shall be accompanied by a check from the candidate's campaign account for the total amount of qualifying contribution funds received for deposit in the Clean Money Fund. This submission shall be accompanied by a signed statement under penalty of perjury from the candidate indicating that all of the information on the qualifying contribution receipts is complete and accurate to the best of the candidate's knowledge and that the amount of the enclosed check is equal to the sum of all the five-dollar (\$5) qualifying contributions the candidate has received.

(G) The candidate discloses at the end of the qualifying period the total amounts, if any, spent to hire paid circulators to collect qualifying contributions. The candidate shall disclose the information in a report filed with the Commission pursuant to regulations the Commission shall promulgate.

(b) A party candidate for elective state office qualifies as a participating candidate for the general election campaign period if both of the following requirements are met:

(1) The candidate met all of the applicable requirements of a participating candidate in the primary election period and filed a declaration with the Commission that the candidate has fulfilled and will fulfill all of the requirements of a participating candidate as stated in this act.

(2) As a participating candidate from an office-qualified party during the primary election campaign period, the candidate had the highest number of votes of the candidates contesting the primary election from the candidate's respective party and, therefore, won the party's nomination.

91073. A qualified candidate for elective state office shall collect at least half the number of signatures as required for an office-qualified candidate for the same office and may show a greater base of support by collecting double the amount of signatures as required for an office-qualified candidate to become a performance-qualified candidate. The candidate shall also file a declaration with the Commission that the candidate has complied and will comply with all of the requirements of this act. For a candidate who does not run in a primary, the qualifying period begins any time after January 1 of the election year and lasts 180 days, except that it shall end no later than 90 days before the general election. A candidate who is not an office-qualified candidate shall notify the Commission within 24 hours of the day when the candidate has begun collecting qualifying contributions.

91075. During the first election that occurs after the effective date of this act, a candidate for elective state office may be certified as a participating candidate, notwithstanding the acceptance of contributions or making of expenditures from private funds before the date of enactment that would, absent this section, disqualify the candidate as a participating candidate, provided that any private funds accepted but not expended before the effective date of this act meet any of the following criteria:

(a) Are returned to the contributor.

(b) Are held in a special campaign account and used only for retiring a debt from a previous campaign.

(c) Are submitted to the Commission for deposit in the Clean Money Fund.

91077. (a) A participating candidate who accepts any Clean Money benefits during the primary election campaign period shall comply with all of the requirements of this chapter applicable to participating candidates through the general election campaign period whether the candidate continues to accept benefits or not.

(b) An elected state officer who accepted Clean Money benefits in the election for the currently held office shall not accept private contributions from any source and shall not solicit or receive political contributions for any candidate or any political party committee or other political committee, until the first day of the Qualifying Period for the next election for the office currently held. Contributions pursuant to Section 91115 are not subject to this requirement.

91079. (a) During the primary and general election campaign periods, a participating candidate who has voluntarily agreed to participate in, and has become eligible for, Clean Money benefits, shall not accept private contributions from any source other than the candidate's political party as specified in Section 91123. Contributions pursuant to Section 91115 are not subject to this requirement.

(b) During the qualifying period and the primary and general

election campaign periods, a participating candidate who has voluntarily agreed to participate in, and has become eligible for, Clean Money benefits shall not solicit or receive political contributions for any other candidate or for any political party committee or other committee as defined under Section 82013.

(c) No person shall make a contribution in the name of another person. A participating candidate who knows or reasonably should have known that he or she received a qualifying contribution or a seed money contribution that is not from the person listed on the receipt required by subparagraph (C) of paragraph (2) of subdivision (a) of Section 91071 shall be liable to pay the Commission the entire amount of the inaccurately identified contribution for deposit in the Clean Money Fund, in addition to any penalties.

(d) During the primary and general election campaign periods, a participating candidate shall pay for all of the candidate's campaign expenditures, except petty cash expenditures, by means of a "Clean Money Debit Card" issued by the Commission, as authorized under Section 91141.

(e) Candidates for elective state office shall furnish complete campaign records, including all records of seed money contributions and qualifying contributions, to the Commission at regular filing times. Candidates shall cooperate with any audit or examination by the Commission, the Franchise Tax Board, or any enforcement agency.

91081. (a) During an election for an elective state office, each participating candidate shall conduct all campaign financial activities through a single campaign account. Accounts established pursuant to Section 91115 are not subject to this requirement.

(b) Notwithstanding Section 85201, a participating candidate may maintain a campaign account other than the campaign account described in subdivision (a) if the other campaign account is for the purpose of retiring a campaign debt that was incurred during a previous election campaign in which the candidate was not a participating candidate.

(c) Contributions for the purposes of retiring a previous campaign debt that are deposited in the "other campaign account" described in subdivision (b) shall not be considered "contributions" to the candidate's current campaign. Contributions for the purpose of retiring debt shall only be raised during the six-month period following the date of the election, unless, for good cause shown, the candidate receives a six-month extension from the Commission.

(d) Participating candidates shall file reports of financial activity related to the current election cycle separately from reports of financial activity related to previous election cycles.

91083. (a) Participating candidates shall use their Clean Money funds only for direct campaign purposes.

(b) A participating candidate shall not use Clean Money funds for any of the following:

(1) Costs of legal defense in any campaign law enforcement proceeding under this act.

(2) Indirect campaign purposes, including, but not limited to, the following:

(A) The candidate's personal support or compensation to the candidate or the candidate's family.

(B) The candidate's personal appearance.

(C) Capital assets having a value in excess of five hundred dollars (\$500) and useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles. Notwithstanding this limitation, a participating candidate may purchase computer-related assets provided that each such asset has a value not in excess of \$1,000.

(D) A contribution or loan to the campaign committee of another candidate or to a political party committee or other political committee.

(E) An independent expenditure.

(F) A gift in excess of twenty-five dollars (\$25) per person.

(G) Any payment or transfer for which compensating value is not received.

(3) Compensation to any individual who receives a salary from the State of California. Administrative and support personnel shall be exempt.

91085. (a) Personal funds contributed by a candidate for elective

state office seeking to become eligible as a participating candidate as seed money to his or her campaign, or by adult members of the candidate's family to the candidate, shall not exceed the maximum of one hundred dollars (\$100) per contributor.

(b) Personal funds shall not be used to meet the qualifying contribution requirement except for one five-dollar (\$5) contribution from the candidate and one five-dollar (\$5) contribution from the candidate's spouse.

91087. (a) The only private contributions a candidate for elective state office seeking to become eligible for Clean Money funding shall accept, other than qualifying contributions, contributions pursuant to Section 91115, and limited contributions from the candidate's political party as specified in Section 91123, are seed money contributions contributed by individual legal residents of the State of California residing in the district in which the candidate is running for election prior to the end of the qualifying period.

(b) A seed money contribution shall not exceed one hundred dollars (\$100) per donor, and the aggregate amount of seed money contributions accepted by a candidate for elective state office seeking to become eligible for Clean Money funding shall not exceed:

(1) Ten thousand dollars (\$10,000) for a candidate running for the office of Member of the Assembly.

(2) Twenty thousand dollars (\$20,000) for a candidate running for the office of Member of the State Senate.

(3) Thirty thousand dollars (\$30,000) for a candidate running for the office of member of the State Board of Equalization.

(4) Seventy-five thousand dollars (\$75,000) for a candidate running for a statewide office other than Governor.

(5) Two hundred fifty thousand dollars (\$250,000) for a candidate running for the office of Governor.

(c) Receipts for seed money contributions under twenty-five dollars (\$25) shall include the contributor's signature, printed name, street address, and ZIP Code. Receipts for seed money contributions of twenty-five dollars (\$25) or more shall also include the contributor's occupation and name of employer. Contributions shall not be retained if the required disclosure information is not received.

(d) Seed money shall be spent only during the exploratory and qualifying periods. Seed money shall not be spent during the primary or general election campaign periods. Any unspent seed money shall be turned over to the Commission for deposit in the Clean Money Fund.

(e) Within 72 hours after the close of the qualifying period, candidates seeking to become eligible for Clean Money funding shall do both of the following:

(1) Fully disclose all seed money contributions and expenditures to the Commission.

(2) Turn over to the Commission for deposit in the Clean Money Fund any seed money the candidate has raised during the exploratory period that exceeds the aggregate seed money limit.

91091. Participating candidates in races for elective state office with more than one candidate shall agree to participate in at least one public debate during a contested primary election and two public debates during a contested general election. The debates shall be conducted in accordance with regulations issued by the Fair Political Practices Commission.

91093. (a) No more than five days after a candidate applies for Clean Money benefits, the Commission shall certify that the candidate is or is not eligible. Eligibility may be revoked if the candidate violates the requirements of this act, in which case the candidate shall repay all Clean Money funds.

(b) The candidate's request for certification shall be signed by the candidate and the candidate's campaign treasurer under penalty of perjury.

(c) The Commission's determination is final except that it is subject to a prompt judicial review.

(d) The Commission shall provide updated information on its Web site that reflects changes to a candidate's status as participating or non-participating candidates within 24 hours of such a change.

91095. (a) Candidates for elective state office who qualify for Clean Money funding for primary and general elections shall:

(1) Receive Clean Money funding from the Commission for each election, the amount of which is specified in Section 91099. This funding may be used to finance any and all campaign expenses during the particular campaign period for which it was allocated consistent with Section 91081.

(2) Receive, if an office-qualified candidate or a performance-qualified candidate showing a broad base of support, additional Clean Money funding to match any excess expenditure amount spent by a nonparticipating candidate, as disclosed pursuant to Section 91107, provided that the dollar value of the excess expenditure amount, combined with the amount spent by any independent expenditure exceeds, the initial amount of Clean Money funding received by the participating candidate.

(3) Receive, if an office-qualified candidate or a performance-qualified candidate showing a broad base of support, additional Clean Money funding to match any excess independent expenditure made in opposition to their candidacies or in support of their opponents' candidacies, as disclosed pursuant to Section 91109, provided that the dollar value of the expenditure, combined with the amount raised or received thus far by any opposing candidate who benefits from the independent expenditure exceeds, the initial amount of Clean Money funding received by the participating candidate.

(b) The maximum aggregate amount of funding a participating office-qualified candidate or a performance-qualified candidate showing a broad base of support shall receive to match independent expenditures and excess expenditures of nonparticipating candidates shall be no more than five times the amount of Clean Money funding allocated to a participating candidate pursuant to Section 91099 for a particular primary or general election campaign period, except that for the office of Governor, the amount shall be no more than four times the amount of Clean Money funding allocated to a participating candidate pursuant to Section 91099.

91095.5. (a) Independent expenditures against a participating candidate shall be treated as expenditures of each opposing candidate for the purposes of Section 91095.

(b) Independent expenditures in favor of one or more non-participating opponents of a participating candidate shall be treated as expenditures of those non-participating candidates for the purpose of Section 91095.

(c) Independent expenditures in favor of a participating candidate shall be treated, for every opposing participating candidate, as though the independent expenditures were an expenditure of a nonparticipating opponent, for purpose of Section 91095.

(d) The Commission shall promulgate regulations relating to independent expenditures that reference or depict more than one candidate for the purposes of Section 91095.

91097. (a) A qualified or office-qualified candidate for elective state office shall receive the candidate's Clean Money funding for the primary election campaign period on the date on which the Commission certifies the candidate as a participating candidate. This certification shall take place no later than five days after the candidate has submitted the required number of qualifying contribution receipts, a check for the total amount of qualifying contributions collected, and a declaration stating that the candidate has complied with all other requirements for eligibility as a participating candidate, but no earlier than the beginning of the primary election campaign period.

(b) A qualified or performance-qualified candidate for elective state office shall receive the candidate's Clean Money funding for the general election campaign period within two business days after certification of the primary election results.

