

CALIFORNIA STATE ASSOCIATION OF COUNTIES  
EXECUTIVE COMMITTEE  
Thursday, August 2, 2012, 10:00am to 1:30pm  
Marriott Hotel, Marina del Rey, Los Angeles County

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**A G E N D A**

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Times for agenda items listed herein are approximate. Matters may be considered earlier than published time.

Presiding: Mike McGowan, President

**10:00am PROCEDURAL ITEMS**

1. Roll Call Page 1
2. Approval of Minutes from April 19, 2012 Meeting Page 2

**10:10am ACTION ITEMS**

3. Consideration of November 2012 Ballot Initiatives Page 5
  - Paul McIntosh & Jim Wiltshire, CSAC staff

*Proposition 30: Temporary Taxes to Fund Education. Guaranteed Local Public Safety Funding.*  
Increases personal income tax on annual earnings over \$250,000 for seven years.  
Increases sales and use tax by ¼ cent for four years. Guarantees funding for public safety services realigned from state to local governments.

*Proposition 31: State Budget. State and Local Government.* Page 39  
Establishes two-year state budget cycle. Prohibits Legislature from creating Expenditures of more than \$25 million unless offsetting revenues or spending cuts are identified. Permits Governor to cut budget unilaterally during declared fiscal emergencies if Legislature fails to act.

4. Request for Position on SB 703: Basic Health Plan Page 76
  - Kelly Brooks Lindsey, CSAC staff
5. Consideration of CSAC High Speed Rail Working Group Recommendations Page 132
  - Supervisor Efren Carrillo, Chair, CSAC Housing, Land Use & Trans. Policy Cmte.

**11:30am INFORMATION ITEMS**

6. National Association of Counties (NACo) Report Page 135
  - Supervisor Valerie Brown, Sonoma County
7. State/Federal Legislative Update Page 137
  - Jim Wiltshire & Karen Keene, CSAC staff
8. CSAC Finance Corporation Report Page 187
  - Nancy Parrish, Finance Corp. Executive Director
9. *The following items are contained in the briefing materials for your information, but no presentation is planned:* Page 189
  - CSAC Corporate Associates Report
  - CSAC Litigation Coordination Program Report

**12:00pm LUNCH**

**12:30pm CLOSED SESSION**

10. One Matter of Employee Discipline/Dismissal/Release

**1:30pm ADJOURN**

Note: The next CSAC Executive Committee meeting is October 10-12, in Newport Beach, Orange County

CALIFORNIA STATE ASSOCIATION OF COUNTIES  
EXECUTIVE COMMITTEE  
2012

President:	Mike McGowan, Yolo
1 <sup>st</sup> Vice President:	David Finigan, Del Norte
2 <sup>nd</sup> Vice President:	John Gioia, Contra Costa
Immed. Past President:	John Tavaglione, Riverside

Urban Section

Keith Carson, Alameda  
Federal Glover, Contra Costa  
Don Knabe, Los Angeles  
John Moorlach, Orange  
Liz Kniss, Santa Clara  
Kathy Long, Ventura  
Greg Cox, San Diego (alternate)

Suburban Section

Valerie Brown, Sonoma  
Joni Gray, Santa Barbara  
Henry Perea, Fresno  
Bruce Gibson, San Luis Obispo (alternate)

Rural Section

John Viegas, Glenn  
Terry Woodrow, Alpine  
Susan Cash, Inyo (alternate)

Advisors

Matthew Hymel, Marin County Administrator  
Charles McKee, Monterey County Counsel

CALIFORNIA STATE ASSOCIATION OF COUNTIES  
EXECUTIVE COMMITTEE

April 19, 2012  
CSAC Conference Center, Sacramento

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MINUTES

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Presiding: Mike McGowan, President

1. ROLL CALL

Mike McGowan, President	Valerie Brown, Sonoma
David Finigan, 1 <sup>st</sup> Vice Pres.	Joni Gray, Santa Barbara
John Gioia, 2 <sup>nd</sup> Vice Pres.	Henry Perea, Fresno
Keith Carson, Alameda	John Viegas, Glenn
Federal Glover, Contra Costa	Terry Woodrow, Alpine
John Moorlach, Orange (via audio)	Susan Cash, Inyo, alternate
Greg Cox, San Diego, alternate	

The presence of a quorum was noted.

2. APPROVAL OF MINUTES

The minutes of January 19, 2012 were approved as previously mailed.

3. PROPOSED CSAC BUDGET FOR FY 2012-13

Supervisor Terry Woodrow, CSAC Treasurer, presented the proposed CSAC budget for 2012-13 as contained in the briefing materials. She noted that the budget does not contain a dues increase, but does include increased personnel, communications and outside contracts costs, which are partially covered by budget reserves. In addition, revenue from the CSAC Finance Corp. decreased due to the loss of the pooled purchasing contract with Office Depot as well as decreases in revenue from Nationwide Retirement Solutions deferred compensation program. Concerns were raised regarding the use of budget reserves to offset increased personnel costs.

Motion and second to approve the 2012-13 CSAC Budget as presented and recommend adoption by the Board of Directors. Motion carried (2 No votes).

President McGowan raised the issue of increasing dues incrementally in order to reduce the percentage of CSAC Finance Corp. dues that CSAC relies on to supplement its budget. A task force will be appointed to look at the current dues structure.

4. PROPOSED CSAC LITIGATION COORDINATION PROGRAM BUDGET FOR FY 2012-13

Paul McIntosh presented the proposed Litigation Program Budget for FY 2012-13 as contained in the briefing materials. He indicated that the budget does not include a dues increase and that additional costs incurred this year were absorbed by a decrease in office space.

Motion and second to approve the Litigation Coordination Program Budget for FY 2012-13 as presented and recommend adoption by the CSAC Board of Directors. Motion carried unanimously.

5. PROPOSED ANNUAL MEETING SITES FOR 2015 & 2016

CSAC policy calls for annual meeting sites to be selected three to four years in advance, and approved by the Executive Committee. Traditionally, CSAC has followed a north/south rotation and locations are chosen based on the following criteria: site availability; conference/hotel space requirements; cost; and past popularity and success of venue. Paul McIntosh presented recommendations for the 2015 and 2016 annual meeting locations: Monterey County for 2015 and Palm Springs, Riverside County, for 2016.

Motion and second to approve Monterey County for the location of CSAC's 2015 annual meeting and Palm Springs, Riverside County, for the location of the 2016 annual meeting. Motion carried unanimously.

6. APPOINTMENTS TO CSCDA

The California Statewide Communities Development Authority (CSCDA) is a joint powers authority sponsored by CSAC and the League of California Cities. There are currently four former and current county officials representing CSAC on the CSCDA board. The terms of three of those representatives are about to expire.

Staff recommended that the following representatives be reappointed to two-year terms: Steve Keil (retired from Sacramento County), Larry Combs (retired from Merced County), and Terry Schutten, CAOAC Executive Director.

Motion and second to approve the two-year reappointment of Steve Keil, Larry Combs and Terry Schutten to the CSCDA Board. Motion carried unanimously.

7. REPORT ON CSAC INTELLECTUAL PROPERTY ANALYSIS

Last fall, CSAC contracted with Consor to perform an analysis of the value of CSAC as an intellectual property. The subsequent report covered three key areas: Corporate Associates Program; Affinity Partnerships; and the CSAC Excess Insurance Authority's continued use of CSAC's name. Staff reported that as a result of the reports recommendation, significant changes to the Corporate Associates program have already begun. Implementation of other recommendations will take some time, but discussions have begun with CSAC Excess Insurance Authority.

8. NOVEMBER 2012 BALLOT INITIATIVE UPDATE

Staff announced that the Governor has suspended signature gathering on his tax measure and is now focusing efforts on a compromise measure with the California Federation of Teachers which is slightly different from his original measure. The constitutional protections for counties are contained in the compromise measure. However, the sales tax increase is ¼ cent instead of the Governor's ½ cent and the income tax provision is seven years instead of five. The deadline for gathering signatures is early June and it appears that this measure is very likely to qualify for the November ballot. CSAC policy committees will consider the new measure and make recommendations to the full Board of Directors at September meeting.



9. CSAC LEGISLATIVE REPORT

Staff reported that the Legislature has introduced several bills related to redevelopment. CSAC is focusing on three of them dealing with the dissolution process. Details on the important redevelopment legislation were contained in the briefing materials and can be found on the CSAC website.

The Governor has proposed merging the California Housing Finance Agency and the Department of Housing and Community Development. A task force has been formed on this issue and CSAC's representative is Sonoma County Planning Director Pete Parkinson.

Given that the 2011 Realignment fiscal structure (AB 118) is in place for one fiscal year only, an act of the Legislature is required to codify a number of important policies including: structure of an interaction between accounts and subaccounts; flexibility of spending within and between accounts and subaccounts; distribution of unallocated growth. CSAC staff has been working with the Department of Finance to draft trailer bill language that captures the conceptual framework of a more permanent Realignment funding structure.

A nine-member AB 109 Allocation committee, comprised of CAOs from urban, suburban and rural counties, has been meeting since late last year to develop a formula to distribute the second year of funding to support counties' responsibilities associated with the shift of adult offender populations to counties' jurisdictions. The committee has had difficulty determining the best method for dividing the money. It was noted, however, that all counties will receive at least two times the amount they received in the first year. The committee is expected to conclude its work soon.

Staff reported that the Governor's January budget contains a number of major policy changes within the Medi-Cal program aimed at improving care coordination, particularly for people on both Medi-Cal and Medicare. Details of the proposed changes were contained in the briefing materials.

10. OTHER ITEMS

Paul McIntosh encouraged all Executive Committee members to attend the CSAC Legislative Conference being held May 30-31 in Sacramento.

Meeting adjourned.

July 18, 2012



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To: CSAC Executive Committee

From: Paul McIntosh, Executive Director

Re: **Proposition 30: The Schools and Local Public Safety Protection Act – ACTION ITEM**

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**Recommendation.** The three relevant CSAC policy committees – Administration of Justice, Government Finance and Operations, and Health and Human Services – each recommend to the Executive Committee a position of “support” on Proposition 30, the Governor Brown-sponsored “Schools and Local Public Safety Protection Act.” The Executive Committee’s recommendation on Proposition 30 will be forwarded to the CSAC Board of Directors for consideration at its meeting on September 6.

**Overview.** The CSAC Board of Directors has made obtaining a constitutional guarantee of revenues to support the 2011 realigned programs, as well as protecting counties from costs associated with future changes to those programs, a top Association priority for 2012.

Proposition 30 slated for the November ballot is the Governor’s measure that is jointly sponsored by the California Federation of Teachers and is the only remaining vehicle to provide those constitutional guarantees and protections previously negotiated by counties with the Administration.

The CSAC Officers referred Proposition 30 to the Health and Human Services, Administration of Justice, and Government Finance and Operations policy committees. Each policy committee met during the CSAC Legislative Conference and each recommend a “support” position on the measure.

The CSAC Policy and Procedure Manual states that the CSAC Officers will assign qualified propositions to appropriate policy committees when they fall within existing policy as outlined in CSAC’s Legislative Platform or pose a direct impact on county government. If the policy committees recommend a position on any measures, then those measures proceed to the CSAC Executive Committee for debate and action. If the Executive Committee votes to recommend a position on a measure, it moves to the full Board of Directors for action. Any Board member can request the Board’s consideration of a ballot measure not otherwise slated for discussion.

**Background.** At a special Board of Directors meeting on January 5, CSAC Board members voted to suspend all efforts by CSAC to independently qualify a ballot measure seeking 2011 Realignment funding protections, leaving the measure filed by Governor Brown in December 2011 (The Schools and Local Public Safety

Protection Act of 2012) as the only available vehicle to achieve those constitutional protections.

On January 19, the CSAC Executive Committee considered the Governor's proposed ballot measure and voted to recommend to the Board of Directors that CSAC take a "support" position on the measure.

On February 23, the CSAC Board of Directors voted to adopt a "support" position on *The Schools and Local Public Safety Protection Act of 2012*. The California State Sheriffs Association (CSSA) and the Chief Probation Officers of California (CPOC) also voted to take a "support" position on *The Schools and Local Public Safety Protection Act of 2012* prior to the CSAC Board of Directors meeting.

On March 15, the Governor announced that he was joining with the California Federation of Teachers (CFT) – which was also gathering signatures for their own tax measure to raise revenue for schools – to support a new measure, titled "*The Schools and Local Public Safety Protection Act Version 3*." The coalition backing the new measure is called Californians Working Together. At the time of the compromise, CFT abandoned its original school tax measure.

When he formed the compromise with CFT, Governor Brown indicated that he would continue to circulate his original petition to ensure that at least one of the measures would qualify. Subsequent to that announcement, though, the Governor determined that the compromise measure had sufficient support to qualify for the ballot and he suspended signature-gathering on his original measure. This development left the compromise measure as the only vehicle available to counties to obtain constitutional protections for 2011 Realignment.

On May 4, the Governor and CFT submitted signatures to registrars in counties across California to qualify the new hybrid measure for the November ballot. On June 20, the Secretary of State certified the measure for qualification and subsequently designated the measure as Proposition 30.

**Comparing the Measures.** While Proposition 30 combines some language and policy from both the Governor's and the CFT's original initiatives, the new measure includes the same structure as the Governor's first initiative, including the following features:

1. Funds are dedicated to education.
2. Assists in balancing the state budget.
3. Offers critical 2011 Realignment protections for counties, including:
  - a. The identical constitutional protections contained in the Governor's original measure (and those negotiated in the original SCA 1X).
  - b. Guaranteed funding for the realigned programs.

c. Protections from costs increases associated with realigned programs.

The bulk of the changes to the Governor’s original measure are found in the tax rate structure<sup>1</sup>. Proposition 30 makes changes to the Personal Income Tax (PIT) rate and changes the length of time that the new PIT rates will remain in effect. Additionally, the new measure proposes a sales tax rate lower than the Governor’s original ballot proposal. The following chart details the changes:

		Governor’s December Measure	Proposition 30
Personal Income Tax Provisions	INCOME FOR SINGLE (JOINT) FILER		
	\$250,000 (\$500,000)	1%	1%
	\$300,000 (\$600,000)	1.5%	2%
	\$500,000 (\$1,000,000)	2%	3%
	LENGTH OF TAX	5 years	7 years
Sales Tax Provisions			
	RATE	½ cent	¼ cent
	LENGTH OF TAX	4 years	4 years

A copy of the Legislative Analyst’s Office analysis of Proposition 30 is attached.

Since virtually all of the income earners impacted by the proposed temporary increase in personal income taxes itemize their deductions on state and federal tax returns, a significant portion of the increase in state taxes paid through this provision would be offset by a reduced federal tax liability.

The revenues raised by the temporary taxes are in addition to the funding guarantee for the realigned programs, which comes from existing sales and use tax and Vehicle License Fee (VLF) fund sources. The revenues generated from these temporary taxes in Proposition 30 are exclusively dedicated to school entities (K-12 education and community colleges) and are subject to the Proposition 98 calculation. The revenues raised by the measure are deposited directly into a newly created fund and allocated to schools, bypassing the Legislature. This feature essentially means that these revenues are first to fill the

<sup>1</sup> Please note that none of the tax changes affect the revenues dedicated to 2011 Realignment.

“bucket” of the state’s annual Proposition 98 calculation, thus saving the state about half of that amount which can then be used for other state General Fund purposes.

In addition to the temporary increase in taxes for education, the measure provides a constitutional guarantee of the funding dedicated to the 2011 realignment (an amount equal to 1.0625% of the state sales tax and certain vehicle license fees) as well as the protections associated with increased costs of those programs sought in early 2011 in SCA 1X.

**Revenue Increases and CSAC Policy.** It has long been CSAC policy to support a balanced approach to resolving the chronic state budget deficit, and under that policy CSAC has supported increased revenues in the past. For instance, in 2009 the CSAC board supported an increase in the gas tax when the Legislature proposed to permanently divert the entire local share of the Highway User Tax Account (HUTA) to fund debt service and provide \$1 billion a year in General Fund relief. This tax increase generated an additional \$750 million per year.

Governor Brown inherited a combined \$26.2 billion budget deficit when he took office in 2011 and May projections indicate a \$15.7 billion state budget deficit for the next 18 month period, despite significant cost cutting in the 2011-12 and 2012-13 state budgets. The recently enacted 2012-13 budget is balanced through a combination of budget cuts and the proposed tax increases. If the tax increases are not supported, triggers cuts — primarily in education — would automatically kick in. The revenue generated from the temporary taxes in Proposition 30 are about half of the taxes that would have been extended by SCA 1X. As you are aware, the CSAC Board of Directors voted 45-4 to support SCA 1X due primarily to the fact that it contained the constitutional protections sought as part of realignment, as does Proposition 30.

Beginning in 1991, the State of California has relied upon temporary tax increases to assist the state in recovering from severe recessions. In 1991, Governor Wilson proposed, and the Legislature enacted taxes by adding incremental tax rates of 10 and 11 percent on upper income levels. These rates expired after five years in 1996. In addition, a temporary ½ cent sales tax was imposed, set to expire in 1993. Even those increased tax revenues, though, did not prevent the state from diverting \$4.3 billion of local property taxes in 1992-93 and 1993-94 to a state Education Revenue Augmentation Fund (ERAF) to fund part of the state’s obligation to K-14 education as the recession lingered. Those diversions are permanent and have grown to more than \$7.3 billion annually.

Also in 1991, CSAC supported an increase in the sales tax (½ cent) and an adjustment to the depreciation schedule of the Vehicle License Fee which generated \$1.98 billion that was then designated to the 1991 realignment programs. Both of those tax sources remain in effect today and generate

approximately \$4 billion for California counties to use for those programs.

In part to offset the impacts of those tax diversions, in 1993 the Legislature placed Proposition 172 on the ballot. This measure offered voters the opportunity to continue the ½ cent sales tax that was to expire at the end of 1993 and dedicated the funding from the ½ cent sales tax to public safety. CSAC supported Proposition 172; it passed by a strong margin and remains in effect today.

In 2009, under Governor Schwarzenegger, the Legislature adopted temporary income tax rates at the higher level, a temporary 1 cent increase in the sales tax, and a temporary Vehicle License Fee rate increase, a portion of which was dedicated to local public safety. These temporary taxes were in place for two years and expired at the end of June 2011. These were the taxes that would have been extended for five years under last year's SCA 1X.

**State Budget Cuts.** There is no question that California and the rest of the nation have been wracked by one of the worst and most prolonged economic recessions since the Great Depression. The impact first hit California in 2008 and has been felt in every state budget since.

In response, California has made significant cuts in state expenditures. It is difficult to make an apples-to-apples comparison of budget gaps and deficits as those figures change continuously. However, an analysis of the actual budget figures for the state's general fund in the last several fiscal years reveals that the State of California has made real reductions in spending, while demand for services has continued to climb.

The 2011-12 Budget cut General Fund spending as a share of the economy to its lowest level since 1972-73. State Supplementary Payment grants were reduced to the level in effect in 1983. CalWORKs grants were reduced to below the level in effect in 1987. State support for its universities and courts was cut by about 25 percent and 20 percent, respectively. The Adult Day Health Care program, redevelopment agencies, Williamson Act subventions, Home-to-School Transportation, and the refundable child care and dependent tax credit were all eliminated. The Department of Corrections and Rehabilitation's expenditures will be reduced by approximately 18 percent once realignment is fully implemented. K-14 education funding remains \$9 billion below the 2007-08 funding level.

The 2012-13 budget includes further cuts to K-14 education, UC and CSU, and other programs should Proposition 30 fail in November. Furthermore, such a failure would exacerbate the structural deficit that has plagued the state since 2000.

**The Governor's Campaign.** As of this writing, the Governor and the CFT have raised more than \$12 million in support of their new measure. We anticipate

significant funding from business, labor and education groups in support of the Governor's efforts. The Governor has in fact indicated a broad range of supporters, from labor to business interests.

To date, the following groups, among others, have made financial contributions to the combined Governor/CFT campaign or have indicated their support of the initiative:

- The California Federation of Teachers
- American Federation of Teachers
- The California Teachers Association
- The California School Employees Association
- The California Medical Association
- Assembly Speaker John Perez's campaign committee
- Service Employees International Union Local 1000
- United Domestic Workers of America
- California Medical Association
- California School Boards Association
- California State Sheriff's Association
- Chief Probation Officers of California

**Competing Campaigns.** An important factor that will influence the Governor and CFT's success on the ballot will be the extent to which they can clear the field of other tax initiatives, most importantly the remaining measure to raise personal income tax rates.

Sponsored by the *Our Children, Our Future* coalition, the Proposition 38 campaign is funded almost entirely by Molly Munger, a civil rights attorney in Los Angeles and the daughter of Charles Munger, a partner of Warren Buffett's. Ms. Munger's proposal increases the PIT rates on all but the lowest income bracket, beginning in 2013 and ending in 2024. The additional marginal tax rates would be higher as taxable income increases. For income of PIT filers currently in the highest current tax bracket (9.3% marginal tax rate, excluding the mental health tax), additional marginal tax rates would rise as income increases. The current mental health tax (Proposition 63) would continue to be imposed.

In 2013-14 and 2014-15, all revenues raised by Proposition 38 (estimated to be between \$10 and \$11 billion per year) would be allocated for schools and Early Care and Education (ECE) programs (85 percent for schools, 15 percent for ECE). Beginning in 2015-16, total allocations to schools and ECE programs could not increase at a rate greater than the average growth in California personal income per capita in the previous five years. The measure also prohibits its revenue from replacing state, local, or federal funding that was in place prior to November 1, 2012. All revenue collected by the measure and allocations made to schools are excluded from the calculation of the Proposition 98 minimum guarantee. Ms.

Munger herself has contributed more than \$8 million to this campaign as of this writing.

**Polling on the Governor/CFT measure.** Recent polling (July 5) by the Public Policy Institute of California (PPIC) indicates that 54 percent of likely voters say they would vote for the Governor's new measure (38 percent would vote no) when they are read the new ballot title and a brief summary. Voters are equally divided on the Munger initiative (46 percent support/46 percent opposed). A copy of the survey is attached.

However, PPIC notes that the Governor's measure could be adversely impacted if the Legislature acts to fund the state's controversial high-speed rail project. One in three likely voters say they would be less inclined to support the Governor's measure if the Legislature begins funding high-speed rail. Please note that the Legislature narrowly approved high-speed rail funding on July 6.

In December of 2011, CSAC conducted a poll of the Governor's original measure and found that 62 percent of those polled support a plain language description of the measure. The ongoing cuts to public education are the most persuasive arguments. In this same poll, a range of 65 percent to 71 percent of likely voters expressed concern about funding for K-14 education.

**Recommendation:** Proposition 30 remains the only vehicle for California counties to obtain the constitutional protections and guaranteed funding for realigned programs, which is the Association's top priority. While the measure polls well as of this writing, competing measures, like Proposition 38, or planned funding for the state's high-speed rail project, could weaken its chances of passage.

CSAC's support of the measure is important to help garner the support of the electorate to pass the measure. Furthermore, CSAC support is very important should the measure fail and it becomes necessary for the Governor to follow through on his commitment to take a realignment protections measure to the electorate in a future election.