(c) A participating candidate for Legislature running in the primary of the dominant party in a one-party dominant district may choose to reallocate a portion of the Clean Money funding amount from the general election period to the primary period. The candidate shall make this choice in a writing submitted to the Commission with the materials specified in subdivision (a) at the close of the qualifying period. The participating candidate who makes such a choice shall receive an additional amount equal to 25 percent of the amount specified for the general election for the appropriate office as set forth in subdivision (b) of Section 91099. The amount a participating candidate who makes such a choice shall receive at the beginning of the general election period shall be reduced by 25 percent.

The choice may also affect the amount at which an opposing candidate may be considered to have exceeded the amount of Clean Money funding available to the participating candidate. If a competing participating candidate transfers funds pursuant to this subdivision from the general to the primary election by the close of the qualifying period, any other participating candidates in the same election may transfer the same amount of funds from the general to the primary election by notifying the Commission in writing within five days of the close of the qualifying period. The Commission shall promulgate regulations that require notification of such transfers to the Commission and to affected candidates.

91099. (a) For candidates in a primary election for elective state office or for performance-qualified candidates for elective state office in a special or special runoff election:

(1) The amount of Clean Money funding for an office-qualified party candidate in a primary, special, or special runoff election is:

(A) Two hundred fifty thousand dollars (\$250,000) for a candidate running for the office of Member of the Assembly.

(B) Five hundred thousand dollars (\$500,000) for a candidate running for the office of Member of the State Senate.

(C) Two hundred fifty thousand dollars (\$250,000) for a candidate running for the office of member of the State Board of Equalization.

(D) Two million dollars (\$2,000,000) for a candidate running for a statewide office other than Governor.

(E) Ten million dollars (\$10,000,000) for a candidate running for Governor.

(2) The amount of Clean Money funding for a performance-qualified candidate in a primary or special election is 20 percent of the amount an office-qualified party candidate running for the same office could receive. The amount of Clean Money funding for a performance-qualified candidate in a special runoff election is 50 percent of the amount an office-qualified candidate running for the same office would receive.

(3) The Clean Money funding amount for a participating candidate in a primary election where no other candidates are running in the same party primary for that seat is 10 percent of the amount provided in a contested primary election.

(b) For candidates for elective state office in a general election:

(1) The amount of Clean Money funding for an office-qualified candidate in a contested general election is:

(A) Four hundred thousand dollars (\$400,000) for a candidate running for the office of Member of the Assembly.

(B) Eight hundred thousand dollars (\$800,000) for a candidate running for the office of Member of the State Senate.

(C) Four hundred thousand dollars (\$400,000) for a candidate running for the office of member of the State Board of Equalization.

(D) Two million dollars (\$2,000,000) for a candidate running for a statewide office other than Governor.

(E) Fifteen million dollars (\$15,000,000) for a candidate running for Governor.

(2) The amount of Clean Money funding for a performance-qualified candidate in a contested general election is 50 percent of the amount an office-qualified candidate running for the same office could receive.

(3) The amount of Clean Money funding for a qualified candidate in a contested general election is 25 percent of the amount an office-qualified candidate running for the same office could receive.

Article 6. Restrictions on Nonparticipating Candidates, Political Parties, and Independent Expenditure Committees

91101. (a) A person, other than a small contributor committee or political party committee, shall not make to any nonparticipating candidate or candidates, and a nonparticipating candidate shall not accept from a person other than a small contributor committee or a political party committee, any contribution totaling more than five hundred dollars (\$500) per election, if a candidate for the Legislature or for the State Board of Equalization, or more than one thousand dollars (\$1,000) if a candidate for statewide office. Contributions pursuant to Section 91115 are not subject to this requirement.

(b) The provisions of this section do not apply to a nonparticipating candidate's contributions of personal funds to the candidate's own

campaign.

91103. A small contributor committee shall not make to any nonparticipating candidate, and a nonparticipating candidate shall not accept from a small contributor committee, any contribution totaling more than two thousand five hundred dollars (\$2,500) per election.

91105. (a) A person shall not make to any independent expenditure committee, and a committee shall not accept from a person, contributions totaling more than one thousand dollars (\$1,000) per calendar year for the purpose of making expenditures in support of the election or defeat of a candidate, or candidates for elective state office.

(b) A person may not make to any committee, other than a political party committee, and a committee other than a political party committee may not accept, any contribution totaling more than one thousand dollars (\$1,000) per calendar year for the purpose of making contributions to any committees, including ballot measure committees, controlled by candidates for elective state office.

(c) A person may not make to any political party committee, and a political party committee may not accept, any contribution totaling more than seven thousand five-hundred dollars (\$7,500) per calendar year for the purpose of making contributions for the support or defeat of candidates for elective state or for the purpose of making contributions to any committees, including ballot measure committees, controlled by candidates for elective state office. Notwithstanding Section 85312, this limit applies to contributions made to a political party used for the purpose of making expenditures at the behest of a candidate for elective state office for communications to party members related to the candidate's candidacy for elective state office.

(d) Nothing in this chapter limits a nonparticipating candidate for elective state office from transferring contributions received by the candidate in excess of any amount necessary to defray the candidate's expenses for election related activities or holding office to a political party committee, provided those transferred contributions are used for purposes consistent with paragraph (4) of subdivision (b) of Section 89519.

(e) An elected state officer, nonparticipating candidate, legal defense account, political party committee, or independent expenditure committee shall not solicit or accept a contribution from a registered state lobbyist or lobbying firm, or from a state contractor, if the lobbyist or employee or principal of the lobbying firm is registered to lobby, or if the state contractor has present or potential future business with, the governmental agency for which the candidate is seeking election or the governmental agency of the elected state officer.

(f) No committee controlled by a candidate or officeholder, shall make any contribution to any other candidate running for state office or his or her controlled committee.

(g) No person shall contribute in the aggregate more than seven thousand five hundred dollars (\$7,500) to all candidates for elective state offices and their controlled committees, political party committees, and any other committees, in any calendar year, for the purpose of making contributions to candidates for elective state office or independent expenditures to support or oppose candidates for elective state office; provided, however, that a person may contribute up to an additional seven thousand five hundred dollars (\$7,500) in a calendar year to independent expenditure committees that support or oppose candidates for elective state office.

(h) A controlled committee of a candidate shall not make independent expenditures and shall not make contributions to another committee which makes independent expenditures to support or oppose other candidates.

Article 6.5. Applicability of Limits to Special Elections and Special Runoff Elections

91106. The contribution and expenditure limits and restrictions of this chapter apply to special elections and apply to special runoff elections. A special election and a special runoff election are separate elections for purposes of the contribution and expenditure provisions set forth in this chapter.

Article 7. Disclosure Requirements

91107. (a) A nonparticipating candidate shall notify the Commission online or electronically on the same day that the candidate spends or

incurs expenditures in excess of the initial amount of Clean Money funding allocated to the candidate's Clean Money opponent or opponents pursuant to Section 91099. The notification shall include the excess amount spent or incurred as of that date. Upon receiving notification from a nonparticipating candidate, the Commission shall immediately notify all other candidates in that election.

(b) A nonparticipating candidate that spends or incurs expenditures in excess of the initial amount of Clean Money funding actually received by the candidate's Clean Money opponent or opponents, shall notify the Commission online or electronically within 24 hours each time the candidate's committee makes or incurs cumulative expenditures of five thousand dollars (\$5,000) or more in excess of the amount(s).

(c) In the event a nonparticipating candidate fails to timely notify the Commission in accordance with subdivisions (a) and (b), the Commission may make its own determination as to whether excess expenditures have been made or incurred by nonparticipating candidates.

(d) Upon receiving an excess expenditure notification or determining that an excess expenditure has been made, the Commission shall release additional Clean Money funding to the opposing participating performance-qualified and office-qualified candidates within one business day. The amount released shall be equal to the excess amount spent or incurred by the nonparticipating candidate subject to the limits set forth in subdivision (b) of Section 91095.

91107.5. (a) No candidate for elective state office shall expend or contribute more than \$25,000 in personal funds in connection with his or her campaign so as to make the total amount contributed from all sources aggregate more than the amount set forth in Section 91099 for the office for which they are running unless and until the conditions in subdivisions (b) and (c) are met.

(b) Notice of the candidate's intent to so expend or contribute shall be provided online, electronically, by facsimile, or personal delivery, to all opponents and to the Commission within 15 days of the decision to expend or contribute, specifying the amount intended to be expended or contributed.

(c) All personal funds to be expended or contributed by the candidate pursuant to subdivision (a) shall first be deposited in the candidate's campaign contribution checking account at least 15 days before the election. Such deposited funds shall be considered an expenditure made by the candidate and shall trigger matching funds pursuant to Section 91095.

(d) In the event that the candidate contributes or expends more in personal funds than provided by this section, the matching fund limit set forth in subdivision (b) of Section 91095 shall be doubled for all opposing participating candidates.

91109. (a) In addition to any other report required by this chapter, a committee, including a political party committee, that makes independent expenditures of one thousand dollars (\$1,000) or more during an election cycle to support or oppose a candidate, shall file a report with the Commission disclosing the independent expenditure within 24 hours of the time the independent expenditure is made or incurred. This report shall disclose the same information required by subdivision (b) of Section 84204 and shall be filed online or electronically if the committee is required to file reports pursuant to Section 84605, and by facsimile, personal delivery or by such other means as determined by the Commission for committees that do not file reports electronically.

(b) An expenditure may not be considered independent, and shall be treated as a contribution from the person making the expenditure to the candidate on whose behalf, or for whose benefit, the expenditure is made, if the expenditure is made under any of the following circumstances:

(1) The expenditure is made with the cooperation of, or in consultation with, the candidate on whose behalf, or for whose benefit, the expenditure is made, or any controlled committee or any agent of the candidate.

(2) The expenditure is made in concert with, or at the request or suggestion of, the candidate on whose behalf, or for whose benefit, the expenditure is made, or any controlled committee or any agent of the candidate.

(3) The expenditure is made under any arrangement, coordination, or direction with respect to the candidate or the candidate's agent and the person making the expenditure.

(c) The report to the Commission shall include a signed statement

under penalty of perjury by the person or persons making the independent expenditure identifying the candidate or candidates supported or opposed by the independent expenditure, and affirming that the expenditure is independent and not coordinated with a candidate or a political party.

(d) Any committee that fails to file the required report to the Commission or that knowingly provides materially false information in a report filed pursuant to subdivisions (a) or (b), may be fined up to three times the amount of the independent expenditure, in addition to any other remedies provided by this act.

(e) Upon receiving a report that an independent expenditure has been made or incurred, the Commission shall immediately notify all candidates in that election and release additional Clean Money funding, pursuant to Section 91095, within one business day to all participating candidates in that specific primary or general election whom the Commission determines were not beneficiaries of the independent expenditure, subject to the limits in subdivision (b) of Section 91095.

91113. (a) In addition to other disclosure provisions contained in this Code, all broadcast and print advertisements paid for by a candidate for elective state office or committee controlled by a candidate for elective state office shall include a disclosure statement indicating that the candidate has approved of the contents of the advertisement.

(b) The disclosure statement required by subdivision (a) that is included in a broadcast advertisement shall be spoken so as to be clearly audible and understood by the intended public and otherwise appropriately conveyed for the hearing impaired.

(c) The disclosure statement required by subdivision (a) that is included in a print advertisement shall be printed clearly and legibly in no less than 10-point type and in a conspicuous manner as defined by the Commission.

(d) For purposes of this section, "advertisement" means any general or public advertisement which is authorized and paid for by a candidate or committee controlled by a candidate for the purpose of supporting or opposing a candidate for elective state office, but does not include a campaign button smaller than 10 inches in diameter, a bumper sticker smaller than 60 square inches, or other advertisement as determined by regulations of the Commission.

Article 8. Ballot Access, Recount, Legal Defense, Officeholder, and Inaugural Funds

91115. (a) A candidate for elective state office or elected state officer may establish a separate account to defray attorney's fees and other related legal costs incurred for the candidate's or elected state officer's expenses in any litigation over ballot access, qualifications or designations, election recounts and contests, or in connection with any legal defense if the candidate or elected state officer is subject to one or more civil or criminal proceedings or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officer's governmental activities and duties. These funds may be used only to defray those attorney's fees and other related legal costs.

(b) An elected state officer who accepted Clean Money benefits in the election shall receive \$50,000 annually from the Clean Money Fund, if a member of the Legislature, or \$100,000 annually for all statewide offices to defray officeholder expenses. Any such elected state officer shall not accept private contributions from any source for his or her officeholder account for the currently held office unless such officer raises private contributions for a campaign account in excess of the amounts set forth in Sec. 91087. In the event that such elected officer raises private contributions for a campaign account in excess of the amounts set forth in Sec. 91087, he or she shall no longer receive money for an officeholder account as of the start of the next calendar year and may raise private contributions for an officeholder account pursuant to subdivision (c) of Section 91115.

(c) An elected state officer who did not accept Clean Money benefits in the election for his or her current office may establish a separate account to defray officeholder expenses that are set forth by the Commission. No funds from this account shall be used for a mass mailing. The aggregate amount contributed to any officeholder account shall not exceed fifty thousand dollars (\$50,000) annually for any legislative officer or one hundred thousand (\$100,000) for any statewide officer.

(d) A Governor, Lieutenant Governor, or other statewide officer may

establish an inaugural account to cover the cost of events, celebrations, gatherings, and communications that take place as part of, or in honor of, the officer's inauguration. No inaugural account may exceed \$500,000 cumulatively.

(e) A candidate or officer may receive contributions of up to five hundred dollars (\$500) per person per year in the aggregate for accounts in subdivisions (a), (c), and (d). All contributions, whether cash or in-kind, shall be reported in a manner prescribed by the Commission. Contributions to such funds shall not be considered campaign contributions.

(f) A candidate or elected state officer who has established a legal account pursuant to subdivision (a) shall dispose of all leftover funds once the legal dispute is resolved and all expenses are discharged. The candidate or elected state officer shall dispose of the excess funds consistent with for one or more of the purposes set forth in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 89519.

(g) An elected state officer who has established an officeholder account pursuant to subdivision (b) shall return to the state Clean Money Fund all leftover funds once the officer leaves and all expenses are discharged.

(h) An elected state officer who has established an officeholder account pursuant to subdivision (c) shall dispose of all leftover funds once the officer leaves office and all expenses are discharged. The elected state officer shall dispose of the excess funds consistent with for one or more of the purposes set forth in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 89519.

Article 9. Restrictions on Candidates

91117. A candidate for elective state office or any committee controlled by the candidate shall not receive any contributions prior to the beginning of the exploratory period.

91119. A nonparticipating candidate may transfer campaign funds from one controlled committee to a controlled committee for elective state office of the same nonparticipating candidate. Contributions transferred shall be attributed to specific contributors using a "last in, first out" or "first in, first out" accounting method, and these attributed contributions when aggregated with all other contributions from the same contributor shall not exceed the limits set forth in Section 91101, 91103 or 91105.

91121. A nonparticipating candidate may accept a contribution after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election and the contribution does not otherwise exceed the applicable contribution limit for that election. All debts shall be repaid or written off no later than 90 days after the general election. The Commission may extend this deadline for up to an additional 90 days upon a finding of good cause for the extension based on facts and circumstances presented by the candidate.

91123. Candidates for elective state office may accept monetary or in-kind contributions from political parties provided that the aggregate amount of such contributions from all political party committees combined does not exceed the following amounts:

(a) The aggregate amount of monetary or in kind contributions from all political party committees combined for each participating and nonparticipating candidate in a primary, special, or special runoff election is:

(1) Twelve thousand five hundred dollars (\$12,500) for a candidate running for the office of Member of the Assembly.

(2) Twenty-five thousand dollars (\$25,000) for a candidate running for the office of Member of the State Senate.

(3) Twelve thousand five hundred dollars (\$12,500) for a candidate running for the office of member of the State Board of Equalization.

(4) One hundred thousand dollars (\$100,000) for a candidate running for a statewide office other than Governor.

(5) Five hundred thousand dollars (\$500,000) for a candidate running for Governor.

(b) The aggregate amount of monetary or in kind contributions from all political party committees combined for each participating and nonparticipating candidate in a contested general election is:

(1) Twenty thousand dollars (\$20,000) for a candidate running for the office of Member of the Assembly.

(2) Forty thousand dollars (\$40,000) for a candidate running for the office of Member of the State Senate.

(3) Twenty thousand dollars (\$20,000) for a candidate running for the office of member of the State Board of Equalization.

(4) Two hundred thousand dollars (\$200,000) for a candidate running for a statewide office other than Governor.

(5) Seven hundred fifty thousand dollars (\$750,000) for a candidate running for Governor.

Such contributions shall not count against the Clean Money funding amounts available to participating candidates and funds may be spent directly by participating candidates without using a Clean Money Debit Card.

Article 10. Voter Pamphlet Statements

91127. The Secretary of State shall designate in the state ballot pamphlet those candidates who have voluntarily agreed to be participating candidates.

91131. (a) A candidate who is a participating candidate may place a statement in the state ballot pamphlet and on any Internet Web site listing of candidates maintained by any government agency including, but not limited to, the Secretary of State, that does not exceed 250 words. The statement shall not make any reference to any opponent of the candidate. The candidate may also provide a list of ten endorsers for placement in the ballot pamphlet. This statement and list of endorsers shall be submitted in accordance with timeframes and procedures set forth by the Secretary of State for the preparation of the state ballot pamphlets.

(b) A nonparticipating candidate may pay to place a statement in the appropriate ballot pamphlet or voter information portion of the sample ballot that does not exceed 250 words, and may pay the price to place a list of up to 10 endorsers in the ballot pamphlet. The statement shall not make any reference to any opponent of the candidate. The statement shall be submitted in accordance with timeframes and procedures set forth by the Secretary of State for the preparation of the state ballot pamphlets. The nonparticipating candidate shall be charged the pro rata cost of printing, handling, translating, and mailing any campaign statement and list of endorsers provided pursuant to this subdivision.

Article 10.5. Voter Education and Outreach

91132. The Secretary of State shall, using the funds provided by paragraph (3) of subdivision (a) of Section 91134, conduct voter education and outreach efforts throughout the state regarding the public campaign funding system established by this chapter and, specifically, the meaning behind the statements included in the ballot, as provided in subparagraph (A) of paragraph (2) of subdivision (a) of Section 13207 of the Elections Code. Such efforts shall include public service announcements in radio, television, or print media that are disseminated in a manner consistent with the language assistance requirements of the Voting Rights Act, 42 U.S.C. Sec. 1973aa-1. Public announcements disseminated by television, radio, or print media shall not feature the voice, name, still or video image of the Secretary of State.

Article 11. Appropriations for the Clean Money Fund

91133. A special, dedicated, nonlapsing Clean Money Fund is created in the State Treasury. The Franchise Tax Board shall deposit into the Clean Money Fund fees generated from the following assessments:

(a) an increase of 0.2 in the rate for amounts paid on taxable income as provided in subdivision (g) of Section 23151 of the Revenue and Taxation Code [from 8.84 percent to 9.04 percent];

(b) an increase of 0.2 in the rate for amounts paid on taxable income as provided in subdivision (b) of Section 23186 of the Revenue and Taxation Code [from 10.84 percent to 11.04 percent]; and

(c) an increase in the tax imposed on passive investment income under Section 23811 of the Revenue and Taxation Code from 1.5 percent to 1.66 percent of annual net passive investment income for corporations with over \$50 million in total receipts.

91134. (a) The Franchise Tax Board shall administer the collection of the Clean Money Fees described herein, including any penalties and interest. The Clean Money Fund is established for the following purposes:

(1) Providing public financing for the election campaigns of certified participating candidates during primary and general campaign periods.

(2) Paying for the administrative and enforcement costs of the Commission related to this chapter. The Commission shall annually be appropriated at least three million dollars (\$3,000,000), adjusted for cost-of-living changes as provided in Section 82001, to administer this act.

(3) Paying for the voter education and outreach efforts as provided in Section 91132, except that the annual amount of funds available for these efforts shall be no more than five percent of the amount specified in subdivision (a) for the each of the first two years after implementation of this chapter in which there are elections, and no more than one percent every year thereafter in which there are elections. Funds unused by the Secretary of State shall revert to the Clean Money Fund, annually.

(b) Funds collected pursuant to this section shall first be collected in the 2007–08 fiscal year and in each subsequent fiscal year.

91135. Other sources of revenue to be deposited in the Clean Money Fund shall include all of the following:

(a) The qualifying contributions required of candidates seeking to become certified as participating candidates and candidates' excess qualifying contributions.

(b) The excess seed money contributions of candidates seeking to become certified as participating candidates.

(c) Unspent or uncommitted funds shall be returned no later than thirty days following the date of the close of the primary election period or the general election for which they were distributed. The Commission shall promulgate regulations in furtherance of this subdivision.

(d) Fines levied by the Commission against candidates for violation of election laws.

(e) Voluntary donations made directly to the Clean Money Fund.

(f) Any interest generated by the Clean Money Fund.

91136. The amount of money in the Clean Money Fund shall not exceed four times the amount of six dollars (\$6.00) times the number of California residents. Any funds that, if deposited in the Clean Money Fund, would cause the balance in the fund to exceed this amount shall be irrevocably transferred to the General Fund.

Article 12. Limits on Contributions to Candidate-Controlled Ballot Measures

91137. Limits on Contributions to Candidate-Controlled Ballot Measure Committees

(a) A ballot measure committee not controlled by a candidate for elective state office or an elected state officer is not subject to the provisions of this section. A ballot measure committee becomes subject to the provisions of this section once it becomes controlled by one or more candidates for elective state office, as defined in Section 82016. However, a ballot measure committee controlled by an individual who ceases to be a candidate as defined in Government Code Section 82007 is no longer subject to the provisions of this section.

(b) No person shall make a contribution or contributions totaling in excess of ten thousand dollars (\$10,000) to any committee that is established for the purpose of supporting or opposing a state or local ballot measure and that is controlled by a candidate for elective state office or an elected state officer. This contribution limit shall apply as an aggregate limit upon all contributions made by any person to all ballot measure committees controlled by the same candidate for elective state office or the same elected state officer, even if those committees are established for the purpose of supporting or opposing different state or local ballot measures, and even if one or more of those ballot measure committees are controlled by more than one candidate for elective state office or elected state officers.

(c) A ballot measure committee that is primarily formed to support or oppose a ballot measure or measures and that is controlled by a candidate for elective state office or an elected state officer is subject to the post-election fundraising limitations of Section 85316. A general purpose ballot measure committee is not subject to the post-election fundraising limitations of Government Code Section 85316.

Article 13. Limits on Contributions or Independent Expenditures by Corporations in Connection with State Candidate Elections

91138. Limits on Contributions or Independent Expenditures by

Corporations in Connection with State Candidate Elections

(a) Except as provided in subdivision (c) of this section, and except for direct contributions pursuant to subdivision (a) of Section 91101, it is unlawful for any national or state bank or for any corporation incorporated under the laws of this or any other state or any foreign country, to make a contribution or expenditure in connection with the election of any candidate for elective state office. It shall likewise be unlawful for any candidate, committee, or other person knowingly to accept or to receive any contribution prohibited by this section, or for any officer or any director of any corporation or of any national or state bank to consent to any contribution or expenditure by the corporation or national or state bank, as the case may be, prohibited by this section.