The relevant policy committees together recommend that the CSAC Executive Committee forward a recommendation of "support" on Proposition 30 to the CSAC Board of Directors for consideration at their September 6 meeting.

#### Attachments

- I. Ballot Label and Summary
- II. Proposition 30 Text
- III. Legislative Analyst's Office Analysis of Proposition 30
- IV. PPIC Statewide Survey (July 2012)



1578. (12-0009) - **Final Random Sample Update - 06/20/12**

Temporary Taxes to Fund Education. Guaranteed Local Public Safety Funding. Initiative Constitutional Amendment.

Qualified: 06/20/12

Proponent: Thomas A. Willis c/o Karen Getman (510) 346-6200

Increases personal income tax on annual earnings over \$250,000 for seven years. Increases sales and use tax by ¼ cent for four years. Allocates temporary tax revenues 89 percent to K-12 schools and 11 percent to community colleges. Bars use of funds for administrative costs, but provides local school governing boards discretion to decide, in open meetings and subject to annual audit, how funds are to be spent. Guarantees funding for public safety services realigned from state to local governments. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Increased state revenues over the next seven fiscal years. Estimates of the revenue increases vary—from \$6.8 billion to \$9 billion for 2012-13 and from \$5.4 billion to \$7.6 billion, on average, in the following five fiscal years, with lesser amounts in 2018-19. These revenues would be available to (1) pay for the state's school and community college funding requirements, as increased by this measure, and (2) address the state's budgetary problem by paying for other spending commitments. Limitation on the state's ability to make changes to the programs and revenues shifted to local governments in 2011, resulting in a more stable fiscal situation for local governments.** (12-0009) **(Full Text)**

March 14, 2012

**VIA MESSENGER**

Office of the Attorney General  
1300 "T" Street  
Sacramento, CA 95814

Attention: Ashley Johansson

Re: *The Schools and Local Public Safety Protection Act of 2012 - ver. 3*

Dear Ms. Johansson:

In accordance with the requirements of Elections Code section 9001(a), I request that the Attorney General prepare a circulating title and summary for a measure entitled "The Schools and Local Public Safety Protection Act of 2012." The text of the measure, a check for \$200.00, and the certifications required by Elections Code sections 9001(b) and 9608 are enclosed.

This initiative is substantively identical to The Schools and Local Public Safety Protection Act of 2012 (ver. 2), AG number 12-0001, except that (1) the sales and use tax increase is only ¼ cent; (2) the income tax rate for the top two brackets is raised by an additional .5 and 1.0 percent, respectively; and (3) the income tax rate increases remain in effect through the end of the 2018 tax year.

Please direct all correspondence and inquiries regarding this measure to:

Karen Getman  
Thomas A. Willis  
Remcho, Johansen & Purcell, LLP  
201 Dolores Avenue  
San Leandro, CA 94577  
Phone: (510) 346-6200  
Fax: (510) 346-6201

Sincerely,



Thomas A. Willis

Enclosures  
(00166767)

## THE SCHOOLS AND LOCAL PUBLIC SAFETY PROTECTION ACT OF 2012

### Sec. 1. Title.

This measure shall be known and may be cited as "The Schools and Local Public Safety Protection Act of 2012."

### Sec. 2. Findings.

(a) Over the past 4 years alone, California has had to cut more than \$56 billion from education, police and fire protection, healthcare and other critical state and local services. These funding cuts have forced teacher layoffs, increased school class sizes, increased college fees, reduced police protection, increased fire response times, exacerbated dangerous overcrowding in prisons, and substantially reduced oversight of parolees.

(b) These cuts in critical services have hurt California's seniors, middle-class, working families, children, college students and small businesses the most. We cannot afford more cuts to education and the other services we need.

(c) After years of cuts and difficult choices it is necessary to turn the state around. Raising new tax revenue is an investment in our future that will put California back on track for growth and success.

(d) The Schools and Local Public Safety Protection Act of 2012 will make California's tax system more fair. With working families struggling while the wealthiest among us enjoy record income growth, it is only right to ask the wealthy to pay their fair share.

(e) The Schools and Local Public Safety Protection Act of 2012 raises the income tax on those at the highest end of the income scale – those who can most afford it. It also temporarily restores some sales taxes in effect last year, while keeping the overall sales tax rate lower than it was in early 2011.

(f) The new taxes in this measure are temporary. Under the Constitution the 1/4 cent sales tax increase expires in four years, and the income tax increases for the wealthiest taxpayers end in seven years.

(g) The new tax revenue is guaranteed in the Constitution to go directly to local school districts and community colleges. Cities and counties are guaranteed ongoing funding for public safety programs such as local police and child protective services. State money is freed up to help balance the budget and prevent even more devastating cuts to services for seniors, working families, and small businesses. Everyone benefits.

(h) To ensure these funds go where the voters intend, they are put in special accounts that the Legislature cannot touch. None of these new revenues can be spent on state bureaucracy or administrative costs.

(i) These funds will be subject to an independent audit every year to ensure they are spent only for schools and public safety. Elected officials will be subject to prosecution and criminal penalties if they misuse the funds.

### Sec. 3. Purpose and Intent.

(a) The chief purpose of this measure is to protect schools and local public safety by asking the wealthy to pay their fair share of taxes. This measure takes funds away from state control and places them in special accounts that are exclusively dedicated to schools and local public safety in the state constitution.

(b) This measure builds on a broader state budget plan that has made billions of dollars in permanent cuts to state spending.

(c) The measure guarantees solid, reliable funding for schools, community colleges, and public safety while helping balance the budget and preventing further devastating cuts to services for seniors, middle-class, working families, children and small businesses.

(d) This measure gives constitutional protection to the shift of local public safety programs from state to local control and the shift of state revenues to local government to pay for those programs. It guarantees that schools are not harmed by providing even more funding than schools would have received without the shift.

(e) This measure guarantees that the new revenues it raises will be sent directly to school districts for classroom expenses, not administrative costs. This school funding cannot be suspended or withheld no matter what happens with the state budget.

(f) All revenues from this measure are subject to local audit every year, and audit by the independent Controller to ensure that they will be used only for schools and local public safety.

Sec. 4. Section 36 is added to Article XIII of the California Constitution, to read:

SEC. 36. (a) For purposes of this section:

(1) "Public Safety Services" includes the following:

(A) Employing and training public safety officials, including law enforcement personnel, attorneys assigned to criminal proceedings, and court security staff.

(B) Managing local jails and providing housing, treatment, and services for, and supervision of, juvenile and adult offenders.

(C) Preventing child abuse, neglect, or exploitation; providing services to children and youth who are abused, neglected, or exploited, or who are at risk of abuse, neglect, or exploitation, and the families of those children; providing adoption services; and providing adult protective services.

(D) Providing mental health services to children and adults to reduce failure in school, harm to self or others, homelessness, and preventable incarceration or institutionalization.

(E) Preventing, treating, and providing recovery services for substance abuse.

(2) "2011 Realignment Legislation" means legislation enacted on or before September 30, 2012, to implement the state budget plan, that is entitled 2011 Realignment and provides for the assignment of Public Safety Services responsibilities to local agencies, including related reporting responsibilities. The legislation shall provide local agencies with maximum flexibility and control over the design, administration, and delivery of Public Safety Services consistent with federal law and funding requirements, as determined by the Legislature. However, 2011 Realignment Legislation shall include no new programs assigned to local agencies after January 1, 2012 except for the early periodic screening, diagnosis, and treatment (EPSDT) program and mental health managed care.

(b)(1) Except as provided in (d), commencing in fiscal year 2011-2012 and continuing thereafter, the following amounts shall be deposited into the Local Revenue Fund 2011, as established by Section 30025 of the Government Code, as follows:

(A) All revenues, less refunds, derived from the taxes described in Sections 6051.15 and 6201.15 of the Revenue and Taxation Code, as those sections read on July 1, 2011.

(B) All revenues, less refunds, derived from the vehicle license fees described in Section 11005 of the Revenue and Taxation Code, as that section read on July 1, 2011.

(2) On and after July 1, 2011, the revenues deposited pursuant to paragraph (1) shall not be considered General Fund revenues or proceeds of taxes for purposes of Section 8 of Article XVI of the California Constitution.

(c)(1) Funds deposited in the Local Revenue Fund 2011, are continuously appropriated exclusively to fund the provision of Public Safety Services by local agencies. Pending full implementation of the 2011 Realignment Legislation, funds may also be used to reimburse the State for program costs incurred in providing Public Safety Services on behalf of local agencies. The methodology for allocating funds shall be as specified in the 2011 Realignment Legislation.

(2) The county treasurer, city and county treasurer, or other appropriate official shall create a County Local Revenue Fund 2011 within the treasury of each county or city

and county. The money in each County Local Revenue Fund 2011 shall be exclusively used to fund the provision of Public Safety Services by local agencies as specified by the 2011 Realignment Legislation.

(3) Notwithstanding Section 6 of Article XIII B, or any other constitutional provision, a mandate of a new program or higher level of service on a local agency imposed by the 2011 Realignment Legislation, or by any regulation adopted or any executive order or administrative directive issued to implement that legislation, shall not constitute a mandate requiring the State to provide a subvention of funds within the meaning of that section. Any requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, with respect to performing its Public Safety Services responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.

(4)(A) Legislation enacted after September 30, 2012, that has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation shall apply to local agencies only to the extent that the State provides annual funding for the cost increase. Local agencies shall not be obligated to provide programs or levels of service required by legislation, described in this subparagraph, above the level for which funding has been provided.

(B) Regulations, executive orders, or administrative directives, implemented after October 9, 2011, that are not necessary to implement the 2011 Realignment Legislation, and that have an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation, shall apply to local agencies only to the extent that the State provides annual funding for the cost increase. Local agencies shall not be obligated to provide programs or levels of service pursuant to new regulations, executive orders, or administrative directives, described in this subparagraph, above the level for which funding has been provided.

(C) Any new program or higher level of service provided by local agencies, as described in subparagraphs (A) and (B), above the level for which funding has been provided, shall not require a subvention of funds by the State nor otherwise be subject to Section 6 of Article XIII B. This paragraph shall not apply to legislation currently exempt from subvention under paragraph (2) of subdivision (a) of Section 6 of Article XIII B as that paragraph read on January 2, 2011.

(D) The State shall not submit to the federal government any plans or waivers, or amendments to those plans or waivers, that have an overall effect of increasing the cost borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation, except to the extent that the plans, waivers, or amendments are required by federal law, or the State provides annual funding for the cost increase.

(E) The State shall not be required to provide a subvention of funds pursuant to this paragraph for a mandate that is imposed by the State at the request of a local agency or to comply with federal law. State funds required by this paragraph shall be from a source other than those described in subdivisions (b) and (d), ad valorem property taxes, or the Social Services Subaccount of the Sales Tax Account of the Local Revenue Fund.

(5)(A) For programs described in subparagraphs (C) to (E) inclusive, of paragraph (1) of subdivision (a) and included in the 2011 Realignment Legislation, if there are subsequent changes in federal statutes or regulations that alter the conditions under which federal matching funds as described in the 2011 Realignment Legislation are obtained, and have the overall effect of increasing the costs incurred by a local agency, the State shall annually provide at least 50 percent of the nonfederal share of those costs as determined by the State.

(B) When the State is a party to any complaint brought in a federal judicial or administrative proceeding that involves one or more of the programs described in subparagraphs (C) to (E) inclusive, of paragraph (1) of subdivision (a) and included in the 2011 Realignment Legislation, and there is a settlement or judicial or administrative order that imposes a cost in the form of a monetary penalty or has the overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation, the State shall annually provide at least 50 percent of the nonfederal share of those costs as determined by the State. Payment by the State is not required if the State determines that the settlement or order relates to one or more local agencies failing to perform a ministerial duty, failing to perform a legal obligation in good faith, or acting in a negligent or reckless manner.

(C) The state funds provided in this paragraph shall be from funding sources other than those described in subdivisions (b) and (d), ad valorem property taxes, or the Social Services Subaccount of the Sales Tax Account of the Local Revenue Fund.

(6) If the State or a local agency fails to perform a duty or obligation under this section or under the 2011 Realignment Legislation, an appropriate party may seek judicial relief. These proceedings shall have priority over all other civil matters.

(7) The funds deposited into a County Local Revenue Fund 2011 shall be spent in a manner designed to maintain the State's eligibility for federal matching funds, and to ensure compliance by the State with applicable federal standards governing the State's provision of Public Safety Services.

(8) The funds deposited into a County Local Revenue Fund 2011 shall not be used by local agencies to supplant other funding for Public Safety Services.

(d) If the taxes described in subdivision (b) are reduced or cease to be operative, the State shall annually provide moneys to the Local Revenue Fund 2011 in an amount equal to or greater than the aggregate amount that otherwise would have been provided

by the taxes described in subdivision (b). The method for determining that amount shall be described in the 2011 Realignment Legislation, and the State shall be obligated to provide that amount for so long as the local agencies are required to perform the Public Safety Services responsibilities assigned by the 2011 Realignment Legislation. If the State fails to annually appropriate that amount, the Controller shall transfer that amount from the General Fund in pro rata monthly shares to the Local Revenue Fund 2011. Thereafter, the Controller shall disburse these amounts to local agencies in the manner directed by the 2011 Realignment Legislation. The state obligations under this subdivision shall have a lower priority claim to General Fund money than the first priority for money to be set apart under Section 8 of Article XVI and the second priority to pay voter-approved debts and liabilities described in Section 1 of Article XVI.

(e)(1) To ensure that public education is not harmed in the process of providing critical protection to local Public Safety Services, the Education Protection Account is hereby created in the General Fund to receive and disburse the revenues derived from the incremental increases in taxes imposed by this section as specified in subdivision (f).

(2)(A) Before June 30, 2013, and before June 30th of each year thereafter through 2018, the Director of Finance shall estimate the total amount of additional revenues, less refunds, that will be derived from the incremental increases in tax rates made in subdivision (f) that will be available for transfer into the Education Protection Account during the next fiscal year. The Director of Finance shall make the same estimate by January 10, 2013, for additional revenues, less refunds, that will be received by the end of the 2012-13 fiscal year.

(B) During the last ten days of the quarter of each of the first three quarters of each fiscal year from 2013-14 through 2018-19, the Controller shall transfer into the Education Protection Account one fourth of the total amount estimated pursuant to subparagraph (A) for that fiscal year, except as this amount may be adjusted pursuant to subparagraph (D).

(C) In each of the fiscal years 2012-13 through 2020-21, the Director of Finance shall calculate an adjustment to the Education Protection Account, as specified by subparagraph (D), by adding together the following amounts, as applicable:

(i) In the last quarter of each fiscal year from 2012-13 through 2018-19, the Director of Finance shall recalculate the estimate made for the fiscal year pursuant to subparagraph (A), and shall subtract from this updated estimate the amounts previously transferred to the Education Protection Account for that fiscal year.

(ii) In June 2015 and in every June through 2021, the Director of Finance shall make a final determination of the amount of additional revenues, less refunds, derived from the incremental increases in tax rates made in subdivision (f) for the fiscal year ending two years prior. The amount of the updated estimate calculated in clause (i) for the fiscal year ending two years prior shall be subtracted from the amount of this final determination.



(D) If the sum determined pursuant to subparagraph (C) is positive, the Controller shall transfer an amount equal to that sum into the Education Protection Account within 10 days preceding the end of the fiscal year. If that amount is negative, the Controller shall suspend or reduce subsequent quarterly transfers, if any, to the Education Protection Account until the total reduction equals the negative amount herein described. For purposes of any calculation made pursuant to clause (i) of subparagraph (C), the amount of a quarterly transfer shall not be modified to reflect any suspension or reduction made pursuant to this subparagraph.

(3) All moneys in the Education Protection Account are hereby continuously appropriated for the support of school districts, county offices of education, charter schools, and community college districts as set forth in this paragraph.

(A) Eleven percent of the moneys appropriated pursuant to this paragraph shall be allocated quarterly by the Board of Governors of the California Community Colleges to community college districts to provide general purpose funding to community college districts in proportion to the amounts determined pursuant to Section 84750.5 of the Education Code, as that code section read upon the enactment of this section. The allocations calculated pursuant to this subparagraph shall be offset by the amounts specified in subdivisions (a), (c) and (d) of Section 84751 of the Education Code, as that section read upon enactment of this section, that are in excess of the amounts calculated pursuant to Section 84750.5 of the Education Code, as that section read upon enactment of this section, provided that no community college district shall receive less than one hundred dollars (\$100) per full time equivalent student.

(B) Eighty nine percent of the moneys appropriated pursuant to this paragraph shall be allocated quarterly by the Superintendent of Public Instruction to provide general purpose funding to school districts, county offices of education, and state general-purpose funding to charter schools in proportion to the revenue limits calculated pursuant to Sections 2558 and 42238 and the amounts calculated pursuant to Section 47633 of the Education Code for county offices of education, school districts, and charter schools, respectively, as those sections read upon enactment of this section. The amounts so calculated shall be offset by the amounts specified in subdivision (c) of Section 2558; paragraphs (1) through (7) of subdivision (h) of Section 42238, and Section 47635 of the Education Code for county offices of education, school districts, and charter schools, respectively, as those sections read upon enactment of this section, which are in excess of the amounts calculated pursuant to Sections 2558, 42238, and 47633 of the Education Code for county offices of education, school districts, and charter schools, respectively, as those sections read upon enactment of this section, provided that no school district, county office of education, or charter school shall receive less than two hundred dollars (\$200) per unit of average daily attendance.

(4) This subdivision is self-executing and requires no legislative action to take effect. Distribution of the moneys in the Education Protection Account by the Board of

Governors of the California Community Colleges and the Superintendent of Public Instruction shall not be delayed or otherwise affected by failure of the Legislature and Governor to enact an annual budget bill pursuant to Section 12 of Article IV, by invocation of paragraph (h) of Section 8 of Article XVI, or by any other action or failure to act by the Legislature or Governor.

(5) Notwithstanding any other provision of law, the moneys deposited in the Education Protection Account shall not be used to pay any costs incurred by the Legislature, Governor or any agency of state government.

(6) A community college district, county office of education, school district, and charter school shall have sole authority to determine how the moneys received from the Education Protection Account are spent in the school or schools within its jurisdiction, provided, however, that the appropriate governing board or body shall make these spending determinations in open session of a public meeting of the governing board or body and shall not use any of the funds from the Education Protection Account for salaries or benefits of administrators or any other administrative costs. Each community college district, county office of education, school district, and charter school shall annually publish on its Internet Web site an accounting of how much money was received from the Education Protection Account and how that money was spent.

(7) The annual independent financial and compliance audit required of community college districts, county offices of education, school districts, and charter schools shall, in addition to all other requirements of law, ascertain and verify whether the funds provided from the Education Protection Account have been properly disbursed and expended as required by this section. Expenses incurred by those entities to comply with the additional audit requirement of this section may be paid with funding from the Education Protection Account and shall not be considered administrative costs for purposes of this section.

(8) Revenues, less refunds, derived pursuant to subdivision (f) for deposit in the Education Protection Account pursuant to this section shall be deemed "General Fund revenues," "General Fund proceeds of taxes" and "moneys to be applied by the State for the support of school districts and community college districts" for purposes of Section 8 of Article XVI.

(f)(1)(A) In addition to the taxes imposed by Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, for the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers at the rate of 1/4 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this state on and after January 1, 2013, and before January 1, 2017.

(B) In addition to the taxes imposed by Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, an excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased

from any retailer on and after January 1, 2013, and before January 1, 2017, for storage, use, or other consumption in this state at the rate of 1/4 percent of the sales price of the property.

(C) The Sales and Use Tax Law, including any amendments enacted on or after the effective date of this section, shall apply to the taxes imposed pursuant to this paragraph.

(D) This paragraph shall cease to be operative on January 1, 2017.

(2) For any taxable year beginning on or after January 1, 2012, and before January 1, 2019, with respect to the tax imposed pursuant to Section 17041 of the Revenue and Taxation Code, the income tax bracket and the rate of 9.3 percent set forth in paragraph (1) of subdivision (a) of Section 17041 of the Revenue and Taxation Code shall be modified by each of the following:

(A)(i) For that portion of taxable income that is over two hundred and fifty thousand dollars (\$250,000) but not over three hundred thousand dollars (\$300,000) the tax rate is 10.3 percent of the excess over two hundred and fifty thousand dollars (\$250,000).

(ii) For that portion of taxable income that is over three hundred thousand dollars (\$300,000) but not over five hundred thousand dollars (\$500,000) the tax rate is 11.3 percent of the excess over three hundred thousand dollars (\$300,000).

(iii) For that portion of taxable income that is over five hundred thousand dollars (\$500,000), the tax rate is 12.3 percent of the excess over five hundred thousand dollars (\$500,000).

(B) The income tax brackets specified in clauses (i), (ii), and (iii) of subparagraph (A) shall be recomputed, as otherwise provided in subdivision (h) of Section 17041 of the Revenue and Taxation Code, only for taxable years beginning on and after January 1, 2013.

(C)(i) For purposes of subdivision (g) of Section 19136 of the Revenue and Taxation Code, this provision shall be considered to be chaptered on the date it becomes effective.

(ii) For purposes of Part 10 (commencing with Section 17001) and Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code, the modified tax brackets and tax rates established and imposed by this paragraph shall be deemed to be established and imposed under Section 17041 of the Revenue and Taxation Code.

(D) This paragraph shall cease to be operative on December 1, 2019.

(3) For any taxable year beginning on or after January 1, 2012, and before January 1, 2019, with respect to the tax imposed pursuant to Section 17041 of the Revenue and Taxation Code, the income tax bracket and the rate of 9.3 percent set forth in paragraph (1) of subdivision (c) of Section 17041 of the Revenue and Taxation Code shall be modified by each of the following:

(A)(i) For that portion of taxable income that is over three hundred forty thousand dollars (\$340,000) but not over four hundred eight thousand dollars (\$408,000) the tax rate is 10.3 percent of the excess over three hundred forty thousand dollars (\$340,000).

(ii) For that portion of taxable income that is over four hundred eight thousand dollars (\$408,000) but not over six hundred eighty thousand dollars (\$680,000) the tax rate is 11.3 percent of the excess over four hundred eight thousand dollars (\$408,000).

(iii) For that portion of taxable income that is over six hundred eighty thousand dollars (\$680,000), the tax rate is 12.3 percent of the excess over six hundred eighty thousand dollars (\$680,000).

(B) The income tax brackets specified in clauses (i), (ii), and (iii) of subparagraph (A) shall be recomputed, as otherwise provided in subdivision (h) of Section 17041 of the Revenue and Taxation Code, only for taxable years beginning on and after January 1, 2013.

(C)(i) For purposes of subdivision (g) of Section 19136 of the Revenue and Taxation Code, this provision shall be considered to be chaptered on the date it becomes effective.

(ii) For purposes of Part 10 (commencing with Section 17001) and Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code, the modified tax brackets and tax rates established and imposed by this paragraph shall be deemed to be established and imposed under Section 17041 of the Revenue and Taxation Code.

(D) This paragraph shall cease to be operative on December 1, 2019.

(g)(1) The Controller, pursuant to his or her statutory authority, may perform audits of expenditures from the Local Revenue Fund 2011 and any County Local Revenue Fund 2011, and shall audit the Education Protection Account to ensure that those funds are used and accounted for in a manner consistent with this section.

(2) The Attorney General or local district attorney shall expeditiously investigate, and may seek civil or criminal penalties for, any misuse of moneys from the County Local Revenue Fund 2011 or the Education Protection Account.

**Sec. 5. Effective Date.**

Subdivision (b) of Section 36 of Article XIII, as added by this measure, shall be operative as of July 1, 2011. Paragraphs (2) and (3) of subdivision (f) of Section 36 of Article XIII, as added by this measure, shall be operative as of January 1, 2012. All other provisions of this measure shall take effect the day after the election in which it is approved by a majority of the voters voting on the measure provided.

**Sec. 6. Conflicting Measures.**

In the event that this measure and another measure that imposes an incremental increase in the tax rates for personal income shall appear on the same statewide 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 than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

**Sec. 7.**

This measure provides funding for school districts and community college districts in an amount that equals or exceeds that which would have been provided if the revenues deposited pursuant to Sections 6051.15 and 6201.15 of the Revenue and Taxation Code pursuant to Chapter 43 of the Statutes of 2011 had been considered "General Fund revenues" or "General Fund proceeds of taxes" for purposes of Section 8 of Article XVI of the California Constitution.



March 16, 2012

Hon. Kamala D. Harris  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Ashley Johansson  
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional amendment related to the funding of local governments and schools and temporary taxes. (A.G. File No. 12-0009).

## **BACKGROUND**

### **State's Fiscal Situation**

**California's Recent Budget Problems.** The General Fund is the state's core account that supports a variety of programs, including public schools, higher education, health, social services, and prisons. The General Fund has experienced chronic shortfalls in recent years due to trends in state spending and revenues. State budgetary problems since 2008-09 have been caused by a number of factors, including a severe economic recession that caused state revenues to decline sharply. To deal with the state's budgetary shortfalls, policymakers have reduced program expenditures, temporarily raised taxes, and taken a variety of other measures including various forms of borrowing from special funds and local governments.

**Ongoing Budget Deficits Projected.** The state's budget shortfalls are expected to continue over the next five years under current tax and expenditure policies. In November 2011, the Legislative Analyst's Office (LAO) estimated annual budget deficits of greater than \$5 billion through 2016-17, including a budget shortfall of roughly \$13 billion in 2012-13. In January 2012, the Department of Finance (DOF) estimated a budget shortfall of \$9.2 billion in 2012-13 and annual budget deficits of less than \$5 billion thereafter. These estimates will be updated in May 2012—based on updated information about state revenues and expenditures—when the Governor releases the May Revision to his proposed 2012-13 state budget.

### **Taxes and Revenues**

The General Fund is supported primarily from income and sales taxes paid by individuals and businesses.

***Income Tax.*** The personal income tax (PIT) is a tax on income earned in the state and is the state's largest revenue source. Tax rates range from 1 percent to 9.3 percent depending on a taxpayer's income. Higher tax rates are charged as income increases, such that the 1 percent of tax filers with the most income now pay around 40 percent of state income taxes. An additional 1 percent rate is levied on taxable incomes in excess of \$1 million with the proceeds dedicated to mental health services rather than the General Fund.

***Sales Tax.*** California's sales and use tax (SUT) is levied on the final purchase price of tangible consumer goods, except for food and certain other items. The SUT rate consists of both a statewide rate and a local rate. The current statewide rate is 7.25 percent. Approximately half of the revenue derived from the statewide rate is deposited into the General Fund, while the remainder is allocated to local governments. Localities also have the option of imposing, with voter approval, add-on rates to raise revenues for cities, counties, or special districts. As a result, SUT rates in California differ by county and locality, with an average rate of about 8.1 percent.

### **State School Funding**

In 1988, voters approved Proposition 98. Including later amendments, Proposition 98 establishes a guaranteed minimum annual funding level—commonly called the minimum guarantee—for K-14 education (consisting of K-12 schools and community colleges). The minimum guarantee is funded through a combination of state General Fund appropriations and local property tax revenues. With a two-thirds vote in any given year, the Legislature can suspend the Proposition 98 guarantee for one year and provide any level of K-14 funding it chooses.

***Minimum Guarantee Often Affected by Changes in State Revenues.*** In many years, the calculation of the minimum guarantee is highly sensitive to changes in state General Fund revenues. In years when General Fund revenues grow by a large amount, the guarantee is likely to increase by a large amount. Conversely, in years when General Fund revenues decline by a large amount, the guarantee is likely to drop by a large amount. In these years, however, the state typically generates an associated "maintenance factor" obligation that requires the state to accelerate future growth in Proposition 98 funding when General Fund revenues revive. Another type of Proposition 98 obligation is known as "settle-up." A settle-up obligation is created when the state ends a fiscal year having appropriated less than the finalized calculation of the minimum guarantee. Typically, the state pays off settle-up obligations in installments over several years.

### **2011 Realignment Legislation**

***Shift of State Program Responsibilities.*** The state and local governments in California operate and fund various programs. These programs are funded through a combination of state, federal, and local funds. The specific responsibilities and costs assigned to state and local governments vary by program. As part of the 2011-12 state budget plan, the Legislature enacted a major shift—or "realignment"—of state program responsibilities and revenues to local governments. The realignment legislation shifts responsibility from the state to local governments (primarily counties) for several programs including court security, adult offenders and parolees, public safety grants, mental health services, substance abuse treatment, child welfare programs, and adult protective services. Implementation of this transfer began in 2011.

***Dedication of Revenues to Cover Program Costs.*** To fund the realignment of these programs, the 2011-12 state budget dedicates a total of \$6.3 billion in revenues from three sources into a special fund for local governments. Specifically, the realignment plan directs 1.0625 cents of the statewide SUT rate to counties. Under prior law, equivalent revenues were deposited in the General Fund. In addition, the realignment plan redirects an estimated \$462 million from the 0.65 percent vehicle license fee (VLF) rate for local law enforcement programs. Under prior law, these VLF revenues were allocated to the Department of Motor Vehicles for administrative purposes and to cities and Orange County for general purposes. The budget also shifts \$763 million on a one-time basis in 2011-12 from the Mental Health Services Fund (established by Proposition 63 in November 2004) for support of the Early and Periodic Screening, Diagnosis, and Treatment Program and Mental Health Managed Care program.

***Exclusion of Revenues From Proposition 98 Calculation.*** A budget-related law, Chapter 43, Statutes of 2011 (AB 114, Committee on Budget), stated that the 1.0625 cent SUT realignment revenues were to be excluded from the Proposition 98 calculation. This provision of Chapter 43, however, was made operative for 2011-12 and subsequent fiscal years contingent on the approval of a ballot measure by November 2012 that both (1) authorizes the exclusion of the 1.0625 cent sales tax revenues from the Proposition 98 calculation and (2) provides funding for school districts and community colleges in an amount equal to the reduction in the minimum guarantee due to the exclusion. If these conditions are not met, Chapter 43 creates a settle-up obligation for the lower Proposition 98 spending in 2011-12 to be paid over the next five fiscal years.

### **State-Reimbursable Mandates**

***State Required to Reimburse Local Governments for Certain Costs.*** The California Constitution generally requires the state to reimburse local governments when it “mandates” a new local program or higher level of service. In some cases, however, the state may impose requirements on local governments that increase local costs without being required to provide state reimbursements.

***Open Meeting Act Mandate.*** The Ralph M. Brown Act (known as the Brown Act) requires all meetings of the legislative body of a local agency to be open and public. Certain provisions of the Brown Act—such as the requirement to prepare and post agendas for public meetings—are state-reimbursable mandates.

## **PROPOSAL**

The measure amends the Constitution to permanently dedicate revenues to local governments to pay for the programs realigned in 2011 and temporarily increases state taxes.

### **2011 Realignment Legislation**

***Guarantees Ongoing Revenues to Local Governments for Realigned Programs.*** The measure requires the state to continue allocating SUT and VLF revenues to local governments to pay for the programs realigned in 2011. If portions of the SUT or VLF dedicated to realignment are reduced or eliminated, the state is required to provide alternative funding that is at least equal to the amount that would have been generated by the SUT and VLF for so long as the local governments are required to operate the realigned programs.



***Constrains State's Ability to Impose Additional Requirements After 2012.*** Through September 2012, the measure allows the state to change the statutory or regulatory requirements related to the realigned programs. A local government would not be required to fulfill a statutory or regulatory requirement approved after September 2012 related to the realigned programs, however, unless the requirement (1) imposed no net additional costs to the local government or (2) the state provided additional funding sufficient to cover its costs.

***Limits Local Governments From Seeking Additional Reimbursements.*** This measure specifies that the legislation creating 2011 realignment (as adopted through September 2012) would not be considered a state-reimbursable mandate. Therefore, local governments would not be eligible to seek reimbursement from the state for any costs related to implementing the legislation. Similarly, the measure specifies that any state regulation, executive order, or administrative directive necessary to implement realignment would not be a state-reimbursable mandate.

***State and Local Governments Could Share Some Unanticipated Costs.*** The measure specifies that certain unanticipated costs related to realignment would be shared between the state and local governments. Specifically, the state would be required to fund at least half of any new local costs resulting from certain changes in federal statutes or regulations. The state also would be required to pay at least half of any new local costs resulting from federal court decisions or settlements related to realigned programs if (1) the state is a party in the proceeding, and (2) the state determines that the decision or settlement is not related to the failure of local agencies to perform their duties or obligations.

### **Open Meeting Act Mandate**

The measure specifies that the Brown Act would no longer be considered a state-reimbursable mandate. Localities would still be required to follow the open meeting rules in the Brown Act but would not be eligible to seek reimbursement from the state for any associated costs.

### **Tax Rates**

***Increases Income Tax Rates on Higher Incomes for Seven Years.*** Under current law, the maximum marginal PIT rate is 9.3 percent, and it applies to taxable income in excess of \$48,209 for individuals; \$65,376 for heads of household; and \$96,058 for joint filers. This measure temporarily increases PIT rates for higher incomes by creating three additional tax brackets with rates above 9.3 percent. Specifically, this measure imposes:

- A 10.3 percent tax rate on income between \$250,000 and \$300,000 for individuals; \$340,000 and \$408,000 for heads of household; and \$500,000 and \$600,000 for joint filers.
- An 11.3 percent tax rate on income between \$300,000 and \$500,000 for individuals; \$408,000 and \$680,000 for heads of household; and \$600,000 and \$1 million for joint filers.
- A 12.3 percent tax rate on income in excess of \$500,000 for individuals; \$680,000 for heads of household; and \$1 million for joint filers.

These tax rates would affect roughly 1 percent of California PIT filers due to the high income threshold. The tax rates would be in effect for seven years—starting in the 2012 tax year and ending at the conclusion of the 2018 tax year. (The additional 1 percent rate for mental health services would still apply to income in excess of \$1 million.)

***Increases SUT Rate for Four Years.*** This measure temporarily increases the state SUT rate by 0.25 percent. The higher tax rate would be in effect for four years—from January 1, 2013 through the end of 2016. Under the measure, the average SUT rate in the state would increase to around 8.4 percent.

### **State School Funding**

***Permanently Removes Realigned Sales Tax Revenues From Proposition 98 Calculation.*** The measure amends the Constitution to explicitly exclude the 1.0625 cent sales tax revenues directed to realignment programs from the Proposition 98 calculation.

***New Tax Revenues Deposited Into New Account for Schools and Community Colleges.*** The measure requires that the additional tax revenues generated by the temporary increases in PIT and SUT rates be deposited into a newly created Education Protection Account (EPA). Appropriations from the account could be used for any educational purpose and would count towards meeting the Proposition 98 minimum guarantee. Of the monies deposited into the account, 89 percent would be provided to schools and 11 percent would be provided to community colleges. The EPA funds for schools would be distributed the same way as existing general purpose per-pupil funding, except that no school district is to receive less than \$200 in EPA funds per pupil. Similarly, the EPA funds for community colleges would be distributed the same way as existing general purpose per-student funding, except that no community college district is to receive less than \$100 in EPA funds per full-time equivalent student.

## **FISCAL EFFECTS**

### **Realignment Programs**

***Provides More Certainty to Local Governments.*** This measure would change the state's authority over the 2011 realignment. After September 2012, the state could not impose new requirements to 2011 realignment resulting in increased costs without providing sufficient funding. Also, the state would share certain new costs related to federal law or court cases. Consequently, the measure reduces the financial uncertainty and risk for local governments under realignment. Any impact would depend on how the state would have acted in the future absent the measure, as well as what, if any, actions are taken by the federal government or courts.

***Limits State's Ability to Change 2011 Realignment.*** With regard to the state, the measure would have the related impact of restricting the state's ability to make changes resulting in new costs to local governments in the 2011 realignment without providing additional funding to local governments. The state could also bear additional costs associated with new federal laws or court cases beyond the funds provided by 2011 realignment.

## State Revenues

***Significant Volatility of PIT Revenues Possible.*** Most of the income reported by California's upper-income filers is related in some way to their capital investments, rather than wages and salary-type income. In 2008, for example, only about 37 percent of the income reported by PIT filers reporting over \$500,000 of income consisted of wages and salaries. The rest consisted of capital gains (generated from sales of assets, such as stocks and homes), income from these filers' interests in partnerships and "S" corporations, dividends, interest, rent, and other capital income. While upper-income filers' wage and salary income is volatile to some extent (due to the cyclical nature of bonuses, among other things), their capital income is *highly* volatile from one year to the next. For example, the current mental health tax on income over \$1 million generated about \$734 million in 2009-10 but has raised as much as \$1.6 billion in previous years. Given this volatility, estimates of the revenues to be raised by this initiative will change between now and the November 2012 election, as well as in subsequent years.

***Revenue Estimates.*** The volatility described above makes it difficult to forecast this measure's state revenue gains from high-income taxpayers. As a result, the estimates from our two offices of this measure's annual revenue increases vary. For the 2012-13 budget, the LAO currently forecasts this measure would generate \$6.8 billion of additional revenues, and DOF forecasts \$9 billion of additional revenues. (This essentially reflects six months of SUT receipts in 2013 and 18 months of PIT receipts from all of tax year 2012 and half of tax year 2013.) In the following five fiscal years, the LAO currently forecasts an average annual increase in state revenues of \$5.4 billion, and DOF currently forecasts an average annual increase in state revenues of \$7.6 billion. In 2018-19, the measure's PIT increase would be in effect for only six months of the fiscal year before expiring and generate lesser amounts of state revenue.

## Proposition 98

The measure affects the Proposition 98 calculations. In the near term, the effect of the temporary tax increases would more than offset the state savings generated by the exclusion of the realignment SUT revenues. The change in the minimum guarantee, however, would depend on a number of factors, including the amount of revenue raised by the measure, year-to-year growth in General Fund revenues, and the way in which Proposition 98 maintenance factor obligations are paid. By excluding the realignment SUT revenues from the Proposition 98 calculations beginning in 2011-12, the state would no longer have a 2011-12 settle-up obligation. As a result, the state would not need to pay hundreds of millions of dollars annually from 2012-13 through 2016-17.

## State Budget

***Deposits New Revenues in the EPA.*** The new PIT and SUT revenues would be deposited in the EPA. The measure dedicates EPA funds for spending on schools and community colleges and counts them towards the Proposition 98 minimum guarantee.

***New Revenues Available to Balance State Budget.*** As described above, the measure would increase the Proposition 98 minimum guarantee in the near term. At the same time, the measure would put new tax revenue into the EPA, which would be available for meeting the state's Proposition 98 obligation. The EPA funds would be sufficient to fund the increase in the

minimum guarantee as well as pay part of the minimum guarantee currently funded from the General Fund, thereby freeing up General Fund monies to help balance the state budget.

***Long-Term Budget Effect Uncertain.*** The measure's tax increases are temporary. Depending on future budget decisions and the state of the economy, the loss of these additional tax revenues could create additional budget pressure when the proposed tax increases expire.

### **Summary of Fiscal Effect**

This measure would have the following major fiscal effects:

- Increased state revenues over the next seven fiscal years. Estimates of the revenue increases vary—from \$6.8 billion to \$9 billion for 2012-13 and from \$5.4 billion to \$7.6 billion, on average, in the following five fiscal years, with lesser amounts in 2018-19.
- These revenues would be available to (1) pay for the state's school and community college funding requirements, as increased by this measure, and (2) address the state's budgetary problem by paying for other spending commitments.
- Limitation on the state's ability to make changes to the programs and revenues shifted to local governments in 2011, resulting in a more stable fiscal situation for local governments.

Sincerely,

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Mac Taylor  
Legislative Analyst

---

Ana J. Matosantos  
Director of Finance

# THE FIELD POLL

THE INDEPENDENT AND NON-PARTISAN SURVEY  
OF PUBLIC OPINION ESTABLISHED IN 1947 AS  
THE CALIFORNIA POLL BY MERVIN FIELD

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Release #2415

Release Date: **Thursday, July 5, 2012**

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**VOTERS FAVOR BROWN TAX INITIATIVE 54% TO 38%; EVENLY SPLIT ON MUNGER AND STEYER TAX PLANS. SUPPORT FOR THE GOVERNOR'S INITIATIVE WOULD BE ADVERSELY AFFECTED IF THE LEGISLATURE FUNDS HIGH-SPEED RAIL PROJECT.**

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By Mark DiCamillo and Mervin Field

California voters will be asked to consider three different tax increase proposals in the upcoming November election. Two of the proposals, one sponsored by Governor Jerry Brown and the other by attorney Molly Munger, would raise personal income taxes, while a third led by hedge-fund manager Tom Steyer, would increase taxes on multi-state businesses operating in California.

A just completed *Field Poll* finds voters supporting the Brown initiative 54% to 38%, but evenly divided on the other two tax proposals. On the Munger initiative it is 46% Yes and 46% No, while the Steyer proposal receives 44% Yes and 43% No votes.

However, the survey also finds that the Brown tax plan would be adversely affected if the legislature proceeds with funding the state's controversial high-speed rail project. One in three likely voters, including one in five voters who currently support the Governor's initiative, say they'd be less inclined to vote Yes on his plan if the legislature begins funding the rail project.

### **Voter preferences on three tax initiatives**

The Governor's tax proposal is currently supported by a sixteen-point plurality (54% to 38%). This is similar to a May *Field Poll* when it was endorsed 52% to 35%.

Support for the Munger tax initiative is evenly split, with 46% in favor and 46% opposed. Last May voters were also divided, with 42% on the Yes side and 43% voting No.

Voters are closely divided on the Steyer business income tax initiative. In *The Field Poll's* first assessment of voter reaction to the measure, 44% of likely voters are inclined to support it, while 43% are opposed.

**Table 1**  
**Trend of voter preferences toward three tax increase initiatives**  
**for the November 2012 election ballot**  
**(among likely voters)**

	Will vote yes	Will vote no	Undecided
<u>Brown tax initiative</u>			
Late June/early July 2012	54%	38	8
May 2012	52%	35	13
<u>Munger tax initiative</u>			
Late June/early July 2012	46%	46	8
May 2012	42%	43	15
February 2012	45%	48	7
<u>Steyer tax initiative</u>			
Late June/early July 2012	44%	43	13

*Note: Prior measures based on all registered voters.*

**How voter subgroups divide on each tax initiative**

There are large partisan differences in voter preferences toward the three tax proposals, with majorities of Democrats in support and large majorities of Republicans opposed. While a majority of voters with no party preference are supporting Brown's initiative, they are about evenly split on the Munger initiative but back the Steyer proposal by a small margin.

Large majorities of conservatives oppose all three tax proposals, while large majorities of liberals are supportive. Middle-of-the road voters are currently supporting the Governor's proposal by fourteen points, backing the Steyer plan by seven points and opposing the Munger initiative by ten points.

Majorities of both male and female voters are inclined to support Brown's initiative, but are more closely divided on both the Munger and Steyer tax proposals.

White non-Hispanic voters are currently backing the Governor's tax plan by nine points, but are lining up against the Munger and Steyer initiatives. About six in ten or more Latinos support all three tax proposals.

Majorities of younger voters under age 40 are lining up on the Yes side of each tax proposal. Middle-age voters age 40-64 are favoring the Governor's proposal by eight points, are opposed to the Munger plan by eleven points and are narrowly supporting the Steyer initiative. Voters age 65 or older are narrowly backing the Governor's initiative, narrowly opposed to the Munger plan, but oppose the Steyer business tax initiative more than two to one.

Voters in union and non-union households are supporting the Governor's initiative. Union household voters are also backing the Munger and Steyer initiatives, while non-union households are evenly divided.

Majorities of voters across all income categories are currently favoring the Governor's tax package. On the other hand, Munger's initiative receives majority support only among voters living in households earning less than \$40,000, and faces majority opposition among voters in other income categories. Middle income voters are narrowly backing the Steyer proposal, while upper income voters are opposed and lower income voters are divided.

The Governor's tax plan is favored by large majorities of voters in Los Angeles County and the nine-county San Francisco Bay Area. Voters living in other parts of the state are also supportive, but by narrow margins. Views of the Munger initiative are more closely divided in Los Angeles County and other parts of Southern California. Bay Area voters are supporting the Munger plan, but voters in areas of Northern California outside the Bay Area are opposed five to three. The Steyer plan is supported by majorities of Bay Area and Los Angeles County voters, but is opposed in other parts of the state.

**Table 2**  
**Voter preferences regarding the three tax initiatives**  
**on the November 2012 election ballot – by subgroup**  
**(among likely voters)**

	Brown tax initiative		Munger tax initiative		Steyer tax initiative	
	Yes	No	Yes	No	Yes	No
<b>Total likely voters</b>	<b>54%</b>	<b>38</b>	<b>46%</b>	<b>46</b>	<b>44%</b>	<b>43</b>
<u>Party registration</u>						
Democrats	73%	20	59%	31	60%	26
Republicans	27%	64	28%	65	16%	67
No party preference/other	56%	38	48%	49	51%	43
<u>Political ideology</u>						
Conservative	28%	64	24%	65	17%	70
Middle-of-the-road	54%	40	43%	53	47%	40
Liberal	79%	12	69%	22	68%	18
<u>Gender</u>						
Male	53%	42	46%	51	44%	46
Female	55%	35	46%	43	44%	40
<u>Race/ethnicity</u>						
White non-Hispanic	50%	41	43%	49	39%	46
Latino	67%	29	59%	35	60%	32
African-American/Asian-American/other	56%	38	49%	45	45%	43
<u>Age</u>						
18 – 39	67%	29	61%	37	59%	36
40 – 64	51%	43	42%	53	46%	42
65 or older	47%	40	40%	47	24%	51
<u>Union affiliation</u>						
Union household	58%	36	51%	46	51%	42
Non-union	54%	39	45%	47	43%	43
<u>Annual household income</u>						
Less than \$40,000	58%	30	58%	30	41%	40
\$40,000 – \$99,999	58%	38	44%	51	50%	41
\$100,000 or more	52%	44	46%	52	41%	50
<u>Region</u>						
Los Angeles County	59%	35	47%	46	55%	34
Other Southern California	48%	43	49%	43	39%	46
San Francisco Bay Area	63%	30	53%	43	50%	37
Other Northern California	49%	43	34%	56	32%	55

\* Small sample size.