(b) For purposes of this section, the term “contribution or expenditure” includes a contribution, expenditure or independent expenditure, as those terms are defined in Sections 82015, 82025 and 82031, and also includes any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value provided to any candidate or committee (including any political party committee) in connection with any election for elective state office, except that nothing in this section shall prohibit (1) a loan of money by a national or state bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business; or (2) the payment or receipt of interest earnings, stock or other dividends on investments where the interest or dividends are received in accordance with the applicable banking laws and in the ordinary course of business.

(c) For purposes of this section, the term “contribution or expenditure” shall not include

(1) communications by a bank or corporation to its stockholders and executive or administrative personnel and their immediate families on any subject;

(2) nonpartisan registration and get-out-the-vote campaigns by a bank or corporation aimed at its stockholders and executive or administrative personnel and their immediate families; and

(3) the establishment, administration, and solicitation by a bank or corporation of contributions to a separate segregated fund to be utilized for making political contributions or expenditures, provided that the fund may consist only of voluntary contributions solicited from individuals who are either stockholders, members or employees of the bank or corporation, and their immediate families.

(d) It shall be unlawful for any separate segregated fund established in accordance with paragraph (3) of subdivision (c) to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other funds required as a condition of employment; or by funds obtained in any commercial transaction. It shall be unlawful for any person soliciting an employee for a contribution to any separate segregated fund (1) to fail to inform the employee of the political purposes of the fund at the time of the solicitation; and (2) to fail to inform the employee, at the time of the solicitation, of his or her right to refuse to so contribute without any reprisal.

(e) This section shall not prevent a trade association or a separate segregated fund established by a trade association from soliciting contributions from the stockholders and executive or administrative personnel of the member corporations of the trade association and the immediate families of the stockholders or personnel to the extent that the solicitation of the stockholders and personnel, and their immediate families, has been separately and specifically approved by the member corporation involved, and the member corporation does not approve any such solicitation by more than one such trade association in any calendar year.

(f) For purposes of this section, the term “executive or administrative personnel” means individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities.

(g) The Commission shall promulgate regulations implementing the requirements of this section and governing the administration and solicitation of contributions to separate segregated funds established in accordance with paragraph (3) of subdivision (c). The Commission's regulations shall conform to the intent of the voters in adopting this section and shall, to the maximum extent practicable, be consistent with the regulations adopted by the Federal Election Commission interpreting

and implementing the comparable provisions of the Federal Election Campaign Act.

Article 14. Limits on Contributions or Expenditures by Corporations in Connection with State Ballot Measure Elections

91139. Limits on Contributions or Expenditures by Corporations in Connection with State Ballot Measure Elections

(a) Except as provided in subdivision (c), it is unlawful for any national or state bank or for any corporation incorporated under the laws of this or any other state or any foreign country, to make contributions or expenditures to support or oppose the qualification, passage or defeat of a state ballot measure that in the aggregate exceed \$10,000 for or against any statewide ballot measure. It shall likewise be unlawful for any candidate, committee, or other person knowingly to accept or to receive any contribution prohibited in excess of the limits established by this section, or for any officer or any director of any corporation or of any national or state bank to consent to any contribution or expenditure by the corporation or national or state bank, as the case may be, prohibited by this section.

(b) For purposes of this section, the term “contribution or expenditure” includes a contribution, expenditure or independent expenditure, as those terms are defined in Sections 82015, 82025 and 82031, and also includes any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value provided to any candidate or committee, including any political party committee, to support or oppose the qualification, passage or defeat of a state ballot measure, except that nothing in this section shall prohibit (1) a loan of money by a national or state bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business, or (2) the payment or receipt of interest earnings, stock or other dividends on investments where the interest or dividends are received in accordance with the applicable banking laws and in the ordinary course of business.

(c) For purposes of this section, the term “contribution or expenditure” shall not include (1) communications by a bank or corporation to its stockholders and executive or administrative personnel and their immediate families on any subject, (2) nonpartisan registration and get-out-the-vote campaigns by a bank or corporation aimed at its stockholders and executive or administrative personnel and their immediate families, or (3) the establishment, administration, and solicitation by a bank or corporation of contributions to a separate segregated fund to be utilized for making political contributions or expenditures, provided that the fund shall consist only of voluntary contributions solicited from individuals who are either stockholders, members or employees of the bank or corporation, and their immediate families.

(d) It shall be unlawful for any separate segregated fund established in accordance with paragraph (3) of subdivision (c) to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other funds required as a condition of employment; or by funds obtained in any commercial transaction. It shall be unlawful for any person soliciting an employee for a contribution to any separate segregated fund (1) to fail to inform the employee of the political purposes of the fund at the time of the solicitation; and (2) to fail to inform the employee, at the time of the solicitation, of his or her right to refuse to so contribute without any reprisal.

(e) This section shall not prevent a trade association or a separate segregated fund established by a trade association from soliciting contributions from the stockholders and executive or administrative personnel of the member corporations of the trade association and the immediate families of the stockholders or personnel to the extent that the solicitation of the stockholders and personnel, and their immediate families, has been separately and specifically approved by the member corporation involved, and the member corporation does not approve any such solicitation by more than one such trade association in any calendar year.

(f) For purposes of this section, the term “executive or administrative personnel” means individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities.

(g) The Commission shall promulgate regulations implementing

the requirements of this section and governing the administration and solicitation of contributions to separate segregated funds established in accordance with paragraph (3) of subdivision (c). The Commission’s regulations shall conform to the intent of the voters in adopting this section and shall, to the maximum extent practicable, be consistent with the regulations adopted by the Federal Election Commission interpreting and implementing the comparable provisions of the Federal Election Campaign Act.

Article 15. Nonprofit Corporation Exemption

91140. Nonprofit Corporations Exempt from Prohibitions and Limits on Political Contributions or Expenditures

(a) The prohibitions and limits on contributions or expenditures set forth in Sections 91138 and 91139 shall not apply to a qualified nonprofit corporation that has all of the following characteristics:

(1) It does not qualify as or engage in any of the activities of a business entity, as defined in Section 82005;

(2) It has:

(A) No shareholders or other persons, other than employees and creditors with no ownership interest, affiliated in any way that could allow them to make a claim on the organization’s assets or earnings; and

(B) No persons who are offered or who receive any benefit that is a disincentive for them to disassociate themselves with the corporation on the basis of the corporation’s position on a political issue.

(3) It:

(A) Was not established by a business entity;

(B) Is not “affiliated” with a business entity within the meaning of Section 150 of the Corporations Code;

(C) Is not composed of members that are business entities or that engage in the activities of a business entity;

(D) Does not directly or indirectly accept donations of anything of value from business entities; and

(4) If unable, for good cause, to demonstrate through accounting records that subparagraph (D) of paragraph (3) is satisfied, has a written policy against accepting donations from business entities; and

(5) It is described in 26 U.S.C. §501(a) and (c).

(b) Whenever a qualified nonprofit corporation solicits donations, the solicitation shall inform potential donors that their donations may be used for political purposes.

(c) Qualified nonprofit corporations possessing all of the characteristics enumerated in subdivision (a) remain subject to all other applicable requirements and limitations of this title, including those provisions requiring disclosure of any contributions or expenditures permitted by this section.

Article 16. Administration

91141. (a) Upon a determination that a candidate has met all the requirements for becoming a participating candidate as provided for in this act, the Commission shall issue to the candidate a card, known as the “Clean Money Debit Card,” and a “line of debit” entitling the candidates and members of the candidate’s staff to draw Clean Money funds from a Commission account to pay for all campaign costs and expenses up to the amount of Clean Money funding the candidate has received.

(b) Neither a participating candidate nor any other person on behalf of a participating candidate shall pay campaign costs by cash, check, money order, loan, or by any other financial means other than the Clean Money Debit Card, except for contributions received from political party committees in accordance with Section 91123.

(c) Cash amounts of one hundred dollars (\$100) or less per day may be drawn on the Clean Money Debit Card and used to pay expenses of no more than twenty-five dollars (\$25) each. Records of all such expenditures shall be maintained and reported to the Commission.

91142. If the Commission determines that there are insufficient funds in the program to fund adequately all candidates eligible for Clean Money funds, the Commission shall reduce the grants proportionately to all eligible candidates. If the Commission notifies a candidate that the Clean Money funds will be reduced and the candidate has not received any Clean Money funds, the candidate may decide to be a nonparticipating

candidate. If a candidate has already received Clean Money funds or wishes to start receiving such funds, a candidate who wishes to collect contributions may do so in amounts up to the contribution limits provided for nonparticipating candidates but shall not collect more than the total of Clean Money funds that the candidate was entitled to receive had there been sufficient funds in the program less the amount of Clean Money funds that will be or have been provided. If, at a later point, the Commission determines that adequate funds have become available, candidates, who have not raised private funds, shall receive the funds owed to them.

91143. (a) At the end of the primary election period, a participating candidate who has received funds pursuant to Article 5 shall return to the fund all funds in the candidate's campaign account above an amount sufficient to pay any unpaid bills for expenditures made during the primary election period and for goods or services directed to the primary election.

(b) At the end of the general election period, a participating candidate shall return to the fund all funds in the candidate's campaign account above an amount sufficient to pay any unpaid bills for expenditures made before the general election and for goods or services directed to the general election.

(c) A participating candidate shall pay all uncontested and unpaid bills referenced in this section no later than thirty days after the primary or general election. A participating candidate shall make monthly reports to the commission concerning the status of the dispute over any contested bills. Any funds in a candidate's campaign account after payment of bills shall be returned promptly to the fund.

(d) If a participating candidate is replaced, and the replacement candidate files an oath with the Secretary of State certifying that he or she shall assume all responsibility for compliance with the provisions of this chapter concerning the current status and ongoing administration of the campaign account, and further certifying that he or she will faithfully comply with all provisions of this chapter applicable to the participating candidate status he or she is assuming as a replacement candidate, the campaign account of the participating candidate shall be transferred to the replacement candidate and the commission shall certify the replacement candidate as a participating candidate with the same status, rights and obligations as the replaced candidate. If the replacement candidate does not file such an oath, the campaign account shall be liquidated and all remaining funds returned to the fund.

Article 17. Cost of Living

91144. The Commission shall adjust the contribution limitations, spending limits, seed money provisions, funding amounts provided and the Clean Money Fund provisions in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index and the increase in registered voters. Those adjustments shall be rounded to the nearest ten dollars (\$10) for the seed money provisions, one hundred dollars (\$100) for the limitations on contributions, and one thousand dollars (\$1,000) for the Clean Money provisions.

91145. On or before December 6 of each year ending in one, the Commission shall prepare and provide to each Member of the Legislature and to the standing committees in the Assembly and the Senate with jurisdiction over elections a report containing a review and analysis of the functioning of the Clean Money Fund and the Commission's recommendations as to whether additional cost of living adjustments, beyond those specified in Section 91144 should be made to the spending limits, seed money provisions, funding amounts provided and the Clean Money Fund provisions of this chapter, and suggesting other changes that are advisable to further the purpose of this act. The Commission's recommendations shall be based upon an analysis of the disclosures of campaign contributions and expenditures made by non-participating candidates in the preceding decade and other campaign financing information available, and this analysis shall be set forth in detail in the report. Amendments to this chapter made in accordance with the Commission's recommendation may be adopted by a vote of 55 percent of both houses of the Legislature.

Article 18. Enforcement

91146. (a) It is unlawful for participating candidates or their

agents to knowingly accept more Clean Money benefits than those to which they are entitled, spend more than the amount of Clean Money funding they have received, or misuse such benefits or Clean Money funding.