(Differences between 100% and the sum of each row's percentage for each initiative represent the proportion with no opinion)



**High-speed rail project and its impact on the Governor's tax initiative**

In the November 2008 election, California voters narrowly approved nine billion dollars in state bonds to fund a high-speed rail project that would link Southern California, the Central Valley and the San Francisco Bay Area. Since the election, the high-speed rail plan has been revised a number of times. Instead of laying all new track, some existing commuter track will be upgraded, allowing the project to finish several years earlier. Yet, total costs of the project have increased by about \$35 billion from what was originally proposed. The legislature is expected to decide this week whether to authorize initial funding from the bonds.

In its current survey *The Field Poll* finds voter views of the project have soured considerably since its passage. At present, 56% of likely voters say they would oppose the rail project if it were up for another public vote, while just 39% are supportive.

The unpopularity of the multi-billion dollar project appears to be negatively affecting chances of voters endorsing the Governor's tax increase proposal should the legislature authorize funds to the project. Nearly one in three likely voters, including one in five voters who currently support the Governor's initiative, say they'd be less inclined to vote Yes if the legislature begins funding the rail project.

**Table 3**  
**How legislative approval of funds for the high-speed rail project affects voter support for Governor Brown's tax increase initiative (among likely voters)**

<u>Impact on support for the Governor's initiative</u>	<b>Total likely voters</b>	<b>Current voting preference on Governor's initiative</b>	
		<b>Yes voter</b>	<b>No voter</b>
Less likely to support	31%	21%	48%
No effect	54	59	45
More likely to support	11	17	5
No opinion	4	3	2

**About the three tax increase initiatives**

The Governor's tax initiative calls for increasing state personal income taxes on residents making over \$250,000 for seven years and raising the state sales tax by one-quarter of one cent for four years. The moneys would go primarily to the k-12 schools and community colleges, but also guarantees funding for public safety services realigned to local governments.

The Munger tax initiative would permanently increase personal income taxes to a broader range of taxpayers on a sliding scale, with lower income residents paying less and wealthier residents more. It allocates most of its revenues to the k-12 schools and early childhood development programs, but also devotes some moneys to paying off the state debt in its first four years.

Steyer's tax increase proposal seeks to extract more revenues from multi-state businesses operating in California. It would require such businesses to calculate their income tax liability based on their percentage of sales in the state and repeals existing laws giving them more favorable tax treatment. Additional revenues would go towards funding projects that promote clean energy and energy efficiency employment in the state.

-30-

### **Information About the Survey**

#### **Methodological Details**

The latest *Field Poll* survey was completed June 21-July 2, 2012 among 997 registered voters in California, including 848 voters considered likely to vote in the November 2012 election. In order to cover a broad range of issues and still minimize voter fatigue, the overall likely voter sample was divided into two random subsamples of 412 and 436 likely voters each on some questions.

Interviewing was conducted by telephone in English and Spanish using live interviewers working from Field Research Corporation's central location telephone interviewing facilities. Up to six attempts were made to reach, screen and interview each randomly selected voter on different days and times of day during the interviewing period.

Interviewing was completed on either a voter's landline phone or a cell phone depending on the source of the telephone listing from the voter file. In this survey 745 interviews were derived from landline sample listings and 252 from cell phone listings. After the completion of interviewing, the overall registered voter sample was weighted to *Field Poll* estimates of the characteristics of the registered voter population in California.

Sampling error estimates applicable to the results of any probability-based survey depend on sample size as well as the percentage distribution being examined. The maximum sampling error for results based on the overall likely voter sample is +/- 3.5 percentage points at the 95% confidence level, while findings based on each random subsample have a maximum sampling error of +/- 4.9 percentage points. The maximum sampling error is based on results in the middle of the sampling distribution (i.e., percentages at or near 50%). Percentages at either end of the distribution (those closer to 10% or 90%) have a smaller margin of error. There are other potential sources of error in surveys besides sampling error. However, the overall design and execution of the survey sought to minimize these other errors.

*The Field Poll* was established in 1947 as *The California Poll* by Mervin Field, who is still an active advisor. The *Poll* has operated continuously since then as an independent, non-partisan survey of California public opinion. The *Poll* receives annual funding from media subscribers of *The Field Poll*, from several California foundations, and the University of California and California State University systems, who receive the data files from each *Field Poll* survey shortly after its completion for teaching and secondary research purposes.

### Questions Asked

There will be a number of different tax-related propositions on the November statewide election ballot. I am going to read some of them, and please tell me whether you would be inclined to vote yes or no on each.

One proposition is called the "Temporary Taxes to Fund Education, Guaranteed Local Public Safety Funding Initiative." It increases personal income taxes on annual earnings over 250 thousand dollars for seven years and increases sales and use taxes by one-quarter cent for four years. It allocates temporary tax revenues of 89 percent to the K-12 schools and 11 percent to community colleges. It bars use of funds for administrative costs, but provides local school governing boards discretion to decide how funds are to be spent. It guarantees funding for public safety services realigned from state to local governments. Fiscal impact: Increased state revenues over seven years, with estimates varying from 6.8 to 9 billion dollars for 2012-13 and 5.4 to 7.6 billion on average the following five years, with lesser amounts in 2018-19 to pay for school and community college funding requirements and address the state's budgetary problem. If the election were being held today, would you vote yes or no on this proposition?

Another proposition is called the "Tax for Education and Early Childhood Programs Initiative." It increases personal income tax rates for individuals earning over 7,316 dollars using a sliding scale from zero point four percent for the lowest earners to two point two percent for individuals earning over 2.5 million dollars, ending after 12 years. During the first four years 60 percent of revenues go to the K-12 schools, 30 percent to repaying state debt and 10 percent to early childhood programs. Thereafter, it allocates 85% to the k-12 schools and 15% to early childhood programs. It prohibits the state from directing or using new funds. Fiscal impact: Increased state personal income tax revenues beginning in 2013 and ending in 2024. Estimates of revenue increases vary from 10 to 11 billion dollars per year initially, tending to increase over time. The 2012-13 revenue increase would be about half this amount. If the election were being held today, would you vote yes or no on this proposition?\*

Another proposition is called the "Tax Treatment for Multi-state Businesses, Clean Energy and Energy Efficiency Funding Initiative." It requires multi-state businesses to calculate their California income tax liability based on the percentage of their sales in the state and repeals existing law giving them an option to choose a tax liability formula that provides favorable tax treatment for businesses with property and payroll outside California. It dedicates 550 million dollars of its revenue for five years to fund projects that create energy efficiency and clean energy jobs in California. Fiscal impact: Approximately 500 million dollars in additional state General Fund revenues in 2012-13 and 1 billion dollars each year thereafter with about half of the additional revenues supporting energy efficiency and alternative energy projects. If the election were being held today, would you vote yes or no on this proposition?\*

Nine billion dollars in state bonds were approved by California voters for the high-speed rail project in the November 2008 election. Suppose that 9 billion dollars in state bonds for the California high-speed rail project were put before voters again in another statewide election ballot. If the election were being held today, would you vote Yes to approve or No to reject this bond package?\*

If the legislature were to approve initial state funding for the high-speed rail project this year, would this make you more likely or less likely to support Governor Brown's tax increase initiative in the November general election or wouldn't this make any difference to you?\*

\* Asked of a random subsample of voters.

July 18, 2012



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To: CSAC Government Finance and Operations Policy Committee

From: Jean Kinney Hurst, CSAC Senior Legislative Representative  
Geoffrey Neill, CSAC Senior Legislative Analyst

Re: **Proposition 31 – ACTION ITEM**

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**Recommendation:** Adopt and forward a **SUPPORT** position for **Proposition 31 to the CSAC Executive Committee.**

**Overview.** This memo is intended to provide the relevant information to the CSAC Government Finance and Operations policy committee to assist in considering a **SUPPORT** position for Proposition 31.

Proposition 31 is promoted by the California Forward Action Fund, which, along with California Forward, has been working on far-reaching reforms to state and local governance for a number of years. During that time, the group has sought the input of a broad range of Californians, including many local officials and many interested citizens and community groups.

**Policy.** Chapter 1 of the CSAC Platform, aside from several references to local control generally, has language about "permit[ting] county government the flexibility to provide services and facilities in a manner that resolves day-to-day problems communities face." The Platform also encourages counties, cities, and special districts to "adopt formal policies that encourage locally initiated solutions to regional problems" (Chapter 1, Section 3).

Chapter 9, Section 2D of the Platform refers to counties being able to streamline or eliminate unnecessary administrative requirements, reduce or eliminate regulations that control implementation of state-mandated programs, and have greater program flexibility to meet individual county needs.

If the Community Strategic Action Plans authorized by Proposition 31 work as intended, they will achieve these goals for counties.

The Platform is silent on the subject of performance-based budgeting, but that part of Proposition 31 could be construed as thwarting local control to the extent counties may not choose whether to make the types of statements in their budgets that the measure would require. Many county budgets likely already adhere to the minimum requirements of this section.

For these reasons, the intent of Proposition 31 largely aligns with CSAC policy.

**Process.** In accordance with the State Ballot Proposition Policy found in the CSAC Policy and Procedures Manual (page 12), the officers referred the measure to this policy committee. The policy committee will then forward its recommendation to the CSAC Executive Committee for a recommendation to the full CSAC Board of Directors. The Board of Directors will consider those recommendations and adopt a position on the measure at its regularly scheduled meeting on September 6. The state's General Election will be held two months later, on November 6, 2012.

**Recommendation:** For the reasons stated above, staff recommends that the CSAC Government Finance and Operations policy committee adopt and forward to the CSAC Executive Committee a **SUPPORT position** Proposition 31.

#### **Attachments**

- I. CSAC summary of Proposition 31
- II. Legislative Analyst's Office summary and fiscal analysis
- III. California Forward outline
- IV. Text of the measure

## CSAC Summary of Proposition 31

### Changes to the State Budget Process

- All bills must be in print for at least three days before the Legislature can pass it, except in a special session responding to a natural disaster or terrorist attack.
- If the cost of implementing a bill, including the budget bill, exceeds \$25 million in any fiscal year (adjusted annually for inflation), whether by increasing a program or decreasing revenue, that bill is void unless that bill or another bill provides offsetting savings or revenue. Exceptions:
  - o Restoring funding for cuts made after 2008-09.
  - o Increases to fund existing statutory responsibilities, including increases due to cost of living or workload.
  - o Growth in state funding for a program as required by federal law.
  - o Funding to cover one-time expenditures.
  - o Funding for state mandates.
  - o Payments for principal or interest payments on state general obligation bonds.
- Disallows bills from being introduced in the second year of session that are substantially similar to bills not passed by the house of origin the previous year.

### *Biennial Budget*

- Governor proposes budget in odd years:
  - o Must identify 1-time resources.
  - o May submit supplemental budget in even years to amend or augment.
  - o Must include revenue and expenditure estimates for the following three years.
  - o Must include statutory changes and five-year infrastructure plan and strategic growth plan.
  - o Must include statement of how the budget promotes the achievement of the major purposes and goals of government.
    - The major purposes of government are defined as: achieving a prosperous economy, quality environment, and community equity. Those purposes are promoted by working to achieve the following goals: increasing employment, improving education, decreasing poverty, decreasing crime, and improving health.
  - o Must include outcome measures to assess progress.
  - o Must evaluate effectiveness at achieving the major goals of government according to outcome measures.
  - o Recommended reductions and revenues must include analysis of economic impact.
- By May 1 each year, committees must have considered the budget bill and it must be referred to a joint committee of the Legislature for review, which must report its recommendations to each house by June 1.

- Department of Finance must update revenue and expenditure estimates by May 15 and immediately prior to passage of the budget bill or supplemental budget. They must also, by November 30, update actual revenues and expenditures compared to the budget.
- The state's performance-based budgeting must be fully implemented by 2015-16.
- The Legislature must pass budget and related appropriation bills by June 15.
- Appropriations for the second year may not be spent in the budget year.
- The budget bill must include the basis for General Fund revenue estimates and an explanation of any difference from previous years.

### *Oversight*

- Disallows the Legislature from passing bills after June 30 in the second year of a two-year session, except bills taking effect immediately. The current cutoff date is September 1.
- Reserves the period after July 4 of the second year of session for program oversight and review.
- Requires the Legislature to establish an oversight process for state funded programs based on performance standards set for in statute and in the Budget Act.
- The review process must result in recommendations in the form of proposed legislation that improves or terminates programs. Each program must be reviewed at least every five years.
- The oversight process must include review of the Community Strategic Action Plans (see below), to 1) determine whether statutes and regulations identified by local agencies as obstacles should be amended or repealed and 2) whether the Action Plans have improved services.

### *Addressing Fiscal Emergencies*

- Bills addressing a declared fiscal emergency and passed in the special session called for that purpose take effect immediately. Majority-vote okay for non-tax measures.
- If the Legislature does not send the Governor a bill addressing the emergency within 45 days, the Governor may reduce or eliminate General Fund appropriations not required by the Constitution or federal law, not to exceed the size of the identified shortfall.
- The Legislature may override all or part of the Governor's reductions with a two-thirds vote.

### Changes to the Local Budget Process

- Local budgets must include the following, as they apply to the entity's powers and duties:
  - o A statement of how it will promote the major purposes and goals of government, as applicable to the entity's functions, role, and locally determined priorities.
    - The major purposes of government are defined as: achieving a prosperous economy, quality environment, and community equity. Those purposes are promoted by working to achieve the following goals: increasing employment, improving education, decreasing poverty, decreasing crime, and improving health.
  - o A description of the outcome measures used to assess progress to the goals above.

- A statement of the outcome measurements for major expenditures and their relationship to the goals above.
- A statement of how the entity will align its expenditures and investments to achieve the goals above.
- A report on progress toward achieving the goals above, including the outcome measurements from the previous year's budget.
- Local budget processes must be open and transparent, including the identification of the goals above.

### Community Strategic Action Plans

#### *Development of a Plan*

- A county Board of Supervisors may initiate the development of a Community Strategic Action Plan. They must invite all other local entities within the county whose functions are within the anticipated scope of the Plan.
- Any local entity may petition the county to initiate a Plan, to be included in the planning process of a Plan, or to amend a Plan.
- The Plan must be developed through an open, transparent, inclusive process.
- The Plan must include:
  - The outcomes desired by participating agencies and how they will be measured.
  - A method for regularly reporting outcomes to the public and the state.
  - An outline of how the Plan will achieve the major purposes and goals defined above.
  - A description of the public services delivered pursuant to the Plan and the roles and responsibilities of the participating entities.
  - An explanation of why the Plan will allow those services to be delivered more effectively and efficiently.
  - An allocation of resources to support the Plan.
  - A consideration of disparities within communities served by the Plan.
  - An explanation of how the Plan is consistent with the budgets of entities participating in the Plan.
- The Plan, including any amendments, must be approved by the county, by local entities providing the Plan's municipal services to at least a majority of the county's population, and one or more school districts serving at least a majority of the county's public school pupils.
- The Plan would not apply to any entity that does not approve it.
- Parties to a Plan may identify state statutes and regulations impeding progress toward the Plan's goals and include in the Plan functional equivalents to the objectives of those statutes and regulations.
- Parties to a Plan that identifies such statutes must submit their Plan to the Legislature. If the Legislature does not act to disapprove the provisions within 60 days, the provisions will be operative for four years.



- Parties to a Plan that identifies such regulations must do the same as above but to the appropriate agency or department, which is subject to the same 60-day review period.

#### *Funding of Plans*

- Sales and use taxes attributable to a rate of 0.035 percent are placed in a continuously appropriated trust fund.
- In the first quarter of each fiscal year beginning in 2014-15, the Controller shall distribute the trust fund to each county that has adopted a Plan, according to population served by the Plans.

#### *Oversight of Plans*

- Counties with Plans must evaluate their effectiveness at least every four years.

December 14, 2011

Hon. Kamala D. Harris  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Dawn McFarland  
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional amendment related to the state legislative and budgeting process and local finance (A.G. File No. 11-0068).

## BACKGROUND

***State Budget Process.*** Under the California Constitution, the Legislature has the power to appropriate state funds and make midyear adjustments to those appropriations. The annual state budget act is the Legislature's primary method of authorizing expenses for a particular fiscal year. The Constitution requires that (1) the Governor propose a balanced budget by January 10 for the next fiscal year (beginning July 1) and (2) the Legislature pass the annual budget act by June 15. The Governor may then either sign or veto the budget bill. The Governor also may reduce or eliminate specific appropriations items using his or her "line-item veto" power. The Legislature may override a veto with a two-thirds vote in each house. Once the budget has been approved by the Legislature and Governor, the Governor has limited authority to reduce spending during the year without legislative approval.

***State Fiscal Emergencies.*** The Governor has the power to declare a fiscal emergency if he or she determines after the budget has been enacted that the state is facing substantial revenue shortfalls or spending overruns. In such cases, the Governor must propose legislation to address the fiscal emergency and call the Legislature into special session. If the Legislature fails to pass and send to the Governor legislation to address the budget problem within 45 days, it is prohibited from (1) acting on any other bills or (2) adjourning until such legislation is passed.

***State Appropriations Process.*** The Legislature may enact laws that create or expand state programs or reduce state tax revenues. Any new law that has a state fiscal effect typically is referred to a committee in each house of the Legislature called the Appropriations

Committee. These committees assess the likely fiscal effect of the legislation and decide whether to recommend the passage of the legislation by each house.

## **PROPOSAL**

This measure amends the Constitution to:

- Constrain the Legislature's authority to enact laws that increase state costs or decrease state revenues by more than \$25 million annually.
- Expand the Governor's authority to implement midyear reductions to appropriations in the state budget.
- Shift state funds to local governments for the purpose of implementing new "Community Strategic Action Plans."
- Modify state and local government budget practices.

### **Constrains the Legislature's Authority to Increase State Costs or Decrease Revenues**

The measure contains provisions that constrain the Legislature's authority to (1) create or expand state programs or (2) reduce state revenues if the fiscal effect of these actions on the state would exceed \$25 million annually. In order to enact legislation containing program expansions or revenue reductions valued at more than \$25 million, lawmakers generally would have to approve legislation containing revenue increases or cost reductions to offset the net change in state costs or revenues. The \$25 million threshold would be adjusted annually for inflation.

### **Authorizes the Governor to Reduce Spending in the Budget**

The measure provides that if the Legislature has not sent bills to the Governor addressing a fiscal emergency by the 45<sup>th</sup> day following the issuance of the fiscal emergency proclamation, the Governor may reduce or eliminate any appropriation contained in the budget act for that fiscal year that is not otherwise required by the Constitution or federal law. The total amount reduced cannot exceed the amount necessary to balance the budget. The Legislature may override all or part of the reductions by a two-thirds vote of each house of the Legislature.

### **Shifts State Funds to Local Governments to Implement New Plans**

Under the measure, every county and any local government (school district, community college district, city, and special district) within its borders could create a joint Community Strategic Action Plan (CSAP) for the purpose of providing services identified by the plan. Local governments that choose to participate in a CSAP would (1) receive additional funding from the state, (2) be authorized to reallocate local property taxes among participating local governments, and (3) be given limited authority to follow locally adopted procedures that are not fully consistent with state laws and regulations. Specifically:

- ***Shift of State Revenues.*** The measure creates the Performance and Accountability Trust Fund in the State Treasury to provide state resources for implementation of CSAPs. Beginning in 2013-14, the measure shifts 0.035 percent of the state sales tax rate to the Performance and Accountability Trust Fund and requires the state General Fund to backfill any reduced revenue to the fund if the state sales tax is reduced in the future. The revenue deposited in the Performance and Accountability Trust Fund would be allocated to local governments with approved CSAPs on a per capita basis.
- ***Reallocate Property Tax.*** The measure permits local governments participating in the CSAP to reallocate their property taxes among themselves if the reallocation is approved by a two-thirds vote of the governing bodies of each of the local governments affected by the reallocation.

***Increased Flexibility in Program Administration.*** The measure allows CSAPs to include certain provisions that otherwise would be contrary to existing state laws and regulations but that are “functionally equivalent” to the objectives of those laws or regulations. The local governments would be required to submit these provisions to the Legislature (in the case of state laws) or appropriate state agency (in the case of state regulations) for review. If the Legislature or agency does not act to reject the CSAP provisions, those provisions would be deemed to be in compliance with state laws and regulations. These local CSAP provisions would expire after four years unless renewed through the same process.

### **State and Local Government Budgeting Practices**

The measure makes various changes to state and local budgeting practices and other procedures, including:

- ***Two-Year State Budget Cycle.*** Under this measure, in each odd numbered calendar year the Governor would submit a budget proposal for the two subsequent fiscal years. For example, in January 2013 the Governor would submit a budget for the fiscal year beginning in July 2013 and for the fiscal year beginning in July 2014. In even numbered years, the Governor could submit an update for either of the two years covered by the previous submission.
- ***Performance Standards for State Programs.*** This measure contains several provisions amending the Constitution to establish a process to review the performance of state programs. Under the proposal, the Governor would be required to include certain information as part of the budget released every two years, including a statement of how the budget will achieve specified statewide goals, a statement of outcome measures by which to evaluate state agencies and programs, and a report on the state’s progress in meeting statewide goals.
- ***Legislative Oversight.*** The measure changes the legislative calendar and reserves part of each legislative biennium—beginning in July of the second year of the biennium—

for legislative oversight and review of state programs. The measure requires the Legislature to create an oversight process and use this process to review every state program, whether managed by the state or local governments, at least once every five years.

- ***Legislative Process and Calendar.*** The proposal amends a provision of the Constitution related to when legislative bills must be in print. The Constitution currently requires that bills be in print and distributed to Members of the Legislature before they can be passed. This proposal amends the Constitution to require that bills generally be in print and be available to the public for three days before passage.
- ***Local Government Performance Information.*** The measure requires that each local government provide certain information as part of their adopted budgets. This information includes statements regarding how the budget will promote specified goals and priorities, description of outcome measures to assess progress in meeting these goals, and a report on the progress in achieving these goals. The measure further requires that each local government develop and implement an open and transparent process in the development of its proposed budget.

## FISCAL EFFECT

***State Sales Tax Revenue Transfer.*** The shift of a portion of the state sales tax to the Performance and Accountability Trust Fund for local government use would reduce state revenue—and increase local revenue—by about \$200 million annually, beginning in 2013-14. The measure specifies that any increased revenues allocated to schools as a result of this measure would not reduce their eligibility for state funds.

***Changes in Legislature's and Governor's Fiscal Authority.*** Constraining the Legislature's authority to expand programs or decrease revenues unless it adopts measures with offsetting fiscal effects could result in state program costs being lower—or state revenues being higher—than otherwise would be the case. In addition, expanding the Governor's authority to implement midyear reductions to the state budget could result in overall state spending being lower than it would have been otherwise. The net fiscal effect of these provisions is unknown, but could be significant over time.

***Changes in Budgeting Practices.*** State and local governments would have increased costs to modify their budgeting practices and provide more ongoing information regarding program outcomes. Specifically, state and local governments likely would experience increased information technology, printing, and data analysis costs. These costs would be higher initially—perhaps in the range of tens of millions of dollars annually—and then moderate over time. The compilation and analysis of this budget and performance information could lead to improved state and local government program efficiencies over time, potentially offsetting these costs.

## **SUMMARY OF FISCAL EFFECT**

This measure would have the following major fiscal effects:

- Decreased state revenues and commensurate increased local revenues, probably in the range of about \$200 million annually, beginning in 2013-14.
- Potential decreased state program costs or increased state revenues resulting from changes in the fiscal authority of the Legislature and Governor.
- Increased state and local costs of tens of millions of dollars annually to implement new budgeting practices. Over time, these costs would moderate and potentially be offset by savings from improved program efficiencies.

Sincerely,

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Mac Taylor  
Legislative Analyst

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Ana J. Matosantos  
Director of Finance

# The Government Performance and Accountability Act

Californians need to know what they are getting for their tax dollars and what government is achieving. If approved by California voters through the ballot measure process, this proposal will position both state and local governments to effectively manage California's fiscal affairs to promote concrete results Californians want and value for their tax dollars.

## Specific Provisions

### 1. Performance-Based Budgeting

State and local governments should focus on improving results. The proposal would require state and local government budgets to establish clear goals for delivering results and accountability -- focusing spending decisions on priorities, desired results, and the changes needed to improve performance.

### 2. Legislative Transparency and Oversight

The state needs a stable budget-making process to help communities reach their goals. The proposal would make all bills available to the public three days before a vote to preclude "gut and amend" bills, ending the practice of bypassing public hearings for controversial legislation. The Department of Finance would also be required to update fiscal information three times per year.

### 3. Pay-As-You-Go

Lawmakers should be required to identify ways to pay for major policy choices, rather than putting all programs at risk of being cut in future years. The proposal requires major new programs and tax cuts costing \$25 million or more to have a clearly identified funding source before they are enacted.

### 4. Multi-Year Budgets With Greater Accountability

To reduce the perennial uncertainty of the state's current short-term budget-making practices, the proposal would require the state to enact two-year budgets. It would limit the period during which bills can be heard (with an exception for bills addressing emergencies), and require a portion of the legislative session to be dedicated to program performance reviews. All programs would be reviewed at least once every 5 years. The proposal also would require the state to prepare and make public five-year forecasts before approving the budget, to act quickly when the budget falls out of balance, and to make budget negotiations more transparent.

## **5. Community-Driven Problem Solving**

To improve performance at the local level, communities will need more flexibility to tailor programs to meet local needs. Through "Community Strategic Action Plans," the proposal would give local governments the incentives and authority to design programs that work together to improve results. Cities, counties, school districts and special districts would identify common goals -- such as improving outcomes for youth -- and how they would coordinate actions to cost-effectively achieve them.

These plans also would identify state laws or regulations that prevent local governments from efficiently and effectively providing services, and include a local method for achieving the state objective. The proposal would also give local governments the ability to reallocate local sales and property taxes (other than those allocated to schools), and provide incentive funding from the state.

### ***What this means for Californians...***

- Policy, program, and fiscal decisions by the state and local governments will be driven by performance data on what is working, what isn't, and an awareness of the long-term fiscal impact of alternative approaches.
- Community Strategic Action Plans will allow local governments to achieve local priorities in a collaborative, inclusive and cost-effective way while permitting significantly greater flexibility in how participating local jurisdictions allocate resources and meet statewide requirements.
- Californians will have more opportunities to inform decisions affecting their communities, they will have more information about the job performance of their elected representatives, and they will have the opportunity to see results where they live that are a direct consequence of their participation.



RECEIVED

NOV 03 2011

November 1, 2011

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

**VIA MESSENGER**

Office of the Attorney General  
1300 "I" Street  
Sacramento, CA 95814

Attention: Dawn McFarland

Re: *The Government Performance and Accountability Act*

Dear Ms. McFarland:

Pursuant to Elections Code section 9001(a), we request that the Attorney General prepare a title and summary of a measure entitled "The Government Performance and Accountability Act." The text of the measure, a check for \$200.00, the addresses at which we are registered to vote and the certifications required by Elections Code sections 9001(b) and 9608 are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

Robin B. Johansen  
James C. Harrison  
Remcho, Johansen & Purcell, LLP  
201 Dolores Avenue  
San Leandro, CA 94577  
Phone: (510) 346-6200  
Fax: (510) 346-6201

Sincerely,



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November 3, 2011

**VIA MESSENGER**

Office of the Attorney General  
1300 "T" Street  
Sacramento, CA 95814

Attention: Dawn McFarland

Re: *The Government Performance and Accountability Act*

Dear Ms. McFarland:

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Fax: (510) 346-6201

Sincerely,



Enclosures  
(00156289)

**The Government Performance and Accountability Act**

**SECTION ONE. Findings and Declarations.**

The People of the State of California hereby find and declare that government must be:

1. **Trustworthy.** California government has lost the confidence of its citizens and is not meeting the needs of Californians. Taxpayers are entitled to a higher return on their investment and the public deserves better results from government services.
2. **Accountable for Results.** To restore trust, government at all levels must be accountable for results. The people are entitled to know how tax dollars are being spent and how well government is performing. State and local government agencies must set measurable outcomes for all expenditures and regularly and publicly report progress toward those outcomes.
3. **Cost-Effective.** California must invest its scarce public resources wisely to be competitive in the global economy. Vital public services must therefore be delivered with increasing effectiveness and efficiency.
4. **Transparent.** It is essential that the public's business be public. Honesty and openness promote and preserve the integrity of democracy and the relationship between the people and their government.
5. **Focused on Results.** To improve results, public agencies need a clear and shared understanding of public purpose. With this measure, the people declare that the purpose of state and local governments is to promote a prosperous economy, a quality environment, and community equity. These purposes are advanced by achieving at least the following goals: increasing employment, improving education, decreasing poverty, decreasing crime, and improving health.
6. **Cooperative.** To make every dollar count, public agencies must work together to reduce bureaucracy, eliminate duplication, and resolve conflicts. They must integrate services and adopt strategies that have been proven to work and can make a difference in the lives of Californians.
7. **Closer to the People.** Many governmental services are best provided at the local level, where public officials know their communities and residents have access to elected officials. Local governments need the flexibility to tailor programs to the needs of their communities.

8. **Supportive of Regional Job Generation.** California is composed of regional economies. Many components of economic vitality are best addressed at the regional scale. The State is obliged to enable and encourage local governments to collaborate regionally to enhance the ability to attract capital investment into regional economies to generate well-paying jobs.
9. **Willing to Listen.** Public participation is essential to ensure a vibrant and responsive democracy and a responsive and accountable government. When government listens, more people are willing to take an active role in their communities and their government.
10. **Thrifty and Prudent.** State and local governments today spend hundreds of millions of dollars on budget processes that do not tell the public what is being accomplished. Those same funds can be better used to develop budgets that link dollars to goals and communicate progress toward those goals, which is a primary purpose of public budgets.

## **SECTION TWO. Purpose and Intent.**

In enacting this measure, the People of the State of California intend to:

1. Improve results and accountability to taxpayers and the public by improving the budget process for the State and local governments with existing resources.
2. Make state government more efficient, effective, and transparent through a state budget process that does the following:
  - a. Focuses budget decisions on what programs are trying to accomplish and whether progress is being made.
  - b. Requires the development of a two-year budget and a review of every program at least once every five years to make sure money is well spent over time.
  - c. Requires major new programs and tax cuts to have clearly identified funding sources before they are enacted.
  - d. Requires legislation -- including the Budget Act -- to be public for three days before lawmakers can vote on it.
3. Move government closer to the people by enabling and encouraging local governments to work together to save money, improve results, and restore accountability to the public through the following:

- a. Focusing local government budget decisions on what programs are trying to accomplish and whether progress is being made.
  - b. Granting counties, cities, and schools the authority to develop, through a public process, a Community Strategic Action Plan for advancing community priorities that they cannot achieve by themselves.
  - c. Granting local governments that approve an Action Plan flexibility in how they spend state dollars to improve the outcomes of public programs.
  - d. Granting local governments that approve an Action Plan the ability to identify state statutes or regulations that impede progress and a process for crafting a local rule for achieving a state requirement.
  - e. Encouraging local governments to collaborate to achieve goals more effectively addressed at a regional scale.
  - f. Providing some state funds as an incentive to local governments to develop Action Plans.
  - g. Requiring local governments to report their progress annually and evaluate their efforts every four years as a condition of continued flexibility – thus restoring accountability of local elected officials to local voters and taxpayers.
4. Involve the people in identifying priorities, setting goals, establishing measurements of results, allocating resources in a budget, and monitoring progress.
  5. Implement the budget reforms herein using existing resources currently dedicated to the budget processes of the State and its political subdivisions without significant additional funds. Further, establish the Performance and Accountability Trust Fund from existing tax bases and revenues. No provision herein shall require an increase in any taxes or modification of any tax rate or base.

**SECTION THREE. Section 8 of Article IV of the California Constitution is hereby amended to read:**

SEC. 8. (a) At regular sessions no bill other than the budget bill may be heard or acted on by committee or either house until the 31st day after the bill is introduced unless the house dispenses with this requirement by rollcall vote entered in the journal, three fourths of the membership concurring.

(b) The Legislature may make no law except by statute and may enact no statute except by bill. No bill may be passed unless it is read by title on 3 days in each house except that the house may dispense with this requirement by rollcall vote entered in the journal, two thirds of the membership concurring. No bill other than a bill containing an urgency clause that is passed in a special session called by the Governor to address a state of emergency declared by the Governor arising out of a natural disaster or a terrorist attack may be passed until the bill with amendments has been in printed and distributed to the members and available to the public for at least 3 days. No bill may be passed unless, by rollcall vote entered in the journal, a majority of the membership of each house concurs.

(c) (1) Except as provided in paragraphs (2) and (3) of this subdivision, a statute enacted at a regular session shall go into effect on January 1 next following a 90-day period from the date of enactment of the statute and a statute enacted at a special session shall go into effect on the 91st day after adjournment of the special session at which the bill was passed.

(2) A statute, other than a statute establishing or changing boundaries of any legislative, congressional, or other election district, enacted by a bill passed by the Legislature on or before the date the Legislature adjourns for a joint recess to reconvene in the second calendar year of the biennium of the legislative session, and in the possession of the Governor after that date, shall go into effect on January 1 next following the enactment date of the statute unless, before January 1, a copy of a referendum petition affecting the statute is submitted to the Attorney General pursuant to subdivision (d) of Section 10 of Article II, in which event the statute shall go into effect on the 91st day after the enactment date unless the petition has been presented to the Secretary of State pursuant to subdivision (b) of Section 9 of Article II.

(3) Statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes shall go into effect immediately upon their enactment.

(d) Urgency statutes are those necessary for immediate preservation of the public peace, health, or safety. A statement of facts constituting the necessity shall be set forth in one section of the bill. In each house the section and the bill shall be passed separately, each

by rollcall vote entered in the journal, two thirds of the membership concurring. An urgency statute may not create or abolish any office or change the salary, term, or duties of any office, or grant any franchise or special privilege, or create any vested right or interest.

**SECTION FOUR. Section 9.5 is hereby added to Article IV of the California Constitution to read:**

SEC. 9.5. A bill passed by the Legislature that (1) establishes a new state program, including a state-mandated local program described in Section 6 of Article XIII B, or a new agency, or expands the scope of such an existing state program or agency, the effect of which would, if funded, be a net increase in state costs in excess of twenty-five million dollars (\$25,000,000) in that fiscal year or in any succeeding fiscal year, or (2) reduces a state tax or other source of state revenue, the effect of which will be a net decrease in state revenue in excess of twenty-five million dollars (\$25,000,000) in that fiscal year or in any succeeding fiscal year, is void unless offsetting state program reductions or additional revenue, or a combination thereof, are provided in the bill or another bill in an amount that equals or exceeds the net increase in state costs or net decrease in state revenue. The twenty-five million dollar (\$25,000,000) threshold specified in this section shall be adjusted annually for inflation pursuant to the California Consumer Price Index.

**SECTION FIVE. Section 10 of Article IV of the California Constitution is hereby amended to read:**

SEC. 10. (a) Each bill passed by the Legislature shall be presented to the Governor. It becomes a statute if it is signed by the Governor. The Governor may veto it by returning it with any objections to the house of origin, which shall enter the objections in the journal and proceed to reconsider it. If each house then passes the bill by rollcall vote entered in the journal, two-thirds of the membership concurring, it becomes a statute.

(b) (1) Any bill, other than a bill which would establish or change boundaries of any legislative, congressional, or other election district, passed by the Legislature on or before the date the Legislature adjourns for a joint recess to reconvene in the second calendar year of the biennium of the legislative session, and in the possession of the Governor after that date, that is not returned within 30 days after that date becomes a statute.

(2) Any bill passed by the Legislature before June 30 of the second calendar year of the biennium of the legislative session and in the possession of the Governor on or after June 30 that is not returned on or before July 31 of that year becomes a statute. In addition, any bill passed by the Legislature before September 1 of the second calendar year of the biennium of the legislative session and in the possession of the Governor on or after

September 1 that is not returned on or before September 30 of that year becomes a statute.

(3) Any other bill presented to the Governor that is not returned within 12 days becomes a statute.

(4) If the Legislature by adjournment of a special session prevents the return of a bill with the veto message, the bill becomes a statute unless the Governor vetoes the bill within 12 days after it is presented by depositing it and the veto message in the office of the Secretary of State.

(5) If the 12th day of the period within which the Governor is required to perform an act pursuant to paragraph (3) or (4) of this subdivision is a Saturday, Sunday, or holiday, the period is extended to the next day that is not a Saturday, Sunday, or holiday.

(c)(1) Any bill introduced during the first year of the biennium of the legislative session that has not been passed by the house of origin by January 31 of the second calendar year of the biennium may no longer be acted on by the house. No bill may be passed by either house on or after ~~September 1 of an even-numbered year~~ June 30 of the second year of the biennium ~~except statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes, bills that take effect immediately, and bills passed after being vetoed by the Governor.~~

(2) No bill may be introduced or considered in the second year of the biennium that is substantially the same and has the same effect as any introduced or amended version of a measure that did not pass the house of origin by January 31 of the second calendar year of the biennium as required in paragraph (1).

(d)(1) The Legislature may not present any bill to the Governor after November 15 of the second calendar year of the biennium of the legislative session. On the first Monday following July 4 of the second year of the biennium, the Legislature shall convene, as part of its regular session, to conduct program oversight and review. The Legislature shall establish an oversight process for evaluating and improving the performance of programs undertaken by the State or by local agencies implementing state-funded programs on behalf of the State based on performance standards set forth in statute and in the biennial Budget Act. Within one year of the effective date of this provision, a review schedule shall be established for all state programs whether managed by a state or local agency implementing state-funded programs on behalf of the State. The schedule shall sequence the review of similar programs so that relationships among program objectives can be identified and reviewed. The review process shall result in recommendations in the form of proposed legislation that improves or terminates programs. Each program shall be reviewed at least once every five years.



(2) The process established for program oversight under paragraph (1) shall also include a review of Community Strategic Action Plans adopted pursuant to Article XI A for the purpose of determining whether any state statutes or regulations that have been identified by the participating local government agencies as state obstacles to improving results should be amended or repealed as requested by the participating local government agencies based on a review of at least three years of experience with the Community Strategic Action Plans. The review shall assess whether the Action Plans have improved the delivery and effectiveness of services in all parts of the community identified in the plan.

(e) The Governor may reduce or eliminate one or more items of appropriation while approving other portions of a bill. The Governor shall append to the bill a statement of the items reduced or eliminated with the reasons for the action. The Governor shall transmit to the house originating the bill a copy of the statement and reasons. Items reduced or eliminated shall be separately reconsidered and may be passed over the Governor's veto in the same manner as bills.

(f) (1) If, following the enactment of the budget bill for the 2004-05 fiscal year or any subsequent fiscal year, the Governor determines that, for that fiscal year, General Fund revenues will decline substantially below the estimate of General Fund revenues upon which the budget bill for that fiscal year, as enacted, was based, or General Fund expenditures will increase substantially above that estimate of General Fund revenues, or both, the Governor may issue a proclamation declaring a fiscal emergency and shall thereupon cause the Legislature to assemble in special session for this purpose. The proclamation shall identify the nature of the fiscal emergency and shall be submitted by the Governor to the Legislature, accompanied by proposed legislation to address the fiscal emergency. In response to the Governor's proclamation, the Legislature may present to the Governor a bill or bills to address the fiscal emergency.

(2) If the Legislature fails to pass and send to the Governor a bill or bills to address the fiscal emergency by the 45th day following the issuance of the proclamation, the Legislature may not act on any other bill, nor may the Legislature adjourn for a joint recess, until that bill or those bills have been passed and sent to the Governor.

(3) A bill addressing the fiscal emergency declared pursuant to this section shall contain a statement to that effect. For purposes of paragraphs (2) and (4), the inclusion of this statement shall be deemed to mean conclusively that the bill addresses the fiscal emergency. A bill addressing the fiscal emergency declared pursuant to this section that contains a statement to that effect, and is passed and sent to the Governor by the 45th day following the issuance of the proclamation declaring the fiscal emergency, shall take effect immediately upon enactment.

(4) (A) If the Legislature has not passed and sent to the Governor a bill or bills to address a fiscal emergency by the 45th day following the issuance of the proclamation declaring the fiscal emergency, the Governor may, by executive order, reduce or eliminate any existing General Fund appropriation for that fiscal year to the extent the appropriation is not otherwise required by this Constitution or by federal law. The total amount of appropriations reduced or eliminated by the Governor shall be limited to the amount necessary to cause General Fund expenditures for the fiscal year in question not to exceed the most recent estimate of General Fund revenues made pursuant to paragraph (1).

(B) If the Legislature is in session, it may, within 20 days after the Governor issues an executive order pursuant to subparagraph (A), override all or part of the executive order by a rollcall vote entered in the journal, two-thirds of the membership of each house concurring. If the Legislature is not in session when the Governor issues the executive order, the Legislature shall have 30 days to reconvene and override all or part of the executive order by resolution by the vote indicated above. An executive order or a part thereof that is not overridden by the Legislature shall take effect the day after the period to override the executive order has expired. Subsequent to the 45th day following the issuance of the proclamation declaring the fiscal emergency, the prohibition set forth in paragraph (2) shall cease to apply when (i) one or more executive orders issued pursuant to this paragraph have taken effect, or (ii) the Legislature has passed and sent to the Governor a bill or bills to address the fiscal emergency.

(C) A bill to restore balance to the budget pursuant to subparagraph (B) may be passed in each house by rollcall vote entered in the journal, a majority of the membership concurring, to take effect immediately upon being signed by the Governor or upon a date specified in the legislation, provided, however, that any bill that imposes a new tax or increases an existing tax must be passed by a two-thirds vote of the members of each house of the Legislature.

**SECTION SIX. Section 12 of Article IV of the California Constitution is hereby amended to read:**

**SEC. 12. (a) (1)** Within the first 10 days of each odd-numbered calendar year, the Governor shall submit to the Legislature, with an explanatory message, a budget for the ensuing two fiscal years, containing itemized statements for recommended state expenditures and estimated total state revenues resources available to meet those expenditures. The itemized statement of estimated total state resources available to meet recommended expenditures submitted pursuant to this subdivision shall identify the amount, if any, of those resources that are anticipated to be one-time resources. The two-year budget, which shall include a budget for the budget year and a budget for the succeeding fiscal year, shall be known collectively as the biennial budget. Within the

first 10 days of each even-numbered year, the Governor may submit a supplemental budget to amend or augment the enacted biennial budget.

(b) The biennial budget shall contain all of the following elements to improve performance and accountability:

- (1) An estimate of the total resources available for the expenditures recommended for the budget year and the succeeding fiscal year.
- (2) A projection of anticipated expenditures and anticipated revenues for the three fiscal years following the fiscal year succeeding the budget year.
- (3) A statement of how the budget will promote the purposes of achieving a prosperous economy, quality environment, and community equity, by working to achieve at least the following goals: increasing employment; improving education; decreasing poverty; decreasing crime; and improving health.
- (4) A description of the outcome measures that will be used to assess progress and report results to the public and of the performance standards for state agencies and programs.
- (5) A statement of the outcome measures for each major expenditure of state government for which public resources are proposed to be appropriated in the budget and their relationship to the overall purposes and goals set forth in paragraph (3).
- (6) A statement of how the State will align its expenditure and investment of public resources with that of other government entities that implement state functions and programs on behalf of the State to achieve the purposes and goals set forth in paragraph (3).
- (7) A public report on progress in achieving the purposes and goals set forth in paragraph (3) and an evaluation of the effectiveness in achieving the purposes and goals according to the outcome measures set forth in the preceding year's budget.

(c) If, for the budget year and the succeeding fiscal year, collectively, recommended expenditures exceed estimated revenues, the Governor shall recommend reductions in expenditures or the sources from which the additional revenues should be provided or both. To the extent practical, the recommendations shall include an analysis of the long-term impact that expenditure reductions or additional revenues would have on the state economy. Along with the biennial budget, the Governor shall submit to the Legislature, any legislation required to implement appropriations contained in the biennial budget.

together with a five-year capital infrastructure and strategic growth plan, as specified by statute.

(d) If the Governor's budget proposes to (1) establish a new state program, including a state-mandated local program described in Section 6 of Article XIII B, or a new agency, or expand the scope of an existing state program or agency, the effect of which would, if funded, be a net increase in state costs in excess of twenty-five million dollars (\$25,000,000) in that fiscal year or in any succeeding fiscal year, or (2) reduce a state tax or other source of state revenue, the effect of which will be a net decrease in state revenue in excess of twenty-five million dollars (\$25,000,000) in that fiscal year or any succeeding fiscal year, the budget shall propose offsetting state program reductions or additional revenue, or a combination thereof, in an amount that equals or exceeds the net increase in state costs or net decrease in state revenue. The twenty-five million dollar (\$25,000,000) threshold specified in this subdivision shall annually be adjusted for inflation pursuant to the California Consumer Price Index.

(be) The Governor and the Governor-elect may require a state agency, officer or employee to furnish whatever information is deemed necessary to prepare the biennial budget and any supplemental budget.

(ef) (1) The biennial budget and any supplemental budget shall be accompanied by a budget bill itemizing recommended expenditures for the budget year and the succeeding fiscal year. A supplemental budget bill shall be accompanied by a bill proposing the supplemental budget.

(2) The budget bill and other bills providing for appropriations related to the budget bill or a supplemental budget bill, as submitted by the Governor, shall be introduced immediately in each house by the persons chairing the committees that consider the budget.

(3) On or before May 1 of each year, after the appropriate committees of each house of the Legislature have considered the budget bill, each house shall refer the budget bill to a joint committee of the Legislature, which may include a conference committee, which shall review the budget bill and other bills providing for appropriations related to the budget bill and report its recommendations to each house no later than June 1 of each year. This shall not preclude the referral of any of these bills to policy committees in addition to a joint committee.

(3)(4) The Legislature shall pass the budget bill and other bills providing for appropriations related to the budget bill by midnight on June 15 of each year. Appropriations made in the budget bill, or in other bills providing for appropriations

related to the budget bill, for the succeeding fiscal year shall not be expended in the budget year.