(b) Any person, including an individual specified in Section 91115, who knowingly or willfully violates any provision of this chapter is guilty of a misdemeanor. Any person who knowingly or willfully causes any other person to violate any provision of this chapter, or who aids and abets any other person in the violation of any provision of this chapter, shall be liable under the provisions of this article.

(c) Prosecution of a violation of any provision of this chapter shall be commenced within four years after the date of the violation.

91147. (a) No person convicted of a misdemeanor under this chapter shall act as a lobbyist, state contractor, run for elective office, or be eligible for appointed office or commission appointment for a period of five years following the date of the conviction unless the court at the time of sentencing specifically determines that this provision shall not be applicable. Non-candidate persons convicted for violations of this chapter shall be prohibited from receiving compensation for any electioneering activities or from firms that receive compensation for election activities for a period of five years following the date of conviction unless the court at the time of sentencing specifically determines that this provision shall not be applicable.

(b) If the court determines that the violation was intentional and involved an amount that had or could have been expected to have a material effect on the outcome of the election, the candidate may be fined up to twenty-five thousand dollars (\$25,000), or imprisoned for up to five years, or both. Any person who is found guilty of any criminal violation of this act shall be sentenced to at a minimum of at least one day and one night in jail.

(1) If a candidate is convicted of a misdemeanor violation of any provision of this chapter, the court shall make a determination as to whether the violation had a material effect on the outcome of the election. If the court finds such a material effect, or that a participating candidate spent or incurred more than 10 percent above the Clean Money funding the candidate received from the Clean Money Fund, in addition to any fines specified in this subdivision, the candidate shall repay to the Clean Money Fund an amount up to 10 times the value of the excess, and:

(A) if the conviction becomes final before the date of the election, the votes for the candidate shall not be counted, and the election shall be determined on the basis of the votes cast for the other candidates in that race;

(B) if the conviction becomes final after the date of the election, and if the candidate was declared to have been elected, then the candidate shall not assume office, the office shall be deemed vacant and shall be filled as otherwise provided by law;

(C) if the conviction becomes final after the candidate has assumed office, then the candidate shall be removed from office, the office shall be deemed vacant and shall be filled as otherwise provided by law; and

(D) the person convicted shall be ineligible to run for any office for a period of five years after the date of the conviction.

(2) If a participating candidate spends or incurs more than the Clean Money funding the candidate is given, and if it is determined by a court not to be an amount that had or could have been expected to have had a material effect on the outcome of the election, then the candidate shall repay to the Clean Money Fund an amount equal to the excess.

(c) The same penalties as provided in subdivision (b) of Section 91146 and Section 91147 shall apply for determinations made by the Commission, subject to court review.

SEC. 2. Section 13207 of the Elections Code is amended to read:

13207. (a) There shall be printed on the ballot in parallel columns all of the following:

(1) The respective offices.

(2) The names of candidates with sufficient blank spaces to allow the voters to write in names not printed on the ballot.

(A) Underneath the name of each candidate shall state either: "This candidate is a participant in the public campaign funding system." or "This candidate is not a participant in the public campaign funding system."

(B) The Fair Political Practices Commission shall determine which candidates in every election covered by Chapter 12 (commencing

with Section 91015) of the Government Code are participating or nonparticipating candidates. The Fair Political Practices Commission shall provide to the Secretary of State the information necessary to satisfy the requirements of this paragraph (2) in a manner that will permit the timely preparation and printing of the ballot. The Secretary of State shall then immediately transmit the information to county election officials.

(3) Whatever measures have been submitted to the voters.

(b) In the case of a ballot which is intended for use in a party primary and which carries both partisan offices and nonpartisan offices, a vertical solid black line shall divide the columns containing partisan offices, on the left, from the columns containing nonpartisan offices, on the right.

(c) The standard width of columns containing partisan and nonpartisan offices shall be three inches, but an elections official may vary the width of these columns up to 10 percent more or less than the three-inch standard. However, the column containing presidential and vice presidential candidates may be as wide as four inches.

(d) Any measures that are to be submitted to the voters shall be printed in one or more parallel columns to the right of the columns containing the names of candidates and shall be of sufficient width to contain the title and summary of each measure. To the right of each title and summary shall be printed, on separate lines, the words "Yes" and "No."

SEC. 3. Section 82016 of the Government Code is amended to read:

82016. *Controlled Committee*

(a) "Controlled committee" means a committee that is controlled directly or indirectly by a candidate or state measure proponent or that acts jointly with a candidate, controlled committee, or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee.

(b) Notwithstanding subdivision (a), a political party committee, as defined in Section 85205 91057, is not a controlled committee.

(c) For purposes of Section 91137, a candidate shall be deemed to control a ballot measure committee if any of the following conditions are met:

(1) Decisions on how the committee's funds are to be expended are effectively directed by or coordinated with the candidate or his or her agent;

(2) The candidate personally solicits contributions to the committee, either telephonically or through direct oral communications with donors; or

(3) The candidate appears in broadcast advertisements paid for by the committee at the candidate's behest.

SEC. 4. Section 82025 of the Government Code is amended to read:

82025. *Expenditure*

(a) "Expenditure" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes.

(b) "Expenditure" includes any monetary or nonmonetary payment made by any person that is used:

(1) For any communications that expressly advocate the nomination, election or defeat of a clearly identified candidate or candidates, or the qualification, passage or defeat of a clearly identified ballot measure or measures; or

(2) For any broadcast, cable, or satellite communications that (A) refer to a clearly identified candidate for elective state office or to a state ballot measure that has qualified to appear on the ballot, (B) are made within 30 days before a primary election or 60 days before a general, special, or special runoff election for the office sought by the candidate or at which the state ballot measure will be voted on, and (C) can be received by 50,000 or more persons in the electoral jurisdiction in which the candidate or ballot measure will be voted on. A candidate is "clearly identified" within the meaning of this subdivision if the communication states his or her name, makes unambiguous reference to his or her office or status as a candidate, or unambiguously describes him or her in any manner. A state ballot measure is "clearly identified" within the meaning of this subdivision if

the communication states a proposition number, official title, or popular name associated with the measure, or if the communication refers to the specific subject matter of the measure and either states or refers to the fact that the measure is before the people for a vote.

(c) Notwithstanding subdivision (b), "expenditure" does not include the costs for: (A) a communication appearing in a bona fide news story, commentary, or editorial distributed through the facilities of any regularly published newspaper, magazine, periodical of general circulation, or broadcasting station, unless the facilities are owned or controlled by any political party, committee, or candidate; (B) a communication which constitutes a candidate debate or forum, or solely promotes such a debate or forum, and is made by or on behalf of the person or entity sponsoring the debate or forum; (C) a communication in a regularly published newsletter or regularly published periodical, whose circulation is limited to an organization's members, employees, shareholders, other affiliated individuals, and those who request or purchase the publication; or (D) any other communications exempted under such regulations as the Commission may promulgate to ensure the appropriate implementation of this section consistent with the requirements of this subdivision.

(d) "Expenditure" does not include a candidate's use of his or her own money to pay for either a filing fee for a declaration of candidacy or a candidate statement prepared pursuant to Section 13307 of the Elections Code.

(e) An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

SEC. 5. Section 82031 of the Government Code is amended to read:

82031. *Independent Expenditure*

"Independent expenditure" means an expenditure, as defined in Section 82025, subdivision (b), made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to, or at the behest of, or in coordination with the affected candidate or committee.

SEC. 6. Section 85203 of the Government Code is repealed.

85203. "Small contributor committee" means any committee that meets all of the following criteria:

(a) The committee has been in existence for at least six months;

(b) The committee receives contributions from 100 or more persons;

(c) No one person has contributed to the committee more than two hundred dollars (\$200) per calendar year;

(d) The committee makes contributions to five or more candidates.

SEC. 6.1. Section 85205 of the Government Code is repealed.

85205. "Political party committee" means the state central committee or county central committee of an organization that meets the requirements for recognition as a political party pursuant to Section 5100 of the Elections Code.

SEC. 6.2. Section 85206 of the Government Code is repealed.

85206. "Public moneys" has the same meaning as defined in Section 426 of the Penal Code.

SEC. 6.3. Section 85300 of the Government Code is repealed.

85300. No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office.

SEC. 6.4. Section 85302 of the Government Code is repealed.

85302. (a) A small contributor committee may not make to any candidate for elective state office other than a candidate for statewide elective office, and a candidate for elective state office, other than a candidate for statewide elective office may not accept from a small contributor committee, any contribution totaling more than six thousand dollars (\$6,000) per election.

(b) Except to a candidate for Governor, a small contributor committee may not make to any candidate for statewide elective office and except for a candidate for Governor, a candidate for statewide elective office may not accept from a small contributor committee, any contribution totaling more than ten thousand dollars (\$10,000) per election.

(c) A small contributor committee may not make to any candidate

for Governor, and a candidate for governor may not accept from a small contributor committee, any contribution totaling more than twenty thousand dollars (\$20,000) per election.

SEC. 6.5. Section 85303 of the Government Code is repealed.

85303. (a) A person may not make to any committee, other than a political party committee, and a committee other than a political party committee may not accept, any contribution totaling more than five thousand dollars (\$5,000) per calendar year for the purpose of making contributions to candidates for elective state office.

(b) A person may not make to any political party committee, and a political party committee may not accept, any contribution totaling more than twenty-five thousand dollars (\$25,000) per calendar year for the purpose of making contributions for the support or defeat of candidates for elective state office. Notwithstanding Section 85312, this limit applies to contributions made to a political party used for the purpose of making expenditures at the behest of a candidate for elective state office for communications to party members related to the candidate's candidacy for elective state office.

(c) Except as provided in Section 85310, nothing in this chapter shall limit a person's contributions to a committee or political party committee provided the contributions are used for purposes other than making contributions to candidates for elective state office.

(d) Nothing in this chapter limits a candidate for elected state office from transferring contributions received by the candidate in excess of any amount necessary to defray the candidate's expenses for election-related activities or holding office to a political party committee, provided those transferred contributions are used for purposes consistent with paragraph (4) of subdivision (b) of Section 89519.

SEC. 6.6. Section 85304 of the Government Code is repealed.

85304. (a) A candidate for elective state office or an elected state officer may establish a separate account to defray attorney's fees and other related legal costs incurred for the candidate's or officer's legal defense if the candidate or officer is subject to one or more civil or criminal proceedings or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officer's governmental activities and duties. These funds may be used only to defray those attorney fees and other related legal costs.

(b) A candidate may receive contributions to this account that are not subject to the contribution limits set forth in this article. However, all contributions shall be reported in a manner prescribed by the commission.

(c) Once the legal dispute is resolved, the candidate shall dispose of any funds remaining after all expenses associated with the dispute are discharged for one or more of the purposes set forth in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 89519.

SEC. 6.7. Section 85305 of the Government Code is repealed.

85305. A candidate for elective state office or committee controlled by that candidate may not make any contribution to any other candidate for elective state office in excess of the limits set forth in subdivision (a) of Section 85301.

SEC. 7. Section 85306 of the Government Code is amended to read:

85306. *Transfer of Funds from One Controlled Committee to Controlled Committee of Same Candidate; Attribution to Specific Contributors; Funds in Possession Before Specified Dates*

(a) A candidate may transfer campaign funds from one controlled committee to a controlled committee for elective state office of the same candidate. Contributions transferred shall be attributed to specific contributors using a "last in, first out" or "first in, first out" accounting method, and these attributed contributions when aggregated with all other contributions from the same contributor may not exceed the limits set forth in Section 85301 or 85302.

(b) Notwithstanding subdivision (a), a (a) A candidate for elective state office, other than a candidate for statewide elective office, who possesses campaign funds on January 1, 2001, may use those funds to seek elective office without attributing the funds to specific contributors.