(4)(5) Until the budget bill has been enacted, the Legislature shall not send to the Governor for consideration any bill appropriating funds for expenditure during the ~~fiscal budget year or the succeeding fiscal year for which the budget bill is to be enacted~~, except emergency bills recommended by the Governor or appropriations for the salaries and expenses of the Legislature.

(ég) No bill except the budget bill or the supplemental budget bill may contain more than one item of appropriation, and that for one certain, expressed purpose. Appropriations from the General Fund of the State, except appropriations for the public schools and appropriations in the budget bill, the supplemental budget bill, and in other bills providing for appropriations related to the budget bill, are void unless passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring.

(eh) (1) Notwithstanding any other provision of law or of this Constitution, the budget bill, the supplemental budget bill, and other bills providing for appropriations related to the budget bill may be passed in each house by rollcall vote entered in the journal, a majority of the membership concurring, to take effect immediately upon being signed by the Governor or upon a date specified in the legislation. Nothing in this subdivision shall affect the vote requirement for appropriations for the public schools contained in subdivision (ég) of this section and in subdivision (b) of Section 8 of this article.

(2) For purposes of this section, "other bills providing for appropriations related to the budget bill or a supplemental budget bill" shall consist only of bills identified as related to the budget in the budget bill or in the supplemental budget bill passed by the Legislature.

(3) For purposes of this section, "budget bill" shall mean the bill or bills containing the budget for the budget year and the succeeding fiscal year.

(fi) The Legislature may control the submission, approval, and enforcement of budgets and the filing of claims for all state agencies.

(gi) (1) For the 2004-05 fiscal year, or any subsequent fiscal year, the Legislature ~~may~~ shall not send to the Governor for consideration, nor ~~may~~ shall the Governor sign into law, a budget bill for the budget year or for the succeeding fiscal year that would appropriate from the General Fund, for ~~that~~ each fiscal year of the biennial budget, a total amount that, when combined with all appropriations from the General Fund for that fiscal year made as of the date of the budget bill's passage, and the amount of any General Fund moneys transferred to the Budget Stabilization Account for that fiscal year pursuant

to Section 20 of Article XVI, exceeds General Fund revenues, transfers, and balances available from the prior fiscal year for that fiscal year estimated as of the date of the budget bill's passage. The estimate of General Fund revenues, transfers, and balances shall be set forth in the budget bill passed by the Legislature. The budget bill passed by the Legislature shall also contain a statement of the total General Fund obligations described in this subdivision for each fiscal year of the biennial budget, together with an explanation of the basis for the estimate of General Fund revenues, including an explanation of the amount by which the Legislature projects General Fund revenues for that fiscal year to differ from General Fund revenues for the immediately preceding fiscal year.

(hk) Notwithstanding any other provision of law or of this Constitution, including subdivision (ef) of this section, Section 4 of this article, and Sections 4 and 8 of Article III, in any year in which the budget bill is not passed by the Legislature by midnight on June 15, there shall be no appropriation from the current budget or future budget to pay any salary or reimbursement for travel or living expenses for Members of the Legislature during any regular or special session for the period from midnight on June 15 until the day that the budget bill is presented to the Governor. No salary or reimbursement for travel or living expenses forfeited pursuant to this subdivision shall be paid retroactively.

**SECTION SEVEN. Article XI A is hereby added to the California Constitution to read:**

**ARTICLE XI A. COMMUNITY STRATEGIC ACTION PLANS**

**SEC. 1. (a) Californians expect and require that local government entities publicly explain the purpose of expenditures and whether progress is being made toward their goals. Therefore, in addition to the requirements of any other provision of this Constitution, the adopted budget of each local government entity shall contain all of the following as they apply to the entity's powers and duties:**

**(1) A statement of how the budget will promote, as applicable to a local government entity's functions, role, and locally-determined priorities, a prosperous economy, quality environment, and community equity, as reflected in the following goals: increasing employment, improving education, decreasing poverty, decreasing crime, improving health, and other community priorities;**

**(2) A description of the overall outcome measurements that will be used to assess progress in all parts of the community toward the goals established by the local government entity pursuant to paragraph (1);**

(3) A statement of the outcome measurement for each major expenditure of government for which public resources are appropriated in the budget and the relationship to the overall goals established by the local government entity pursuant to paragraph (1);

(4) A statement of how the local government entity will align its expenditure and investment of public resources to achieve the goals established by the local government entity pursuant to paragraph (1); and

(5) A public report on progress in achieving the goals established by the local government entity pursuant to paragraph (1) and an evaluation of the effectiveness in achieving the outcomes according to the measurements set forth in the previous year's budget.

(b) Each local government entity shall develop and implement an open and transparent process that encourages the participation of all aspects of the community in the development of its proposed budget, including identifying community priorities pursuant to paragraph (1) of subdivision (a) of this section.

(c) This section shall become operative in the budget year of the local government entity which commences in the year 2014.

(d) The provisions of this section are self-executing and are to be interpreted to apply only to those activities over which local entities exercise authority.

SEC. 2: (a) A county, by action of the board of supervisors, may initiate the development of a Community Strategic Action Plan, hereinafter referred to as the Action Plan. The county shall invite the participation of all other local government entities within the county whose existing functions or services are within the anticipated scope of the Action Plan. Any local government entity within the county may petition the board of supervisors to initiate an Action Plan, to be included in the planning process, or to amend the Action Plan.

(b) The participating local government entities shall draft an Action Plan through an open and transparent process that encourages the participation of all aspects of the community, including neighborhood leaders. The Action Plan shall include the following:

(1) A statement that (A) outlines how the Action Plan will achieve the purposes and goals set forth in paragraphs (1) through (5), inclusive, of subdivision (a) of Section 1 of this article, (B) describes the public services that will be delivered pursuant to the Action Plan and the roles and responsibilities of the participating entities, (C) explains why those services will be delivered more effectively and

efficiently pursuant to the Action Plan, (D) provides for an allocation of resources to support the plan, including funds that may be received from the Performance and Accountability Trust Fund, (E) considers disparities within communities served by the Action Plan, and (F) explains how the Action Plan is consistent with the budgets adopted by the participating local government entities;

(2) The outcomes desired by the participating local government entities and how those outcomes will be measured; and

(3) A method for regularly reporting outcomes to the public and to the State.

(c) (1) The Action Plan shall be submitted to the governing bodies of each of the participating local government entities within the county. To ensure a minimum level of collaboration, the Action Plan must be approved by the county, local government entities providing municipal services pursuant to the Action Plan to at least a majority of the population in the county, and one or more school districts serving at least a majority of the public school pupils in the county.

(2) The approval of the Action Plan, or an amendment to the Action Plan, by a local government entity, including the county, shall require a majority vote of the membership of the governing body of that entity. The Action Plan shall not apply to any local government entity that does not approve the Action Plan as provided in this paragraph.

(d) Once an Action Plan is adopted, a county may enter into contracts that identify and assign the duties and obligations of each of the participating entities, provided that such contracts are necessary for implementation of the Action Plan and are approved by a majority vote of the governing body of each local government entity that is a party to the contract.

(e) Local government entities which have adopted an Action Plan pursuant to this section and that have satisfied the requirements of Section 3 of this article, if applicable, may integrate state or local funds that are allocated to them for the purpose of providing the services identified by the Action Plan in a manner that will advance the goals of the Action Plan.

SEC. 3. (a) If the parties to an Action Plan adopted pursuant to Section 2 of this article conclude that a state statute or regulation, including a statute or regulation restricting the expenditure of funds, impedes progress toward the goals of the Action Plan or they need additional statutory authority to implement the Action Plan, the local government entities may include provisions in the Action Plan that are functionally equivalent to the objective or objectives of the applicable statute or regulation. The provision shall include a description of the intended state objective, of how the rule is an obstacle to better



outcomes, of the proposed community rule, and how the community rule will contribute to better outcomes while advancing a prosperous economy, quality environment, and community equity. For purposes of this section, a provision is functionally equivalent to the objective or objectives of a statute or regulation if it substantially complies with the policy and purpose of the statute or regulation.

(b) The parties shall submit an Action Plan containing the functionally equivalent provisions described in subdivision (a) with respect to one or more state statutes to the Legislature during a regular or special session. If, within 60 days following its receipt of the Action Plan, the Legislature takes no concurrent action, by resolution or otherwise, to disapprove the provisions, the provisions shall be deemed to be operative, with the effect in law that compliance with the provisions shall be deemed compliance with the state statute or statutes.

(c) If the parties to an Action Plan adopted pursuant to Section 2 of this article conclude that a regulation impedes the goals of the Action Plan, they may follow the procedure described in subdivision (a) of this section by submitting their proposal to the agency or department responsible for promulgating or administering the regulation, which shall consider the proposal within 60 days. If, within 60 days following its receipt of the Action Plan, the agency or department takes no action to disapprove the provisions, the provisions shall be deemed to be operative, with the effect in law that compliance with the provisions shall be deemed compliance with the state regulation or regulations. Any action to disapprove the provision shall include a statement setting forth the reasons for doing so.

(d) This section shall only apply to statutes or regulations that directly govern the administration of a state program that is financed in whole or in part with state funds.

(e) Any authority granted pursuant to this section shall automatically expire four years after the effective date, unless renewed pursuant to this section.

SEC. 4. (a) The Performance and Accountability Trust Fund is hereby established in the State Treasury for the purpose of providing state resources for the implementation of integrated service delivery contained in the Community Strategic Action Plans prepared pursuant to this article. Notwithstanding Section 13340 of the Government Code, money in the fund shall be continuously appropriated solely for the purposes provided in this article. For purposes of Section 8 of Article XVI the revenues transferred to the Performance and Accountability Trust Fund pursuant to this Act shall be considered General Fund proceeds of taxes which may be appropriated pursuant to Article XIII B.

(b) Money in the Performance and Accountability Trust Fund shall be distributed according to statute to counties whose Action Plans include a budget for expenditure of the funds that satisfies Sections 1 and 2 of this article.

(c) Any funds allocated to school districts pursuant to an Action Plan must be paid for from a revenue source other than the Performance and Accountability Trust Fund, and may be paid from any other source as determined by the entities participating in the Action Plan. The allocation received by any school district pursuant to an Action Plan shall not be considered General Fund proceeds of taxes or allocated local proceeds of taxes for purposes of Section 8 of Article XVI.

SEC. 5. A county that has adopted an Action Plan pursuant to Section 2 of this article shall evaluate the effectiveness of the Action Plan at least once every four years. The evaluation process shall include an opportunity for public comments, and for those comments to be included in the final report. The evaluation shall be used by the participating entities to improve the Action Plan and by the public to assess the performance of its government. The evaluation shall include a review of the extent to which the Action Plan has achieved the purposes and goals set forth in paragraphs (1) through (5), inclusive, of subdivision (a) of Section 1 of this article, including: improving the outcomes among the participating entities in the delivery and effectiveness of the applicable governmental services; progress toward reducing community disparities; and whether the individuals or community members receiving those services were represented in the development and implementation of the Action Plan.

SEC. 6. (a) The State shall consider how it can help local government entities deliver services more effectively and efficiently through an Action Plan adopted pursuant to Section 2 of this article. Consistent with this goal, the State or any department or agency thereof may enter into contracts with one or more local government entities that are participants in an Action Plan to perform any function that the contracting parties determine can be more efficiently and effectively performed at the local level. Any contract made pursuant to this section shall conform to the Action Plan adopted pursuant to the requirements of Section 2 of this article.

(b) The State shall consider and determine how it can support, through financial and regulatory incentives, efforts by local government entities and representatives of the public to work together to address challenges and to resolve problems that local government entities have voluntarily and collaboratively determined are best addressed at the geographic scale of a region in order to advance a prosperous economy, quality environment, and community equity. The State shall promote the vitality and global competitiveness of regional economies and foster greater collaboration among local governments within regions by providing priority consideration for state-administered

funds for infrastructure and human services, as applicable, to those participating local government entities that have voluntarily developed a regional collaborative plan and are making progress toward the purposes and goals of their plan, which shall incorporate the goals and purposes set forth in paragraphs (1) through (5), inclusive, of subdivision (a) of Section 1 of this article.

SEC. 7. Nothing in this article is intended to abrogate or supersede any existing authority enjoyed by local government entities, nor to discourage or prohibit local government entities from developing and participating in regional programs and plans designed to improve the delivery and efficiency of government services.

SEC. 8. For purposes of this article, the term "local government entity" shall mean a county, city, city and county, and any other local government entity, including school districts, county offices of education, and community college districts.

**SECTION EIGHT. Section 29 of Article XIII of the California Constitution is hereby amended to read:**

SEC. 29. (a) The Legislature may authorize counties, cities and counties, and cities to enter into contracts to apportion between them the revenue derived from any sales or use tax imposed by them that is collected for them by the State. Before the contract becomes operative, it shall be authorized by a majority of those voting on the question in each jurisdiction at a general or direct primary election.

(b) Notwithstanding subdivision (a), on and after the operative date of this subdivision, counties, cities and counties, and cities, may enter into contracts to apportion between them the revenue derived from any sales or use tax imposed by them pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law, or any successor provisions, that is collected for them by the State, if the ordinance or resolution proposing each contract is approved by a two-thirds vote of the governing body of each jurisdiction that is a party to the contract.

(c) Notwithstanding subdivision (a), counties, cities and counties, cities, and any other local government entity, including school districts and community college districts, that are parties to a Community Strategic Action Plan adopted pursuant to Article XI A may enter into contracts to apportion between and among them the revenue they receive from ad valorem property taxes allocated to them, if the ordinance or resolution proposing each contract is approved by a two-thirds vote of the governing body of each jurisdiction that is a party to the contract. Contracts entered into pursuant to this section shall be consistent with each participating entity's budget adopted in accordance with Section 1 of Article XI A.

**SECTION NINE.** Chapter 6 (commencing with Section 55750) is hereby added to Part 2 of Division 2 of Title 5 of the Government Code to read:

**CHAPTER 6. COMMUNITY STRATEGIC ACTION PLANS.**

SEC. 55750. (a) Notwithstanding Section 7101 of the Revenue and Taxation Code or any other provision of law, beginning in the 2013-14 fiscal year, the amount of revenues, net of refunds, collected pursuant to Section 6051 of the Revenue and Taxation Code and attributable to a rate of 0.035 percent shall be deposited in the State Treasury to the credit of the Performance and Accountability Trust Fund, as established pursuant to Section 4 of Article XI A of the California Constitution, and shall be used exclusively for the purposes for which that fund is created.

(b) To the extent that the Legislature reduces the sales tax base and that reduction results in less revenue to the Performance and Accountability Trust Fund than the Fund received in the 2013-14 fiscal year, the Controller shall transfer from the General Fund to the Performance and Accountability Trust Fund an amount that when added to the revenues received by the Performance and Accountability Trust Fund in that fiscal year equals the amount of revenue received by the Fund in the 2013-2014 fiscal year.

SEC. 55751. (a) Notwithstanding Section 7101 of the Revenue and Taxation Code or any other provision of law, beginning in the 2013-14 fiscal year, the amount of revenues, net of refunds, collected pursuant to section 6201 of the Revenue and Taxation Code and attributable to a rate of 0.035 percent shall be deposited in the State Treasury to the credit of the Performance and Accountability Trust Fund, as established pursuant to Section 4 of Article XI A of the California Constitution, and shall be used exclusively for the purposes for which that fund is created.

(b) To the extent that the Legislature reduces the use tax base and that reduction results in less revenue to the Performance and Accountability Trust Fund than the Fund received in the 2013-14 fiscal year, the Controller shall transfer from the General Fund to the Performance and Accountability Trust Fund an amount that when added to the revenues received by the Performance and Accountability Trust Fund in that fiscal year equals the amount of revenue received by the Fund in the 2013-14 fiscal year.

SEC. 55752. (a) In the 2014-15 fiscal year and every subsequent fiscal year, the Controller shall distribute funds in the Performance and Accountability Trust Fund established pursuant to Section 4 of Article XI A of the California Constitution to each county that has adopted a Community Strategic Action Plan that is in effect on or before June 30 of the preceding fiscal year, and that has submitted its Action Plan to the Controller for the purpose of requesting funding under this section. The distribution shall be made in the first quarter of the fiscal year. Of the total amount available for

distribution from the Performance and Accountability Trust Fund in a fiscal year, the Controller shall apportion to each county Performance and Accountability Trust Fund, which is hereby established, to assist in funding its Action Plan, a percentage equal to the percentage computed for that county under subdivision (c).

(b) As used in this section, the population served by a Community Strategic Action Plan is the population of the geographic area that is the sum of the population of all of the participating local government entities, provided that a resident served by one or more local government entities shall be counted only once. The Action Plan shall include a calculation of the population of the geographic area served by the Action Plan, according to the most recent Department of Finance demographic data.

(c) The Controller shall determine the population served by each county's Action Plan as a percentage of the total population computed for all of the Action Plans that are eligible for funding pursuant to subdivision (a).

(d) The funds provided pursuant to Section 4 of Article XI A of the California Constitution and this chapter represent in part ongoing savings that accrue to the State that are attributable to the 2011 realignment and to the measure that added this section. Four years following the first allocation of funds pursuant to this section, the Legislative Analyst's Office shall assess the fiscal impact of the Action Plans and the extent to which the plans have improved the efficiency and effectiveness of service delivery or reduced the demand for state-funded services.

**SECTION TEN. Section 42246 is hereby added to Article 2 of Chapter 7 of Part 24 of Division 3 of Title 2 of the Education Code to read:**

SEC. 42246. Funds contributed or received by a school district pursuant to its participation in a Community Strategic Action Plan authorized by Article XI A of the California Constitution shall not be considered in calculating the State's portion of the district's revenue limit under Section 42238 or any successor statute.

**SECTION ELEVEN. Section 9145 is hereby added to Article 7 of Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code to read:**

SEC. 9145. For the purposes of Sections 9.5 and 12 of Article IV of the California Constitution, the following definitions shall apply:

(a) "Expand the scope of an existing state program or agency" does not include any of the following:

(1) Restoring funding to an agency or program that was reduced or eliminated in any fiscal year subsequent to the 2008-09 fiscal year to balance the budget or address a forecasted deficit.

(2) Increases in state funding for a program or agency to fund its existing statutory responsibilities, including increases in the cost of living or workload, and any increase authorized by a memorandum of understanding approved by the Legislature.

(3) Growth in state funding for a program or agency as required by federal law or a law that is in effect as of the effective date of the measure adding this section.

(4) Funding to cover one-time expenditures for a state program or agency, as so identified in the statute that appropriates the funding.

(5) Funding for a requirement described in paragraph (5) of subdivision (b) of Section 6 of Article XIII B of the California Constitution.

(b) "State costs" do not include costs incurred for the payment of principal or interest on a state general obligation bond.

(c) "Additional revenue" includes, but is not limited to, revenue to the State that results from specific changes made by federal or state law and that the state agency responsible for collecting the revenue has quantified and determined to be a sustained increase.

**SECTION TWELVE. Section 11802 is hereby added to Article 1 of Chapter 8 of Part 1 of Division 3 of Title 2 of the Government Code to read:**

SEC. 11802. No later than June 30, 2013, the Governor shall, after consultation with state employees and other interested parties, submit to the Legislature a plan to implement the performance-based budgeting provisions of Section 12 of Article IV of the California Constitution. The plan shall be fully implemented in the 2015-16 fiscal year and in each subsequent fiscal year.

**SECTION THIRTEEN. Section 13308.03 is hereby added to Article 1 of Chapter 3 of Part 3 of Division 3 of Title 2 of the Government Code to read:**

SEC. 13308.03. In addition to the requirements set forth in Section 13308, the Director of Finance shall:

(a) By May 15 of each year, submit to the Legislature and make available to the public updated projections of state revenue and state expenditures for the budget year and the succeeding fiscal year either as proposed in the budget bill pending in one or both houses of the Legislature or as appropriated in the enacted budget bill, as applicable.

(b) Immediately prior to passage of the biennial budget, or any supplemental budget, by the Legislature, submit to the Legislature a statement of total revenues and total expenditures for the budget year and the succeeding fiscal year, which shall be incorporated into the budget bill.

(c) By November 30 of each year, submit a fiscal update containing actual year-to-date revenues and expenditures for the current year compared to the revenues and expenditures set forth in the adopted budget to the Legislature. This requirement may be satisfied by the publication of the Fiscal Outlook Report by the Legislative Analyst's Office.

**SECTION FOURTEEN. Amendment.**

The statutory provisions of this measure may be amended solely to further the purposes of this measure by a bill approved by a two-thirds vote of the members of each house of the Legislature and signed by the Governor.

**SECTION FIFTEEN. Severability.**

If any of the provisions of this measure or the applicability of any provision of this measure to any person or circumstances shall be found to be unconstitutional or otherwise invalid, that finding shall not affect the remaining provisions or applications of this measure to other persons or circumstances, and to that extent the provisions of this measure are deemed to be severable.

**SECTION SIXTEEN. Effective Date.**

Sections Four, Five, and Six of this Act shall become operative on the first Monday of December in 2014. Unless otherwise specified in the Act, the other sections of the Act shall become operative the day after the election at which the Act is adopted.

**SECTION SEVENTEEN. Legislative Counsel.**

(a) The People find and declare that the amendments proposed by this measure to Section 12 of Article IV of the California Constitution are consistent with the amendments to Section 12 of Article IV of the California Constitution proposed by Assembly Constitutional Amendment No. 4 of the 2009-10 Regular Session (Res. Ch. 174, Stats. 2010) (hereafter "ACA 4"), which will appear on the statewide general election ballot of November 4, 2014.

(b) For purposes of the Legislative Counsel's preparation and proofreading of the text of ACA 4 pursuant to Sections 9086 and 9091 of the Elections Code, and Sections 88002 and 88005.5 of the Government Code, the existing provisions of Section 12 of Article IV of the California Constitution shall be deemed to be the provisions of that section as amended by this measure. The Legislative Counsel shall prepare and proofread the text of ACA 4, accordingly, to distinguish the changes proposed by ACA 4 to Section 12 of Article IV of the California Constitution from the provisions of Section 12 of Article IV of the California Constitution as amended by this measure. The Secretary of State shall place the complete text of ACA 4, as prepared and proofread by the Legislative Counsel pursuant to this section, in the ballot pamphlet for the statewide general election ballot of November 4, 2014.





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July 17, 2012

To: CSAC Executive Committee

From: Supervisor Liz Kniss, Chair, CSAC Health and Human Services Policy Committee and Santa Clara County Supervisor  
Kelly Brooks-Lindsey, Legislative Representative  
Farrah McDaid Ting, Senior Legislative Analyst

Re: **Basic Health Plan (SB 703) – ACTION ITEM**

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**Staff Recommendation:** Adopt a **SUPPORT** position for SB 703.

**Background.** The Affordable Care Act allows states to create a health care benefit program for individuals with income between 134% and 200% of the Federal Poverty Level (FPL) that is outside of the Health Benefits Exchange.

Called a Basic Health Plan (BHP), the federal government will pay for 95% of the costs of coverage for the estimated 920,000 people in California who would be eligible. The goal of the BHP is to provide an incentive for low-income populations who might otherwise forego health insurance due to cost to enroll in a health care plan. By enrolling these low income adults in health care coverage, supporters of SB 703 anticipate gains in overall health and reductions in uninsured and uncompensated care costs for county health systems and hospitals.

The BHP provides an opportunity to:

- Provide low-income Californians with equal or better benefit levels,
- Offer less expensive health plan premiums, and
- Require lower cost-sharing than would be available to this population in the Exchange using federal dollars, according to a Mercer Government Human Services Consulting (Mercer) financial feasibility analysis. This analysis is attached.

Adopting the BHP option will likely lead to:

- More individuals receiving health care coverage as a result of lower premiums
- Greater ability to access health care because of the lower cost-sharing
- Increased compliance with the federal individual mandate
- A reduction in uncompensated care costs for health care providers.

**Financing.** Because federal BHP financing is based on the amount spent on premium tax credit and cost-sharing subsidies for commercial Exchange products, the BHP also provides an opportunity to increase funding to certain health plans and providers that would exceed rates paid to health plans and health care providers through Medi-Cal. The Mercer feasibility analysis estimates rates paid to providers in the BHP would be 20% to 25% higher than Medi-Cal rates, which will improve the financial viability of safety net providers.

The BHP option also provides participants with a product with a higher medical loss ratio (85% instead of 80%) than in the Exchange, which allows consumers to get more value out

of their premium dollar. Finally, establishing a BHP could also reduce state General Fund Medi-Cal costs by making it more likely that individuals who qualify for share-of-cost Medi-Cal who incur medical costs significant enough to enable them to "spend down" to Medi-Cal eligibility, will shift to the federally-funded BHP.

**Discussion.** The Legislature continues to discuss the BHP. Senator Ed Hernandez has introduced SB 703, which is currently on the Assembly Appropriations Committee's Suspense File.

There are several issues to consider in the creation of a Basic Health Plan. The first is the potential for incurring state costs, i.e. the 5% that is not covered by the federal government. If the state will incur costs for the BHP population, it would create additional pressure on the state General Fund. Also, there have been concerns raised about the BHP competing with or siphoning off clients from the Health Care Exchange (HBEX). Please note that the HBEX is anticipating up to 4 million new participants, and that the Mercer Report (attached) indicates that a BHP would not adversely affect its operation.

Because of the potential benefits to the populations currently served by counties, CSAC staff is seeking direction from the Executive Committee to take a SUPPORT position for SB 703 before the close of the 2011-12 legislative session. The CSAC Health and Human Services Policy Committee has reviewed the measure twice (on May 30 and July 16), but was unable to take a position on July 16 due to lack of a quorum.

Current supporters of the measure include the counties of Santa Clara, Los Angeles, Monterey, San Francisco, and Contra Costa, as well as CSAC affiliates County Health Executives Association of California (CHEAC), and California Association of Public Hospitals and Health Systems (CAPH). Other supporters include the Local Health Plans of California (sponsor), and the Congress of California Seniors. Kaiser Permanente opposes SB 703. To date Kaiser is the only health plan to oppose the bill.

**Recommended Action:** Adopt a **SUPPORT** position for SB 703.

**Materials:** Text of SB 703 and Assembly Health Committee analysis;  
Mercer Report: State of California Financial Feasibility of a Basic Health Program (May 2011);  
CHEAC support letter;  
Kaiser Permanente opposition letter.

AMENDED IN ASSEMBLY JULY 12, 2011

AMENDED IN ASSEMBLY JUNE 28, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MARCH 30, 2011

AMENDED IN SENATE MARCH 24, 2011

**SENATE BILL**

**No. 703**

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**Introduced by Senator Hernandez**

February 18, 2011

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An act to add Part 6.25 (commencing with Section 12694.1) to Division 2 of the Insurance Code, relating to health care coverage, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 703, as amended, Hernandez. Health care coverage: Basic Health Program.

Existing law, the federal Patient Protection and Affordable Care Act, requires each state to, by January 1, 2014, establish an American Health Benefit Exchange that makes available qualified health plans to qualified individuals and employers. Existing state law establishes the California Health Benefit Exchange within state government. The federal Patient Protection and Affordable Care Act also authorizes the establishment of a basic health program under which a state may enter into contracts to offer one or more standard health plans providing a minimum level of essential benefits to eligible individuals instead of offering those individuals coverage through an Exchange, if specified criteria are met.

Existing law establishes the Managed Risk Medical Insurance Board (MRMIB) and makes it responsible for administering the California

Major Risk Medical Insurance Program and the Healthy Families Program to provide health care coverage to certain residents of the state who are unable to secure adequate coverage, subject to specified eligibility requirements.

This bill would establish in state government a Basic Health Program, to be administered by MRMIB. The bill would require MRMIB to enter into a contract with the United States Secretary of Health and Human Services to implement the Basic Health Program, and would set forth the powers and the duties of MRMIB relative to determining eligibility for enrollment, setting premiums for coverage, and selecting participating health plans under the Basic Health Program, subject to requirements under federal law. The bill would require the board to permit enrollment in the Basic Health Program on January 1, 2014. The bill would create the Basic Health Program Trust Fund for those purposes and would make moneys in the fund subject to appropriation by the Legislature, except that if the annual Budget Act is not enacted by a certain date, the bill would authorize the board to transfer specified funds from the trust fund to health plans in order to comply with certain requirements, thereby making an appropriation. The bill would require the Basic Health Program to be funded by federal funds, private donations, premiums paid by eligible individuals, and other non-General Fund moneys available for that purpose. Notwithstanding those provisions, the bill would authorize the board to obtain loans from the General Fund for initial start-up expenses, to be repaid by July 1, 2016, and would establish a procedure for continued coverage of individuals under the California Health Benefit Exchange if costs of the Basic Health Program exceed moneys available from specified sources. *The bill would require the board to request an evaluation of the Basic Health Program and to seek funding for the evaluation from an unspecified independent nonprofit private foundation.*

Vote: majority. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Part 6.25 (commencing with Section 12694.1) is
- 2 added to Division 2 of the Insurance Code, to read:

1                   PART 6.25. BASIC HEALTH PROGRAM

2  
3       12694.1. It is the intent of the Legislature to establish a Basic  
4 Health Program option to implement the option contained in  
5 Section 1331 of the federal Patient Protection and Affordable Care  
6 Act (PPACA). The Legislature finds and declares that Section  
7 1331 of PPACA creating the Basic Health Program does the  
8 following:

9       (a) Requires eligible individuals and their dependents enrolled  
10 in the Basic Health Program be provided a health plan containing  
11 the essential health benefits at a monthly premium price that does  
12 not exceed the amount of the premium that the eligible individual  
13 would have been required to pay if the individual had enrolled in  
14 the applicable second lowest cost silver plan offered to the  
15 individual through the California Health Benefit Exchange.

16       (b) (1) Prohibits the cost sharing an eligible individual is  
17 required to pay under the Basic Health Program from exceeding  
18 the cost sharing required under a platinum plan for individuals  
19 with a household income at or below 150 percent of the federal  
20 poverty level for the size of the family involved.

21       (2) Prohibits the cost sharing an eligible individual is required  
22 to pay under the Basic Health Program from exceeding the cost  
23 sharing required under a gold plan for an individual with a  
24 household income above 150 percent of the federal poverty level  
25 but at or below 200 percent of the federal poverty level for the size  
26 of the family involved.

27       (c) Requires the medical loss ratio for products in the Basic  
28 Health Program to be 85 percent, instead of 80 percent, in the  
29 individual and small group market.

30       12694.15. For purposes of this part, the following definitions  
31 shall apply:

32       (a) "Basic Health Program" means the program authorized by  
33 Section 1331 of PPACA.

34       (b) "Board" means the Managed Risk Medical Insurance Board.

35       (c) "County organized health system" means a licensed health  
36 care service plan established pursuant to Section 14087.51 or  
37 14087.54 of the Welfare and Institutions Code or Chapter 3  
38 (commencing with Section 101675) of Part 4 of Division 101 of  
39 the Health and Safety Code.

1 (d) "Department" means the State Department of Health Care  
2 Services.

3 (e) "Eligible individual" shall have the same meaning as set  
4 forth in subdivision (e) of Section 1331 of PPACA.

5 (f) "Essential health benefits" shall have the same meaning as  
6 set forth in Section 1302 of PPACA.

7 (g) "Fund" means the Basic Health Program Trust Fund  
8 established by Section 12694.955.

9 (h) "Health plan" means a private health insurer holding a valid  
10 outstanding certificate of authority from the Insurance  
11 Commissioner or a health care service plan, as defined under  
12 subdivision (f) of Section 1345 of the Health and Safety Code,  
13 licensed by the Department of Managed Health Care.

14 (i) "Local initiative" means a licensed health care service plan  
15 established pursuant to Section 14018.7, 14087.31, 14087.35,  
16 14087.36, 14087.38, or 14087.96 of the Welfare and Institutions  
17 Code.

18 (j) "Patient Protection and Affordable Care Act" or "PPACA"  
19 means Public Law 111-148, as amended by the federal Health  
20 Care and Education Reconciliation Act of 2010 (Public Law  
21 111-152), and any amendments to, or regulations or guidance  
22 issued under, those acts.

23 12694.2. The Basic Health Program is hereby created and shall  
24 be administered by the Managed Risk Medical Insurance Board.

25 12694.25. The board shall enter into a contract with the United  
26 States Secretary of Health and Human Services to implement a  
27 Basic Health Program to provide coverage to eligible individuals.

28 12694.26. The board shall permit enrollment in the Basic  
29 Health Program on January 1, 2014.

30 12694.3. (a) The board shall administer the Basic Health  
31 Program in conjunction with the Healthy Families Program, and  
32 shall provide an eligibility and enrollment process that allows an  
33 individual, or his or her natural or adoptive parent, legal guardian,  
34 caretaker relative, foster parent, or stepparent with whom the child  
35 resides, to enroll in the Basic Health Program at the same time an  
36 individual, or his or her natural or adoptive parent, legal guardian,  
37 caretaker relative, foster parent, or stepparent with whom the child  
38 resides, applies for enrollment in the Healthy Families Program.  
39 An individual may enroll in the same health plan, or a different

- 1 health plan, than his or her child or children who are enrolled in  
2 the Healthy Families Program.
- 3 (b) In implementing the requirements of this section, and  
4 consistent with the requirements of Section 1331 of PPACA, the  
5 board may do all of the following:
- 6 (1) Determine eligibility criteria for the Basic Health Program.  
7 (2) Determine the participation requirements of eligible  
8 individuals applying for coverage in the Basic Health Program.  
9 (3) Determine the participation requirements of participating  
10 health plans.  
11 (4) Determine when the coverage of eligible individuals begins  
12 and the extent and scope of coverage.  
13 (5) Determine, through negotiation with health plans, premium  
14 and cost-sharing amounts.  
15 (6) Collect premiums.  
16 (7) Provide or make available subsidized coverage through  
17 participating health plans.  
18 (8) Provide for the processing of applications and the enrollment  
19 of eligible individuals.  
20 (9) Determine and approve the benefit designs and cost sharing  
21 required by health plans participating in the Basic Health Program.  
22 (10) Enter into contracts.  
23 (11) Employ necessary staff.  
24 (12) Authorize expenditures from the fund to pay program  
25 expenses that exceed eligible individual premium contributions  
26 and to administer the Basic Health Program, as necessary.  
27 (13) Maintain enrollment and expenditures to ensure that  
28 expenditures do not exceed amounts available in the fund, and, if  
29 sufficient funds are not available to cover the estimated cost of  
30 program expenditures, the board shall institute appropriate  
31 measures to reduce costs.  
32 (14) Issue rules and regulations, as necessary. Until January 1,  
33 2016, any rules and regulations issued pursuant to this subdivision  
34 may be adopted as emergency regulations in accordance with the  
35 Administrative Procedure Act (Chapter 3.5 (commencing with  
36 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
37 Code). The adoption of these regulations shall be deemed an  
38 emergency and necessary for the immediate preservation of the  
39 public peace, health, and safety or general welfare. The regulations

1 shall become effective immediately upon filing with the Secretary  
2 of State.

3 (15) Make application assistance payments to individuals who  
4 have successfully completed the requirements of a Certified  
5 Application Assistant in the Healthy Families Program and who  
6 successfully enroll eligible individuals in Basic Health Program  
7 coverage.

8 (16) Exercise all powers reasonably necessary to carry out the  
9 powers and responsibilities expressly granted or imposed by this  
10 part and Section 1331 of PPACA.

11 12694.35. In implementing this part, eligibility for coverage  
12 under, and the benefits, premiums, and cost sharing in, the Basic  
13 Health Program, shall meet the requirements of Section 1331 of  
14 PPACA. The board may determine the benefits, if any, to offer  
15 Basic Health Program participants that are in addition to the  
16 essential health benefits package required by Section 1302 of  
17 PPACA, including benefits provided through specialized health  
18 care service plans, as defined in subdivision (o) of Section 1345  
19 of the Health and Safety Code, and specialized health insurance  
20 policies, as defined in Section 106, to the extent that PPACA  
21 authorizes the inclusion of such plans or policies in the Basic  
22 Health Program. To the extent authorized by federal law, the board  
23 shall determine whether benefits provided through specialized  
24 health care service plans and specialized health insurance policies  
25 are made available through the Basic Health Program as part of a  
26 benefit package made available through health plans; or as an  
27 additional product to be purchased by individuals receiving  
28 coverage through the Basic Health Program.

29 12694.4. The Basic Health Program shall be administered  
30 without regard to gender, race, creed, color, sexual orientation,  
31 health status, disability, or occupation.

32 12694.45. (a) The board shall use appropriate and efficient  
33 means to notify eligible individuals of the availability of health  
34 coverage from the Basic Health Program.

35 (b) The board, in conjunction with the department, shall conduct  
36 a community outreach and education campaign to assist in  
37 notifying eligible individuals of the availability of health coverage  
38 through the Basic Health Program. The board and the department  
39 shall seek federal funding and funding from private entities,  
40 including foundation funding, for this purpose. The department



1 and the California Health Benefit Exchange shall include  
2 information on the availability of coverage through the Basic  
3 Health Program in all eligibility outreach efforts, and the board  
4 shall also include information on the availability of coverage in  
5 the Medi-Cal program and the California Health Benefit Exchange.

6 (c) The board shall use appropriate materials, which may include  
7 brochures, pamphlets, fliers, posters, and other promotional items,  
8 to notify families of the availability of coverage through the Basic  
9 Health Program.

10 12694.5. (a) The board shall ensure that written enrollment  
11 information issued or provided by the Basic Health Program is  
12 available to program subscribers and applicants in each of the  
13 Medi-Cal threshold languages.

14 (b) The board shall ensure that telephone services provided to  
15 program subscribers and applicants by the Basic Health Program  
16 are available in all of the languages identified as Medi-Cal  
17 threshold languages.

18 (c) The board shall ensure that interpreter services are available  
19 between eligible individuals and participating health plans in the  
20 Medi-Cal threshold languages. The board shall ensure that  
21 subscribers are provided information within provider network  
22 directories of available linguistically diverse providers.

23 (d) The board shall ensure that participating health plans,  
24 specialized health care service plans, and specialized health  
25 insurance policies provide documentation on how they provide  
26 linguistically and culturally appropriate services, including  
27 marketing materials, to subscribers.

28 12694.55. No participating health plan, specialized health care  
29 service plan, or specialized health insurance policy shall, in an  
30 area served by the Basic Health Program, directly, or through an  
31 employee, agent, or contractor, provide an applicant with any  
32 marketing material relating to benefits or rates provided under the  
33 Basic Health Program, unless the material has been reviewed and  
34 approved by the board.

35 12694.57. The board may do the following:

36 (a) Amend existing Healthy Families Program contracts to allow  
37 the parents of children enrolled in the Healthy Families Program  
38 to enroll in the same plan as their child or children through the  
39 Basic Health Program.

1 (b) Require, as a condition of participation in the Basic Health  
2 Program, health plans to participate in the Healthy Families  
3 Program.

4 12694.6. (a) The board may establish geographic areas,  
5 consistent with the geographic areas of the Healthy Families  
6 Program, within which participating health plans may offer  
7 coverage to subscribers.

8 (b) Nothing in this section shall restrict a county organized  
9 health system, a health plan, or a local initiative from providing  
10 services to Basic Health Program subscribers in their licensed  
11 geographic service area.

12 12694.65. (a) Notwithstanding any other provision of law, the  
13 board shall not be subject to licensure or regulation by the  
14 Department of Insurance or the Department of Managed Health  
15 Care.

16 (b) A participating health plan, specialized health care service  
17 plan, or specialized health insurance policy that contracts with the  
18 Basic Health Program and is regulated by the Insurance  
19 Commissioner or the Department of Managed Health Care shall  
20 be licensed and in good standing with its respective licensing  
21 agency. In its application to the Basic Health Program, an applicant  
22 shall provide assurance of its standing with the appropriate  
23 licensing agency.

24 12694.7. (a) The board shall contract with a broad range of  
25 health plans in an area, if available, to ensure that subscribers have  
26 a choice of health plans from among a reasonable number and  
27 different types of competing health plans. The board shall develop  
28 and make available objective criteria for health plan selection and  
29 provide adequate notice of the application process to permit all  
30 health plans a reasonable and fair opportunity to participate. The  
31 criteria and application process shall allow participating health  
32 plans to comply with their state and federal licensing and regulatory  
33 obligations, except as otherwise provided in this part. Health plan  
34 selection shall be based on the criteria developed by the board.

35 (b) (1) In its selection of participating health plans, the board  
36 shall take all reasonable steps to ensure that the range of choices  
37 of health plans available to each applicant shall include health  
38 plans that include in their provider networks, and have signed  
39 contracts with, traditional and public and private safety net  
40 providers.

1 (2) A participating health plan shall annually submit to the board  
2 a report summarizing its provider network. The report shall  
3 provide, as available, information on the provider network as it  
4 relates to all of the following:

- 5 (A) Geographic access for the subscribers.
- 6 (B) Linguistic services.
- 7 (C) The ethnic composition of providers.
- 8 (D) The number of subscribers who selected traditional and  
9 public and private safety net providers.

10 (c) (1) The board shall not rely solely on a determination by  
11 the Department of Managed Health Care or the Insurance  
12 Commissioner of a health plan network's adequacy or geographic  
13 access to providers in the awarding of contracts under this part.  
14 The board shall collect and review demographic, census, and other  
15 data to provide to prospective local initiatives, health plans, or  
16 specialized health plans, and identify specific provider contracting  
17 target areas with significant numbers of uninsured individuals with  
18 incomes that would make them eligible for the Basic Health  
19 Program. The board shall give priority to those health plans, on a  
20 county-by-county basis, that demonstrate that they have included  
21 in their prospective plan networks significant numbers of providers  
22 in these geographic areas.

23 (2) Targeted contracting areas are those ZIP Codes or groups  
24 of ZIP Codes or census tracts or groups of census tracts that have  
25 a percentage of eligible individuals that is greater than the overall  
26 percentage of eligible individuals in that county.

27 (d) In each geographic area, the board shall designate a  
28 community provider plan that is the participating health plan that  
29 has the highest percentage of traditional and public and private  
30 safety net providers in its network. Subscribers selecting such a  
31 health plan shall be given a premium discount in an amount  
32 determined by the board.

33 (e) This section shall also apply to a specialized health care  
34 service plan, as defined in subdivision (o) of Section 1345 of the  
35 Health and Safety Code, and a specialized health insurance policy,  
36 as defined in Section 106, to the extent that the inclusion of that  
37 plan or policy in the Basic Health Program is authorized by  
38 PPACA.

39 12694.75. (a) After two consecutive months of nonpayment  
40 of premiums by an eligible individual enrolled in the Basic Health

1 Program, and a reasonable written notice period of not less than  
2 30 days is provided to the eligible individual, the eligible individual  
3 may be disenrolled from the Basic Health Program for the failure  
4 to pay premiums. The board may conduct or contract for collection  
5 actions to collect unpaid family contributions.

6 (b) Subject to any additional requirements of federal law,  
7 disenrollments shall be effective at the end of the second  
8 consecutive month of nonpayment.

9 12694.8. The Basic Health Program may place a lien on  
10 compensation or benefits, recovered or recoverable by a subscriber  
11 or applicant, or from any party or parties responsible for the  
12 compensation or benefits for which benefits have been provided  
13 under a plan contract or policy issued under this part.

14 12694.85. The board shall establish and use a competitive  
15 process to select participating health plans and any other  
16 contractors under this part. Any contract entered into pursuant to  
17 this part shall be exempt from Chapter 2 (commencing with Section  
18 10100) of Division 2 of the Public Contract Code, and shall be  
19 exempt from the review or approval of any division of the  
20 Department of General Services.

21 12694.855. (a) A health care provider that is provided  
22 documentation of an individual's enrollment in the Basic Health  
23 Program shall not seek reimbursement or attempt to obtain payment  
24 for any covered services provided to that individual other than  
25 from the participating health plan covering that individual.

26 (b) Subdivision (a) shall not apply to any cost sharing required  
27 for covered services provided to the individual under his or her  
28 participating health plan.

29 (c) For purposes of this section, "health care provider" means  
30 any professional person, organization, health facility, or any other  
31 person or institution licensed by the state to deliver or furnish  
32 health care services.

33 12694.9. To the extent permitted by federal law, an eligible  
34 individual enrolled in the Basic Health Program shall continue to  
35 be eligible for the program for a period of 12 months from the  
36 month eligibility is established.

37 12694.95. The board shall do all of the following:

38 (a) Make use of a simple and easy to understand mail-in and  
39 Internet application process.

1 (b) Permit individuals to learn, in a timely manner upon the  
2 request of the individual, the amount of cost sharing, including,  
3 but not limited to, deductibles, cost sharing, and coinsurance, under  
4 the individual's health plan or coverage that the individual would  
5 be responsible for paying with respect to the furnishing of a specific  
6 product or service by a participating provider. At a minimum, this  
7 information shall be made available to the individual through an  
8 Internet Web site and through other means for individuals without  
9 access to the Internet.

10 (c) Provide for the operation of a toll-free telephone hotline to  
11 respond to requests for assistance.

12 (d) Maintain an Internet Web site through which eligible  
13 individuals may obtain standardized comparative information on  
14 those health plans.

15 (e) Utilize a standardized format for presenting health benefits  
16 plan options offered through the Basic Health Program, including  
17 the use of the uniform outline of coverage established under Section  
18 2715 of the federal Public Health Service Act.

19 (f) Establish a process to inform individuals who lose eligibility  
20 ~~for~~ *under* the Basic Health Program of the availability of coverage  
21 through Medi-Cal and the California Health Benefit Exchange,  
22 and to transmit their eligibility-related information to those  
23 programs electronically to facilitate enrollment.