(c) Notwithstanding subdivision (a), a (b) A candidate for statewide elective office who possesses campaign funds on November 6, 2002, may use those funds to seek elective office without attributing the funds to

specific contributors.

(c) Notwithstanding Section 91137, a candidate may transfer funds without limitation from one ballot measure committee controlled by the candidate to another ballot measure committee controlled by the same candidate.

SEC. 8. Section 85314 of the Government Code is repealed.

85314. The contribution limits of this chapter apply to special elections and apply to special runoff elections. A special election and a special runoff election are separate elections for purposes of the election and voluntary expenditure limits set forth in this chapter.

SEC. 8.1. Section 85317 of the Government Code is repealed.

85317. Notwithstanding subdivision (a) of Section 85306, a candidate for elective state office may carry over contributions raised in connection with one election for elective state office to pay campaign expenditures incurred in connection with a subsequent election for the same elective state office.

SEC. 8.2. Section 85318 of the Government Code is repealed.

85318. A candidate for elective state office may raise contributions for a general election prior to the primary election, and for a special general election prior to a special primary election, for the same elective state office if the candidate sets aside these contributions and uses these contributions for the general election or special general election. If the candidate for elective state office is defeated in the primary election or special primary election, or otherwise withdraws from the general election or special general election, the general election or special general election funds shall be refunded to the contributors on a pro rata basis less any expenses associated with the raising and administration of general election or special general election contributions. Notwithstanding Section 85201, candidates for elective state office may establish separate campaign contribution accounts for the primary and general elections or special primary and special general elections.

SEC. 8.3. Section 85400 of the Government Code is repealed.

85400. (a) A candidate for elective state office, other than the Board of Administration of the Public Employees' Retirement System, who voluntarily accepts expenditure limits may not make campaign expenditures in excess of the following:

(1) For an Assembly candidate, four hundred thousand dollars (\$400,000) in the primary or special primary election and seven hundred thousand dollars (\$700,000) in the general or special general election.

(2) For a Senate candidate, six hundred thousand dollars (\$600,000) in the primary or special primary election and nine hundred thousand dollars (\$900,000) in the general or special general election.

(3) For a candidate for the State Board of Equalization, one million dollars (\$1,000,000) in the primary election and one million five hundred thousand dollars (\$1,500,000) in the general election.

(4) For a statewide candidate other than a candidate for Governor or the State Board of Equalization, four million dollars (\$4,000,000) in the primary election and six million dollars (\$6,000,000) in the general election.

(5) For a candidate for Governor, six million dollars (\$6,000,000) in the primary election and ten million dollars (\$10,000,000) in the general election.

(b) For purposes of this section, "campaign expenditures" has the same meaning as "election-related activities" as defined in clauses (i) to (vi), inclusive, and clause (viii) of subparagraph (C) of paragraph (2) of subdivision (b) of Section 82015.

(c) A campaign expenditure made by a political party on behalf of a candidate may not be attributed to the limitations on campaign expenditures set forth in this section.

SEC. 8.4. Section 85401 of the Government Code is repealed.

85401. (a) Each candidate for elective state office shall file a statement of acceptance or rejection of the voluntary expenditure limits set forth in Section 85400 at the time he or she files the statement of intention specified in Section 85200.

(b) A candidate may, until the deadline for filing nomination papers set forth in Section 8020 of the Elections Code, change his or her statement of acceptance or rejection of voluntary expenditure limits provided he or she has not exceeded the voluntary expenditure limits. A candidate may not change his or her statement of acceptance or rejection of voluntary

expenditure limits more than twice after the candidate's initial filing of the statement of intention for that election and office:

(c) Any candidate for elective state office who declined to accept the voluntary expenditure limits but who nevertheless does not exceed the limits in the primary, special primary, or special election, may file a statement of acceptance of the expenditure limits for a general or special runoff election within 14 days following the primary, special primary, or special election.

(d) Notwithstanding Section 81004.5 or any other provision of this title, a candidate may not change his or her statement of acceptance or rejection of voluntary expenditure limits other than as provided for by this section and Section 85402:

SEC. 8.5. Section 85402 of the Government Code is repealed.

85402. (a) Any candidate for elective state office who has filed a statement accepting the voluntary expenditure limits is not bound by those limits if an opposing candidate contributes personal funds to his or her own campaign in excess of the limits set forth in Section 85400:

(b) The commission shall require by regulation timely notification by candidates for elective state office who make personal contributions to their own campaign:

SEC. 8.6. Section 85403 of the Government Code is repealed.

85403. Any candidate who files a statement of acceptance pursuant to Section 85401 and makes campaign expenditures in excess of the limits shall be subject to the remedies in Chapter 3 (commencing with Section 83100) and Chapter 11 (commencing with Section 91000):

SEC. 8.7. Section 85501 of the Government Code is repealed.

85501. A controlled committee of a candidate may not make independent expenditures and may not contribute funds to another committee for the purpose of making independent expenditures to support or oppose other candidates:

SEC. 8.8. Section 85600 of the Government Code is repealed.

85600. The Secretary of State shall designate in the state ballot pamphlet those candidates for statewide elective office, as defined in Section 82053, who have voluntarily agreed to the expenditure limitations set forth in Section 85400. Local elections officers shall designate in the voter information portion of the sample ballot those candidates for State Senate and Assembly who have voluntarily agreed to the expenditure limitations set forth in Section 85400:

SEC. 8.9. Section 85601 of the Government Code is repealed.

85601. (a) A candidate for statewide elective office, as defined in Section 85400 may purchase the space to place a statement in the state ballot pamphlet that does not exceed 250 words. The statement may not make any reference to any opponent of the candidate. The statement shall be submitted in accordance with timeframes and procedures set forth by the Secretary of State for the preparation of the state ballot pamphlets:

(b) Notwithstanding subdivision (c) of Section 88001 of this code or subdivision (e) of Section 9084 of the Elections Code, on and after November 6, 2002, the Secretary of State may not include in the state ballot pamphlet a statement from a candidate who has not voluntarily agreed to the expenditure limitations set forth in Section 85400:

(c) A candidate for State Senate or Assembly who accepts the voluntary expenditure limits set forth in Section 85400 may purchase the space to place a statement in the voter information portion of the sample ballot that does not exceed 250 words. The statement may not make any reference to any opponent of the candidate. The statement shall be submitted in accordance with the timeframes and procedures set forth in the Elections Code for the preparation of the voter information portion of the sample ballot:

SEC. 8.10. Section 85702 of the Government Code is repealed.

85702. An elected state officer or candidate for elected state office may not accept a contribution from a lobbyist, and a lobbyist may not make a contribution to an elected state officer or candidate for elected state office, if that lobbyist is registered to lobby the governmental agency for which the candidate is seeking election or the governmental agency of the elected state officer:

SEC. 9. Section 23151 of the Revenue and Taxation Code is amended to read:

23151. *Imposition of privilege tax; Rates*

(a) With the exception of banks and financial corporations, every corporation doing business within the limits of this state and not expressly exempted from taxation by the provisions of the Constitution of this state or by this part, shall annually pay to the state, for the privilege of exercising its corporate franchises within this state, a tax according to or measured by its net income, to be computed at the rate of 7.6 percent upon the basis of its net income for the next preceding income year, or if greater, the minimum tax specified in Section 23153.

(b) For calendar or fiscal years ending after June 30, 1973, the rate of tax shall be 9 percent instead of 7.6 percent as provided by subdivision (a).

(c) For calendar or fiscal years ending in 1980 to 1986, inclusive, the rate of tax shall be 9.6 percent.

(d) For calendar or fiscal years ending in 1987 to 1996, inclusive, and for any income year beginning before January 1, 1997, the tax rate shall be 9.3 percent.

(e) For any income year beginning on or after January 1, 1997, the tax rate shall be 8.84 percent. The change in rate provided in this subdivision shall be made without proration otherwise required by Section 24251.

(f)(1) For the first taxable year beginning on or after January 1, 2000, the tax imposed under this section shall be the sum of both of the following:

(A) A tax according to or measured by net income, to be computed at the rate of 8.84 percent upon the basis of the net income for the next preceding income year, but not less than the minimum tax specified in Section 23153.

(B) A tax according to or measured by net income, to be computed at the rate of 8.84 percent upon the basis of the net income for the first taxable year beginning on or after January 1, 2000, but not less than the minimum tax specified in Section 23153.

(2) Except as provided in paragraph (1), for taxable years beginning on or after January 1, 2000, the tax imposed under this section shall be a tax according to or measured by net income, to be computed at the rate of 8.84 percent upon the basis of the net income for that taxable year, but not less than the minimum tax specified in Section 23153.

(g)(1) For the first taxable year beginning on or after January 1, 2007, the tax imposed under this section shall be the sum of both of the following:

(A) A tax according to or measured by net income, to be computed at the rate of 9.04 percent upon the basis of the net income for the next preceding income year, but not less than the minimum tax specified in Section 23153.

(B) A tax according to or measured by net income, to be computed at the rate of 9.04 percent upon the basis of the net income for the first taxable year beginning on or after January 1, 2007, but not less than the minimum tax specified in Section 23153.

(2) Except as provided in paragraph (1), for taxable years beginning on or after January 1, 2007, the tax imposed under this section shall be a tax according to or measured by net income, to be computed at the rate of 9.04 percent upon the basis of the net income for that taxable year, but not less than the minimum tax specified in Section 23153.

SEC. 9.1. Section 23181 of the Revenue and Taxation Code is amended to read:

23181. *Annual tax on banks*

(a) Except as otherwise provided herein, an annual tax is hereby imposed upon every bank doing business within the limits of this state according to or measured by its net income, upon the basis of its net income for the next preceding income year at the rate provided under Section 23186.

(b) If a bank commences to do business and ceases doing business in the same taxable year, the tax for such taxable year shall be according to or measured by its net income for such year, at the rate provided under Section 23186.

(c) With respect to a bank, other than a bank described in subdivision (b), which ceases doing business after December 31, 1972, the tax for the taxable year of cessation shall be:

(1) According to or measured by its net income for the next preceding income year, to be computed at the rate prescribed in Section 23186, plus

(2) According to or measured by its net income for the income year

during which the bank ceased doing business, to be computed at the rate prescribed in Section 23186.

(d) In the case of a bank which ceased doing business before January 1, 1973, but dissolves or withdraws on such date or thereafter, the tax for the taxable year of dissolution or withdrawal shall be according to or measured by its net income for the income year during which the bank ceased doing business, unless such income has previously been included in the measure of tax for any taxable year, to be computed at the rate prescribed under Section 23186 for the taxable year of dissolution or withdrawal.

(e) Commencing with income years ending in 1980, every bank shall pay to the state a minimum tax (determined in accordance with Section 23153) or the measured tax imposed on its income, whichever is greater.

(f)(l) For the first taxable year beginning on or after January 1, 2000, the tax imposed under this section shall be the sum of both of the following:

(A) A tax according to or measured by net income, to be computed at the rate provided under Section 23186 upon the basis of the net income for the next preceding income year, but not less than the minimum tax specified in Section 23153.

(B) A tax according to or measured by net income, to be computed at the rate provided under Section 23186 upon the basis of the net income for the first taxable year beginning on or after January 1, 2000, but not less than the minimum tax specified in Section 23153.

(2) Except as provided in paragraph (1), for taxable years beginning on or after January 1, 2000, the tax imposed under this section shall be a tax according to or measured by net income, to be computed at the rate provided under Section 23186 upon the basis of the net income for that taxable year, but not less than the minimum tax specified in Section 23153.

(g)(l) For the first taxable year beginning on or after January 1, 2007, the tax imposed under this section shall be the sum of both of the following:

(A) A tax according to or measured by net income, to be computed at the rate of 11.04 percent upon the basis of the net income for the next preceding income year, but not less than the minimum tax specified in Section 23153.

(B) A tax according to or measured by net income, to be computed at the rate of 11.04 percent upon the basis of the net income for the first taxable year beginning on or after January 1, 2007, but not less than the minimum tax specified in Section 23153.

(2) Except as provided in paragraph (1), for taxable years beginning on or after January 1, 2007, the tax imposed under this section shall be a tax according to or measured by net income, to be computed at the rate of 11.04 percent upon the basis of the net income for that taxable year, but not less than the minimum tax specified in Section 23153.

SEC. 9.2. Section 23183 of the Revenue and Taxation Code is amended to read:

23183. *Financial corporations; Annual tax; Measurement by income; Rate*

(a) For taxable years beginning before January 1, 2000, an annual tax is hereby imposed upon every financial corporation doing business within the limits of this state and taxable under the provisions of Section 27 of Article XIII of the Constitution of this state, for the privilege of exercising its corporate franchises within this state, according to or measured by its net income, upon the basis of its net income for the next preceding income year at the rate provided under Section 23186.

(b) For purposes of this article, the term “financial corporation” does not include any corporation, including a wholly owned subsidiary of a bank or bank holding company, if the principal business activity of such entity consists of leasing tangible personal property.

(c)(l) For the first taxable year beginning on or after January 1, 2000, the tax imposed under this section shall be the sum of both of the following:

(A) A tax according to or measured by net income, to be computed at the rate provided under Section 23186 upon the basis of the net income for the next preceding income year, but not less than the minimum tax specified in Section 23153.

(B) A tax according to or measured by net income, to be computed at the rate provided under Section 23186 upon the basis of the net income for the first taxable year beginning on or after January 1, 2000, but not less

than the minimum tax specified in Section 23153.

(2) Except as provided in paragraph (1), for taxable years beginning on or after January 1, 2000, the tax imposed under this section shall be a tax according to or measured by net income, to be computed at the rate provided under Section 23186 upon the basis of the net income for that taxable year, but not less than the minimum tax specified in Section 23153.

(d)(l) For the first taxable year beginning on or after January 1, 2007, the tax imposed under this section shall be the sum of both of the following:

(A) A tax according to or measured by net income, to be computed at the rate of 11.04 percent upon the basis of the net income for the next preceding income year, but not less than the minimum tax specified in Section 23153.

(B) A tax according to or measured by net income, to be computed at the rate of 11.04 percent upon the basis of the net income for the first taxable year beginning on or after January 1, 2007, but not less than the minimum tax specified in Section 23153.

(2) Except as provided in paragraph (1), for taxable years beginning on or after January 1, 2007, the tax imposed under this section shall be a tax according to or measured by net income, to be computed at the rate of 11.04 percent upon the basis of the net income for that taxable year, but not less than the minimum tax specified in Section 23153.

SEC. 9.3. Section 23501 of the Revenue and Taxation Code is amended to read:

23501. *Annual tax imposed; Rates*

(a) There shall be imposed upon every corporation, other than a bank, for each taxable year, a tax at the rate of 7.6 percent upon its net income derived from sources within this state on or after January 1, 1937, other than income for any period for which the corporation is subject to taxation under Chapter 2 (commencing with Section 23101), according to or measured by its net income.

(b) For calendar or fiscal years ending after June 30, 1973, the rate of tax shall be 9 percent instead of 7.6 percent as provided by subdivision (a).

(c) For calendar or fiscal years ending after December 31, 1979, the rate of tax shall be the rate specified for those years by Section 23151.

(d) For calendar or fiscal years ending after December 31, 2006, the rate of tax shall be the rate specified for those years by Section 23151.

SEC. 9.4. Section 23811 of the Revenue and Taxation Code is amended to read:

23811. *Tax on passive investment income attributable to California sources*

Except as otherwise provided in this section, there is hereby imposed a tax on passive investment income attributable to California sources, determined in accordance with the provisions of Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, as modified by this section. For taxable years beginning on or after January 1, 2007, the tax imposed on passive investment income shall be increased from 1.5 percent to 1.66 percent of taxable net passive investment income for the next preceding income year for corporations with over \$50 million dollars in total receipts.

(a) The tax imposed under this section may not be imposed on an “S corporation” that has no excess net passive income for federal income tax purposes determined in accordance with Section 1375 of the Internal Revenue Code.

(b)(l) The rate of tax shall be equal to the rate of tax imposed under Section 23151 in lieu of Section 11(b) of the Internal Revenue Code.

(2) In the case of an “S corporation” that is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

(c) Section 1375(c)(l) of the Internal Revenue Code, relating to credits, is modified to provide that the tax imposed under subdivision (a) may not be reduced by any credits allowed under this part.

(d) The term “subchapter C earnings and profits” or “accumulated earnings and profits” as used in Section 1375 of the Internal Revenue Code shall mean the “subchapter C earnings and profits” of the corporation attributable to California sources determined under this part, modified as provided in subdivision (e).

(e)(1) In the case of a corporation that is an “S corporation” for purposes of this part for its first taxable year for which it has in effect a valid federal S election, there shall be allowed as a deduction in determining that corporation’s “subchapter C earnings and profits” at the close of any taxable year the amount of any consent dividend (as provided in paragraph (2)) paid after the close of that taxable year.

(2) In the event there is a determination that a corporation described in paragraph (1) has “subchapter C earnings and profits” at the close of any taxable year, that corporation shall be entitled to distribute a consent dividend to its shareholders. The amount of the consent dividend may not exceed the difference between the corporation’s “subchapter C earnings and profits” determined under subdivision (d) at the close of the taxable year with respect to which the determination is made and the corporation’s “subchapter C earnings and profits” for federal income tax purposes at the same date. A consent dividend must be paid within 90 days of the date of the determination that the corporation has “subchapter C earnings and profits.” For this purpose, the date of a determination means the effective date of a closing agreement pursuant to Section 19441, the date an assessment of tax imposed by this section becomes final, or the date of execution by the corporation of an agreement with the Franchise Tax Board relating to liability for the tax imposed by this section. For purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part, a corporation must make the election provided in Section 1368(e)(3) of the Internal Revenue Code.

(3) If a corporation distributes a consent dividend, it shall claim the deduction provided in paragraph (1) by filing a claim therefor with the Franchise Tax Board within 120 days of the date of the determination specified in paragraph (2).

(4) The collection of tax imposed by this section from a corporation described in paragraph (2) shall be stayed for 120 days after the date of the determination specified in paragraph (2). If a claim is filed pursuant to paragraph (3), collection of that tax shall be further stayed until the date the claim is acted upon by the Franchise Tax Board.

(5) If a claim is filed pursuant to paragraph (3), the running of the statute of limitations on the making of assessments and actions for collection of the tax imposed by this section shall be suspended for a period of two years after the date of the determination specified in paragraph (2).

SEC. 10. Section 24586 is added to the Revenue and Taxation Code, to read:

24586. (a) *The Franchise Tax Board shall annually determine the total amount of the fees generated by increases in the tax rates for tax years beginning January 1, 2007, and thereafter pursuant to Revenue and Taxation Code Sections 23151, 23181, 23183, 23501, and 23811, and notify the Controller of that amount.*

(b) *The Controller shall transfer the amount determined under subdivision (a), less the direct, actual costs of the Franchise Tax Board and the Controller for the collection and administration of funds under this article, to the California Clean Money Fund, established pursuant to Section 91133 of the Government Code, for use in funding clean and fair elections for non-federal statewide and state legislative elections. Upon appropriation by the Legislature, the Controller shall transfer the amount of reimbursement for direct actual costs incurred by the Franchise Tax Board and the Office of the Controller in the administration of this fund.*

(c) *All funds deposited in the California Clean Money Fund shall be allocated, in accordance with Section 91133 of the Government Code, to the Fair Political Practices Commission for disbursement for the purposes and in the manner described in Section 91133 of the Government Code.*

(d) *This section shall remain in effect so long as Chapter 12 (commencing with Section 91015) of Title 9 of the Government Code, also known as the California Clean Money and Fair Elections Act of 2006, requires the establishment and maintenance of the California Clean Money Fund.*

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 12. This chapter shall be deemed to amend the Political

Reform Act of 1974 as amended and all of its provisions that do not conflict with this chapter shall apply to the provisions of this chapter.

SEC. 13. Severability

(a) The provisions of this act are severable. If any provision or portion of provision of this act or the application of any provision of this act to any person or circumstance is held to be invalid by a court of competent jurisdiction, that invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application.

(b) In adopting this measure, the People specifically declare that the provision of this act adding Section 91139 to the the Government Code shall be severable from the remainder of this act, and the People specifically declare their desire and intent to enact the remainder of this act even if that provision were not to be given full or partial effect. The People recognize that a Montana law prohibiting corporate contributions or expenditures in connection with a ballot measure election was invalidated in 2000 by a divided panel of the Ninth Circuit Court of Appeals in *Montana Chamber of Commerce v. Argenbright*, but believe that the majority opinion in that case incorrectly interpreted relevant decisions of the United States Supreme Court in this area and that more recent decisions of the Supreme Court support the People’s rationale for limiting corporate campaign spending in order to eliminate the distorting effects of corporate wealth on the electoral process. Moreover, the People are adopting the prohibitions in this act based upon an evidentiary record and history of California ballot measure elections that compellingly demonstrates the need for the narrowly tailored restrictions contained herein.

SEC. 14. Construction and Amendment

This act shall be broadly construed to accomplish its purposes. This act may be amended to further its purposes by a statute, passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring and signed by the Governor, if at least 12 days prior to passage in each house the bill in its final form has been delivered to the California Fair Political Practices Commission for distribution to the news media and to every person who has requested the Commission to send copies of such bills to him or her. Any such amendment must be consistent with the purposes and must further the intent of this act. Notwithstanding this provision, amendments to adjust for changes in the cost of living may be made pursuant to Section 91145.

SEC. 15. Effective Date

This act shall become effective immediately upon its approval by the voters and shall apply to all elections held on or after January 1, 2007.

SEC. 16. Conflicting Ballot Measures

(a) If a conflict exists between the provisions of this measure and the provisions of any other measure approved by the voters at the same election, the provisions of this measure shall take effect except to the extent that they are in direct and irreconcilable conflict with the provisions of such other measure and the other measure receives a greater number of affirmative votes.

(b) If any provisions of this measure are superseded by the provisions of any other conflicting ballot measure approved by the voters and receiving a greater number of affirmative votes at the same election, and the conflicting ballot measure is subsequently held to be invalid, the provisions of this measure shall be self-executing and shall be given full force of law.

PROPOSITION 90

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the California Constitution.

This initiative measure expressly amends the California Constitution by amending a section thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. STATEMENT OF FINDINGS

(a) The California Constitution provides that no person shall be deprived of property without due process of law and allows government to take or damage private property only for a public use and only after payment to the property owner of just compensation.

(b) Despite these constitutional protections, state and local

89
90

governments have undermined private property rights through an excessive use of eminent domain power and the regulation of private property for purposes unrelated to public health and safety.

(c) Neither the federal nor the California courts have protected the full scope of private property rights found in the state constitution. The courts have allowed local governments to exercise eminent domain powers to advance private economic interests in the face of protests from affected homeowners and neighborhood groups. The courts have not required government to pay compensation to property owners when enacting statutes, charter provisions, ordinances, resolutions, laws, rules or regulations not related to public health and safety that reduce the value of private property.

(d) As currently structured, the judicial process in California available to property owners to pursue property rights claims is cumbersome and costly.

SEC. 2. STATEMENT OF PURPOSE

(a) The power of eminent domain available to government in California shall be limited to projects of public use. Examples of public use projects include, but are not limited to, road construction, the creation of public parks, the creation of public facilities, land-use planning, property zoning, and actions to preserve the public health and safety.

(b) Public use projects that the government assigns, contracts or otherwise arranges for private entities to perform shall retain the power of eminent domain. Examples of public use projects that private entities perform include, but are not limited to, the construction and operation of private toll roads and privately-owned prison facilities.

(c) Whenever government takes or damages private property for a public use, the owner of any affected property shall receive just compensation for the property taken or damaged. Just compensation shall be set at fair market value for property taken and diminution of fair market value for property damaged. Whenever a property owner and the government cannot agree on fair compensation, the California courts shall provide through a jury trial a fair and timely process for the settlement of disputes.

(d) This constitutional amendment shall apply prospectively. Its terms shall apply to any eminent domain proceeding brought by a public agency not yet subject to a final adjudication. No statute, charter provision, ordinance, resolution, law, rule or regulation in effect on the date of enactment that results or has resulted in a substantial loss to the value of private property shall be subject to the new provisions of Section 19 of Article I.

(e) Therefore, the people of the state of California hereby enact “The Protect Our Homes Act.”

SEC 3. Section 19 of Article I of the California Constitution is amended to read:

SEC. 19. (a)(1) Private property may be taken or damaged only for a stated public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. Private property may not be taken or damaged for private use.

(2) Property taken by eminent domain shall be owned and occupied by the condemnor, or another governmental agency utilizing the property for the stated public use by agreement with the condemnor, or may be leased to entities that are regulated by the Public Utilities Commission or any other entity that the government assigns, contracts or arranges with to perform a public use project. All property that is taken by eminent domain shall be used only for the stated public use.

(3) If any property taken through eminent domain after the effective date of this subdivision ceases to be used for the stated public use, the former owner of the property or a beneficiary or an heir, if a beneficiary or heir has been designated for this purpose, shall have the right to reacquire the property for the fair market value of the property before the property may be otherwise sold or transferred. Notwithstanding subdivision (a) of Section 2 of Article XIII A, upon reacquisition the property shall be appraised by the assessor for purposes of property taxation at its base year value, with any authorized adjustments, as had been last determined in accordance with Article XIII A at the time the property was acquired by the condemnor.

(4) The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to

be the probable amount of just compensation.

(b) For purposes of applying this section:

(1) “Public use” shall have a distinct and more narrow meaning than the term “public purpose”; its limiting effect prohibits takings expected to result in transfers to nongovernmental owners on economic development or tax revenue enhancement grounds, or for any other actual uses that are not public in fact, even though these uses may serve otherwise legitimate public purposes.

(2) Public use shall not include the direct or indirect transfer of any possessory interest in property taken in an eminent domain proceeding from one private party to another private party unless that transfer proceeds pursuant to a government assignment, contract or arrangement with a private entity whereby the private entity performs a public use project. In all eminent domain actions, the government shall have the burden to prove public use.

(3) Unpublished eminent domain judicial opinions or orders shall be null and void.

(4) In all eminent domain actions, prior to the government’s occupancy, a property owner shall be given copies of all appraisals by the government and shall be entitled, at the property owner’s election, to a separate and distinct determination by a superior court jury, as to whether the taking is actually for a public use.

(5) If a public use is determined, the taken or damaged property shall be valued at its highest and best use without considering any future dedication requirements imposed by the government. If private property is taken for any proprietary governmental purpose, then the property shall be valued at the use to which the government intends to put the property, if such use results in a higher value for the land taken.

(6) In all eminent domain actions, “just compensation” shall be defined as that sum of money necessary to place the property owner in the same position monetarily, without any governmental offsets, as if the property had never been taken. “Just compensation” shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.

(7) In all eminent domain actions, “fair market” value shall be defined as the highest price the property would bring on the open market.

(8) Except when taken to protect public health and safety, “damage” to private property includes government actions that result in substantial economic loss to private property. Examples of substantial economic loss include, but are not limited to, the downzoning of private property, the elimination of any access to private property, and limitations on the use of private air space. “Government action” shall mean any statute, charter provision, ordinance, resolution, law, rule or regulation.

(9) A property owner shall not be liable to the government for attorney fees or costs in any eminent domain action.

(10) For all provisions contained in this section, “government” shall be defined as the State of California, its political subdivisions, agencies, any public or private agent acting on their behalf, and any public or private entity that has the power of eminent domain.

(c) Nothing in this section shall prohibit the California Public Utilities Commission from regulating public utility rates.

(d) Nothing in this section shall restrict administrative powers to take or damage private property under a declared state of emergency.

(e) Nothing in this section shall prohibit the use of condemnation powers to abate nuisances such as blight, obscenity, pornography, hazardous substances or environmental conditions, provided those condemnations are limited to abatement of specific conditions on specific parcels.

SEC. 4. IMPLEMENTATION AND AMENDMENT

This section shall be self-executing. The Legislature may adopt laws to further the purposes of this section and aid in its implementation. No amendment to this section may be made except by a vote of the people pursuant to Article II or Article XVIII of the California Constitution.

SEC. 5. SEVERABILITY

The provisions of this section are severable. If any provision of this section or its application is held invalid, that finding shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 6. EFFECTIVE DATE

This section shall become effective on the day following the election

pursuant to subdivision (a) of Section 10 of Article II of the California Constitution.

The provisions of this section shall apply immediately to any eminent domain proceeding by a public agency in which there has been no final adjudication.

Other than eminent domain powers, the provisions added to this section shall not apply to any statute, charter provision, ordinance, resolution, law, rule or regulation in effect on the date of enactment that results in substantial economic loss to private property. Any statute, charter provision, ordinance, resolution, law, rule or regulation in effect on the date of enactment that is amended after the date of enactment shall continue to be exempt from the provisions added to this section provided that the amendment both serves to promote the original policy of the statute, charter provision, ordinance, resolution, law, rule or regulation and does not significantly broaden the scope of application of the statute, charter provision, ordinance, resolution, law, rule or regulation being amended. The governmental entity making the amendment shall make a declaration contemporaneously with enactment of the amendment that the amendment promotes the original policy of the statute, charter provision, ordinance, resolution, law, rule or regulation and does not significantly broaden its scope of application. The question of whether an amendment significantly broadens the scope of application is subject to judicial review.

THE PROCESS OF VOTING ABSENTEE ★ ★ ★

Any registered voter may vote by absentee ballot. Rather than go to the polls to cast a ballot on Election Day, you may apply for an absentee ballot, which you will need to complete and return to your elections official.

To apply for an absentee ballot, you may use the application printed on your Sample Ballot, which you will receive prior to every election, or apply in writing to your county elections official. You will need to submit a completed application or letter to your county elections official between 29 days and 7 days before the election. The application or letter must contain:

1. your name and residence address as stated on your registration card;
2. the address to which the absentee ballot should be sent (if different than your registered address);
3. the name and date of the election in which you would like to vote absentee; and
4. the date and your signature.

Once your application is processed by your county elections official, the proper ballot type/style will be sent to you. After you have voted, insert your ballot in the envelope provided for this purpose, making sure you complete all required information on the envelope. You may return your voted absentee ballot by:

1. mailing it to your county elections official;
2. returning it in person to a polling place or elections office within your county on Election Day; or
3. authorizing a legally allowable third party (relative or person residing in the same household as you) to return the ballot on your behalf.

Regardless of how the ballot is returned, it MUST be received by the time polls close (8 p.m.) on Election Day. Late-arriving absentee ballots are not counted.

Once your voted absentee ballot is received by your county elections official, your signature on the absentee ballot return envelope will be compared to the signature on your voter registration card to determine that you are the authorized voter. To preserve the secrecy of your ballot, the ballot will then be separated from the envelope and the ballot becomes as anonymous and secret as any other ballot.

Apply to Be a Permanent Vote-By-Mail Voter:

Any voter may apply for PERMANENT ABSENT VOTER STATUS (Elections Code § 3201). These voters are automatically sent a vote-by-mail ballot for every election without having to fill out an application every time. Please contact your county elections official to apply to become a permanent vote-by-mail voter if you wish to receive vote-by-mail ballots for all future elections. To find out who your county elections official is, go online at www.ss.ca.gov/elections/elections_d.htm to see a list of contact information for all county elections officials.

★ ★ ★ VOTER BILL OF RIGHTS ★ ★ ★

1. You have the right to cast a ballot if you are a valid registered voter.

A valid registered voter means a United States citizen who is a resident in this state, who is at least 18 years of age and not in prison or on parole for conviction of a felony, and who is registered to vote at his or her current residence address.
2. You have the right to cast a provisional ballot if your name is not listed on the voting rolls.
3. You have the right to cast a ballot if you are present and in line at the polling place prior to the close of the polls.
4. You have the right to cast a secret ballot free from intimidation.
5. You have the right to receive a new ballot if, prior to casting your ballot, you believe you made a mistake.

If at any time before you finally cast your ballot, you feel you have made a mistake, you have the right to exchange the spoiled ballot for a new ballot. Absentee voters may also request and receive a new ballot if they return their spoiled ballot to an elections official prior to the closing of the polls on election day.
6. You have the right to receive assistance in casting your ballot, if you are unable to vote without assistance.
7. You have the right to return a completed absentee ballot to any precinct in the county.
8. You have the right to election materials in another language, if there are sufficient residents in your precinct to warrant production.
9. You have the right to ask questions about election procedures and observe the elections process.

You have the right to ask questions of the precinct board and election officials regarding election procedures and to receive an answer or be directed to the appropriate official for an answer. However, if persistent questioning disrupts the execution of their duties, the board or election officials may discontinue responding to questions.
10. You have the right to report any illegal or fraudulent activity to a local elections official or to the Secretary of State's Office.

If you believe you have been denied any of these rights, or if you are aware of any election fraud or misconduct, please call the Secretary of State's confidential toll-free Voter Protection Hotline at 1-800-345-VOTE (8683).

Information on your voter registration affidavit will be used by elections officials to send you official information on the voting process, such as the location of your polling place and the issues and candidates that will appear on the ballot. Commercial use of voter registration information is prohibited by law and is a misdemeanor. Voter information may be provided to a candidate for office, a ballot measure committee, or other person for election, scholarly, journalistic, political, or governmental purposes, as determined by the Secretary of State. Driver's license and social security numbers, or your signature as shown on your voter registration card, cannot be released for these purposes. If you have any questions about the use of voter information or wish to report suspected misuse of such information, please call the Secretary of State's Voter Protection and Assistance Hotline at 1-800-345-VOTE.

Certain voters facing life-threatening situations may qualify for confidential voter status. For more information, please contact the Secretary of State's Safe At Home program or visit the Secretary of State's Web site at www.ss.ca.gov.

Secretary of State
1500 11th Street
Sacramento, CA 95814

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STATE



GENERAL ELECTION
Official Voter Information Guide

Remember to Vote!
Tuesday, November 7, 2006
Polls are open from 7 a.m. to 8 p.m.

October 9
First day to apply for an absentee ballot by mail.

October 23
Last day to register to vote.

October 31
Last day that county elections officials will accept
any voter's application for an absentee ballot.

November 7
Last day to apply for an absentee ballot in person
at the office of the county elections official.

For additional copies of the Voter Information Guide
in any of the following languages, please call:

- English: 1-800-345-VOTE (8683)
- Español/Spanish: 1-800-232-VOTA (8682)
- 日本語 /Japanese: 1-800-339-2865
- Việt ngữ /Vietnamese: 1-800-339-8163
- Tagalog/Tagalog: 1-800-339-2957
- 中文/Chinese: 1-800-339-2857
- 한국어/Korean: 1-866-575-1558
- TDD: 1-800-833-8683

In an effort to reduce election costs, the State Legislature has authorized the State and counties to mail only one guide to addresses where more than one voter with the same surname resides. You may obtain additional copies by contacting your county elections official or by calling 1-800-345-VOTE.



www.voterguide.ss.ca.gov