24 12694.955. (a) The Basic Health Program Trust Fund is hereby  
25 created in the State Treasury for the purpose of this part. All federal  
26 funds received pursuant to Section 1331 of PPACA shall be placed  
27 in the Basic Health Program Trust Fund. Moneys in the fund shall  
28 be used for the purposes of this part, upon appropriation by the  
29 Legislature, except that if the annual Budget Act is not enacted by  
30 June 30 of any fiscal year preceding the fiscal year to which the  
31 budget would apply, the board may transfer federal funds and  
32 premium payments from the Basic Health Program Trust Fund to  
33 health plans contracting with the board to ensure that individuals  
34 receiving coverage through the Basic Health Program are able to  
35 comply with the requirement to maintain minimum essential  
36 coverage as described in Section 1501 of PPACA. Any moneys  
37 in the fund that are unexpended or unencumbered at the end of a  
38 fiscal year may be carried forward to the next succeeding fiscal  
39 year.

1 (b) Notwithstanding any other provision of law, moneys  
2 deposited in the fund shall not be loaned to, or borrowed by, any  
3 other special fund or the General Fund, a county general fund, or  
4 any other county fund.

5 (c) The board shall establish and maintain a prudent reserve in  
6 the fund.

7 (d) Notwithstanding Section 16305.7 of the Government Code,  
8 all interest earned on the moneys that have been deposited into the  
9 fund shall be retained in the fund and used for purposes consistent  
10 with the fund.

11 (e) Subject to approval by the Department of Finance, and upon  
12 notification to the committees of each house of the Legislature  
13 that consider the budget and the committees of each house that  
14 consider appropriations, the board may obtain loans from the  
15 General Fund for all necessary and reasonable start-up and initial  
16 expenses related to the administration of the fund and the Basic  
17 Health Program. The board shall repay principal and interest, using  
18 the pooled money investment account rate of interest, to the  
19 General Fund no later than July 1, 2016.

20 12694.957. (a) The board shall ensure that the establishment,  
21 operation, and administrative functions of the Basic Health  
22 Program do not exceed the combination of federal funds, private  
23 donations, premiums paid by eligible individuals, and other  
24 non-General Fund moneys available for this purpose. Except for  
25 loans authorized pursuant to subdivision (e) of Section 12694.955,  
26 no state General Fund money shall be used for any purpose under  
27 this part.

28 (b) The board shall negotiate contracts with health plans to  
29 provide or pay for benefits to enrollees under this part. Each  
30 contract entered into pursuant to this part shall require the  
31 participating health plan to assume full risk for the cost of care for  
32 the contract period. The board shall not contract with any  
33 participating health plan if such a contract would result in costs  
34 exceeding the funds available for purposes of this part, as described  
35 in subdivision (a). The requirements of this subdivision shall also  
36 apply to contracts with specialized health care service plans, as  
37 defined in subdivision (o) of Section 1345 of the Health and Safety  
38 Code, and specialized health insurance policies, as defined in  
39 Section 106, to the extent that the inclusion of such plans or  
40 policies in the Basic Health Program is authorized by PPACA.

1 (c) In the event that the board reasonably expects that the cost  
2 of the Basic Health Program will exceed the available funds  
3 specified in subdivision (a), coverage for eligible individuals shall  
4 continue until the annual redetermination of each eligible  
5 individual, after which time the board shall immediately transfer  
6 the eligible individual to coverage in the California Health Benefit  
7 Exchange. To the extent permitted by federal law, the board shall  
8 contract with the federal government to allow federal funds made  
9 available under paragraph (3) of subdivision (d) of Section 1331  
10 of PPACA, relating to 95 percent of the premium tax credits under  
11 Section 36B of the Internal Revenue Code of 1986, and the  
12 cost-sharing reduction under Section 1402, to be used for the costs  
13 of the board in implementing and administering this part.

14 12694.959. (a) *The board shall request an evaluation of the*  
15 *Basic Health Program. The board shall seek funding for the*  
16 *evaluation from an independent nonprofit private foundation.*

17 (b) *The purpose of the evaluation is to determine the extent to*  
18 *which the Basic Health Program has achieved objectives to provide*  
19 *low-income Californians with equal or better benefit levels, and*  
20 *less expensive premiums and lower cost sharing than would be*  
21 *available in the California Health Benefit Exchange. In addition,*  
22 *the evaluation is intended to assess the impact of the Basic Health*  
23 *Program on all of the following:*

24 (1) *The viability of the California Health Benefit Exchange*  
25 *(Exchange).*

26 (2) *Providers, health plans, and insurers that serve the Medi-Cal*  
27 *program and the Healthy Families Program.*

28 (3) *Continuity of care and coverage for individuals moving from*  
29 *the Medi-Cal program to the Basic Health Program and from the*  
30 *Basic Health Program to the Exchange.*

31 (c) *Components of the evaluation may include, but are not*  
32 *limited to, the following:*

33 (1) *A determination of the extent to which individuals served*  
34 *through the Basic Health Program have lower premiums,*  
35 *additional benefits, or lower cost sharing than they would*  
36 *otherwise have received in the Exchange.*

37 (2) *A determination of the extent to which individuals served*  
38 *through the Basic Health Program have a choice of quality health*  
39 *coverage options and adequate provider access and networks.*

1 (3) *A determination of the extent to which Basic Health Program*  
2 *administrators have been able to coordinate the contracting of*  
3 *health plans and health insurance or the purchasing of other*  
4 *services with the Medi-Cal program, Healthy Families Program,*  
5 *and the Exchange.*

6 (4) *A determination of the extent to which the Exchange is*  
7 *attracting competitive health plan participation and offers premium*  
8 *rate structures, and a determination as to the impact the inclusion*  
9 *of the Basic Health Program population would have on the*  
10 *Exchange.*

11 (d) *The evaluation shall include, but is not limited to, all of the*  
12 *following:*

13 (1) *Enrollment in the Exchange and enrollment in the Basic*  
14 *Health Program, including actual enrollment as compared to the*  
15 *estimated number of individuals eligible for the Exchange and the*  
16 *Basic Health Program, the number of individuals enrolled in the*  
17 *Exchange with family incomes between 300 percent and 400*  
18 *percent of the federal poverty level, and the number of individuals*  
19 *enrolled in the Exchange with family incomes above 400 percent*  
20 *of the federal poverty level.*

21 (2) *The average cost per person of the individuals enrolled in*  
22 *the Exchange as compared to the average cost per person of*  
23 *individuals enrolled in the Basic Health Program.*

24 (3) *The impact of the Basic Health Program on the funding*  
25 *available for Exchange administrative costs.*

26 (4) *The impact of the Basic Health Program on premiums in*  
27 *the Exchange and the impact of the Exchange on premiums in the*  
28 *Basic Health Program.*

29 (5) *The impact of the Basic Health Program on the Exchange's*  
30 *ability to selectively contract with health plans.*

31 (6) *The average premium and average cost sharing per person*  
32 *enrolled in the Basic Health Program and the Exchange.*

33 (7) *The number of plans participating in the Basic Health*  
34 *Program and the Exchange, including whether and to what extent*  
35 *health plans in the Medi-Cal program participate in the Basic*  
36 *Health Program in counties with Medi-Cal managed care.*

37 (8) *The number of individuals enrolling in the Basic Health*  
38 *Program who, in the month immediately preceding Basic Health*  
39 *Program enrollment, were enrolled in the Medi-Cal program.*



1     (9) *The number of individuals enrolled in the Medi-Cal program*  
2 *who, in the month immediately preceding Medi-Cal enrollment,*  
3 *were enrolled in the Basic Health Program.*

4     (10) *The number of individuals enrolled in the Exchange who,*  
5 *in the month immediately preceding Exchange enrollment, were*  
6 *enrolled in the Basic Health Program.*

7     (11) *The number of individuals enrolled in the Basic Health*  
8 *Program who, in the month immediately preceding enrollment in*  
9 *the Basic Health Program, were enrolled in the Exchange.*

10     (12) *The average amount of federal funding received by the*  
11 *state per person by year, broken down by federal funding for*  
12 *premiums and federal funds for cost-sharing subsidies, for*  
13 *individuals enrolled in the Basic Health Program.*

14     (13) *Whether implementation of the Basic Health Program has*  
15 *resulted in diminished access to health care providers for Medi-Cal*  
16 *beneficiaries or diminished provider participation in the Medi-Cal*  
17 *program.*

18     (e) *The Legislature hereby requests the results of the evaluation*  
19 *to be furnished to the appropriate policy and fiscal committees of*  
20 *the Legislature by July 1, 2017.*

21     (f) *The California Health Benefit Exchange, the Basic Health*  
22 *Program, the Medi-Cal program, and the Health Families Program*  
23 *shall provide, in a timely manner, the data necessary for the*  
24 *evaluation requested by this section.*

O

Date of Hearing: July 5, 2011

ASSEMBLY COMMITTEE ON HEALTH  
William W. Monning, Chair  
SB 703 (Ed Hernandez) – As Amended: June 28, 2011

SENATE VOTE: 25-14

SUBJECT: Health care coverage: Basic Health Program.

SUMMARY: Creates the Basic Health Plan (BHP), administered by the Managed Risk Medical Insurance Board (MRMIB), which will serve individuals with income up to 200% of the federal poverty level (FPL) who would otherwise be eligible for subsidies in the California Health Benefit Exchange (Exchange). Specifically, this bill:

- 1) States legislative intent to establish a BHP to implement the option contained in the federal Patient Protection and Affordable Care Act (PPACA). Finds and declares that the BHP:
  - a) Requires eligible individuals and their dependents enrolled in the BHP to be provided a health plan containing essential health benefits (EHBs) at a monthly premium price that does not exceed the amount of the premium that the eligible individual would have been required to pay if the individual had enrolled in the applicable second lowest cost silver plan offered to the individual through the Exchange.
  - b) Prohibits the cost sharing an eligible individual is required to pay under the BHP from exceeding the cost sharing required under a platinum plan for individuals with a household income at or below 150% FPL for the size of the family involved.
  - c) Prohibits the cost sharing an eligible individual is required to pay under the BHP from exceeding the cost sharing required under a gold plan for an individual with a household income above 150% FPL but at or below 200% FPL for the size of the family involved.
  - d) Requires the medical loss ratio for coverage products in the BHP to be 85%, instead of 80% as required for products in the individual and small group market.
- 2) Defines “health plan” as a private health insurer holding a valid outstanding certificate of authority from the California Department of Insurance (CDI) or a health care service plan licensed by the Department of Managed Health Care (DMHC).
- 3) Requires MRMIB to enter into a contract with the United States Secretary of the Department of Health and Human Services (DHHS) to implement the BHP to provide coverage to eligible individuals and permits enrollment on January 1, 2014.
- 4) Requires MRMIB to administer BHP in conjunction with the Healthy Families Program (HFP), and to provide an eligibility and enrollment process that allows an individual, or his or her natural or adoptive parent, legal guardian, caretaker relative, foster parent, or stepparent with whom the child resides, to enroll in the BHP at the same time an individual, or his or her natural or adoptive parent, legal guardian, caretaker relative, foster parent, or stepparent with whom the child resides, applies for enrollment in HFP for the child. Permits an individual to enroll in the same health plan, or a different health plan, than his or her child or children who are enrolled in HFP.

- 5) Provides MRMIB authority to take actions in conjunction with administering the BHP, including the following:
  - a) Determine eligibility criteria, requirements for coverage and health plan participation, premiums, and cost-sharing amounts;
  - b) Collect premiums and provide or make available subsidized coverage through participating health plans;
  - c) Provide for the processing of applications and enrollment of eligible individuals;
  - d) Determine and approve the benefit designs and cost sharing required by health plans;
  - e) Maintain enrollment and expenditures to ensure that expenditures do not exceed amounts available in the fund, and, if sufficient funds are not available to cover the estimated cost of program expenditures, requires MRMIB to institute appropriate measures to reduce costs;
  - f) Issue rules and regulations, and until January 1, 2016, provide emergency regulation authority; and,
  - g) Make application assistance payments to individuals who have successfully completed the requirements of a Certified Application Assistant in HFP and who successfully enroll eligible individuals in BHP.
- 6) Authorizes MRMIB to determine benefits, if any, to offer BHP participants that are in addition to the EHB packages required by PPACA, including benefits provided through specialized health care service plans and specialized health insurance policies, to the extent PPACA authorizes the inclusion of such plans or policies in the BHP.
- 7) Requires MRMIB, in conjunction with state Department of Health Care Services (DHCS), to conduct a community outreach and education campaign to assist in notifying eligible individuals of the availability of coverage through BHP.
- 8) Requires DHCS and the Exchange to include information on the availability of coverage through the BHP in all eligibility outreach efforts, and MRMIB to also include information on the availability of coverage in the Medi-Cal Program and Exchange.
- 9) Requires MRMIB to ensure that written enrollment information issued or provided, and telephone services provided, by the BHP are available to program subscribers and applicants in each of the Medi-Cal threshold languages.
- 10) Requires MRMIB to ensure that subscribers are provided information within provider network directories of available linguistically diverse providers, and participating health plans, specialized health plans and specialized insurance policies, provided documentation on how linguistically and culturally appropriate services are provided, including marketing materials, to subscribers.
- 11) Requires MRMIB to contract with a broad range of health plans in an area, if available, to ensure that subscribers have a choice of health plans from among a reasonable number and different types of competing health plans.
- 12) Requires MRMIB to take all reasonable steps to ensure that the range of choices of health plans available to each applicant includes health plans that include in their provider networks, and have signed contracts with, traditional and public and private safety net providers.

- 13) Requires a participating health plan to annually submit to MRMIB a report summarizing its provider network, including information on geographic access for subscribers, linguistic services, the ethnic composition of providers, the number of subscribers who selected traditional and public and private safety net providers.
- 14) Prohibits MRMIB from relying solely on a determination by DMHC and the CDI of a health plan network's adequacy or geographic access to providers in the awarding of contracts under this bill.
- 15) Requires MRMIB to collect and review demographic census, and other data to provide to prospective local initiatives, health plans, or specialized health plans, and identify specific provider contracting target areas with significant numbers of uninsured individuals with incomes that would make them eligible for the BHP.
- 16) Requires MRMIB to give priority to those health plans, on a county-by-county basis, that demonstrate that they have included in their prospective plan networks significant numbers of providers in these geographic target areas.
- 17) Requires MRMIB to designate a community provider plan (CPP) in each geographic area that is the participating health plan that has the highest percentage of traditional and public and private safety net providers in its network. Requires that subscribers selecting such a health plan be given a premium discount in an amount determined by MRMIB. Includes specialized health plans and insurance policies in this provision and provisions 11) through 16) above.
- 18) Continues enrollment for an eligible individual enrolled in the BHP for a period of 12 months from the month eligibility is established, to the extent permitted by federal law.
- 19) Authorizes MRMIB to disenroll an eligible individual enrolled in BHP after two consecutive months of nonpayment of premiums, and a reasonable written notice period of not less than 30 days. Authorizes MRMIB to conduct or contract for collection actions.
- 20) Requires MRMIB to make sure of a simple and easy to understand mail-in and Internet application process, provide for the operation of a toll-free telephone hotline to respond to requests for assistance, maintain an Internet Website, utilize a standardized format for presenting health benefits plan options, as specified, and establish a process to inform individuals who lose eligibility for the BHP of the availability of coverage through Medi-Cal, and the Exchange and to transmit their eligibility-related information to those programs electronically to facilitate enrollment.
- 21) Requires MRMIB in the event that MRMIB reasonably expects that the cost of BHP will exceed the available funds, to transfer individuals at their annual redetermination to coverage in the Exchange.

EXISTING FEDERAL LAW:

- 1) Establishes federal PPACA, which among other private market insurance reforms, authorizes states to establish an American Health Benefit Exchange by January 1, 2014, that makes qualified health plans available to qualified individuals and employers.

- 2) Provides states an option to establish BHP to enter into contracts to offer one or more health plans providing at least EHBs, as specified, to eligible individuals in lieu of offering such coverage in the Exchange.
- 3) Requires, as part of the BHP, the state to establish to the satisfaction of DHHS, that the amount of the monthly premium an eligible individual is required to pay for coverage under a standard health plan (in BHP) for the individual and the individual's dependents does not exceed the amount of the monthly premium that the eligible individual would have been required to pay if the individual had enrolled in the applicable second lowest cost silver plan, as specified, offered to the individual through an Exchange; that the cost-sharing an eligible individual is required to pay under the standard health plan does not exceed the cost-sharing required under a platinum plan in the case of an eligible individual with household income not in excess of 150% FPL; and, the cost-sharing required under a "gold plan" in the case of an eligible individual with household income between 150% FPL and 200% FPL and the benefits provided under the standard health plans offered through the program covers at least the essential health benefits (EHBs).
- 4) Defines EHBs to include: ambulatory patient services, emergency services, hospitalization, maternity and newborn care, mental health and substance use disorder services, including behavioral health treatment, prescription drugs, rehabilitative and habilitative services and devices, laboratory services, preventive and wellness services, chronic disease management, and pediatric services, including oral and vision care, and requires the Secretary of DHHS to further define EHBs, and ensure that the scope of EHBs is equal to those provided under a typical employer plan.
- 5) Provides for premium assistance credits for the purchase of health insurance in the Exchange. Credits are calculated on a sliding scale capped at 2% of income for those at or above 133% FPL and phasing out at 9.8% for those at 400% FPL. The premium credit is based on the second lowest-cost silver plan.
- 6) Provides assistance based on standard out-of-pocket (OOP) limits of \$5,950 for individuals and \$11,900 for families. Limit is reduced to one-third for those with income between 100% and 200% FPL, to one-half for those with income between 200 and 300% FPL and two-thirds for those with income between 300 and 400% FPL.

#### EXISTING STATE LAW:

- 1) Establishes HFP, administered by MRMIB, to provide health coverage through health plans to eligible children in families with income up to 250% FPL.
- 2) Establishes the CPP in HFP, whereby in each geographic area, MRMIB designates a CPP that is the participating health plan which has the highest percentage of traditional and safety net providers in its network. Requires subscribers selecting such a plan to be given a family contribution discount. Pursuant to regulation, traditional and safety net providers are determined by MRMIB for each county based on providers participating in the Child Health and Disability Prevention Program, outpatient hospital based clinics, Federally Qualified Health Centers (FQHCs), rural, community and free clinics participating in the Medi-Cal Program, and specified public and private hospitals participating in the Medi-Cal Program

such as county hospitals, non-profit community hospitals, hospitals operated by the University of California, and designated children’s hospitals.

- 3) Authorizes MRMIB to pay designated individuals or organizations an application assistance fee, if the individual or organization assists an applicant to complete the HFP application, and the applicant is enrolled in HFP as a result of the application.
- 4) Provides for the licensure of health plans, through the DMHC, under the Knox-Keene Health Care Service Plan Act of 1975, and for the licensure of health insurers, through the CDI, under the Insurance Code.
- 5) Provides for the DHCS, which administers the Medi-Cal Program, a health care services and coverage program for low-income families, pregnant women, children, individuals with disabilities, the elderly, and individuals in long-term care.
- 6) Establishes the Exchange in state government, and specifies the duty and authority of the Exchange. Requires the Exchange to determine the minimum requirements health plans must meet for participation in the Exchange, the standards and criteria for selecting health plans to be offered in the Exchange, to provide, in each region of the state, a choice of qualified plans, at each of the five levels of coverage contained in federal law (platinum, gold, silver, bronze, and catastrophic).

FISCAL EFFECT: According to the Senate Appropriations Committee:

Fiscal Impact (in thousands)

<u>Major Provisions</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>Fund</u>
Start-up funding:	unknown, likely in the millions of dollars annually			General*
Ongoing cost to operate BHP:	likely in the billions of dollars annually			Federal/** Private

\*Permits a General Fund (GF) loan to be repaid by July 1, 2016, with interest.

\*\*BHP funded by federal funds and subscriber premiums.

COMMENTS:

- 1) PURPOSE OF THIS BILL. According to the author, this bill will create affordable health care coverage for hundreds of thousands of people without asking for a single dime more from California’s taxpayers. The BHP will provide low-income Californians with equal or better benefit levels, less expensive health plan premiums, and lower cost-sharing than would be available to them in the Exchange using exclusively federal dollars, according to a Mercer Government Human Services Consulting (Mercer) financial feasibility analysis. Adopting the BHP option will lead to more individuals receiving health care coverage as a result of lower premiums, greater ability to access health care because of the lower cost-sharing, increased compliance with the federal individual mandate, and a reduction in uncompensated care for health care providers. Because federal BHP financing is based on the amount spent on premium tax credit and cost-sharing subsidies for commercial Exchange products, the BHP also provides an opportunity to increase funding to certain health plans and providers to amounts that would exceed rates paid to health plans and health care providers through Medi-

Cal. The Mercer feasibility analysis estimates rates paid to providers in the BHP would be 20% to 25% higher than Medi-Cal rates, which will improve the financial viability of safety net providers who will continue to serve the remaining uninsured after full implementation of federal health care reform. The BHP option also provides participants with a product with a higher medical loss ratio (85% instead of 80%) than in the Exchange, which allows consumers to get more value out of their premium dollar. Finally, establishing a BHP could also reduce state GF Medi-Cal costs by making it more likely that individuals who qualify for share-of-cost Medi-Cal, because they incur medical costs significant enough to enable them to “spend down” to Medi-Cal eligibility, will shift to the federally-funded BHP.

- 2) FEDERAL HEALTH CARE REFORM. On March 23, 2010, President Obama signed the PPACA (Public Law [PL] 111-148), which was amended on March 30, 2010 by the Health Care and Education Reconciliation Act of 2010 (PL 111-152), together these laws are referred to as PPACA. The law includes many provisions including a restructuring of the small and individual group insurance market, setting minimum standards for health care coverage, providing financial assistance to certain individuals and small employers, and enabling and supporting states to establish Health Benefit Exchanges where individuals and small business can shop for insurance and premium credits and cost sharing subsidies will be determined.
- 3) BENEFIT CATEGORIES. PPACA establishes five benefit categories—bronze, silver, gold, platinum, and catastrophic - all of which will have the EHB package. Policies cannot be sold in the small-group and individual market or Exchanges that do not meet the actuarial standards (percentage of medical expense paid by insurer) for the benefit categories established by PPACA. All carriers selling in the individual and small-group markets are at least required to offer silver and gold plans.
  - a) The bronze package will represent minimum creditable coverage with an actuarial value of 60% (i.e., covering 60% of enrollees' medical costs) with out-of-pocket spending limited to that which is defined for health savings accounts (HSAs), or \$5,950 for individual policies and \$11,900 for family policies.
  - b) The silver benefit package will have an actuarial value of 70% and the same out-of-pocket limits.
  - c) The gold package will have an actuarial value of 80% and the same out-of-pocket limits.
  - d) The platinum package will cover 90% of costs with the same out-of-pocket limits.
  - e) A catastrophic benefit package can be made available for adults younger than age 30, similar to HSA-eligible, high-deductible plans, with the EHB package, the cost of preventive services will be excluded from the deductible as under current HSA law, three primary care visits, and cost-sharing to HSA out-of-pocket limits.
- 4) PREMIUM TAX CREDITS AND SUBSIDIES. Depending upon income, PPACA provides premium tax credits, lower cost-sharing and lower maximum out-of-pocket (OOP) limits. Beginning 2014, advanceable, refundable tax credits will be available in the Exchange. Tax credits are based on the premium for the second lowest cost silver plan in an Exchange in the area where the person is eligible for coverage. Premiums are capped on a sliding scale depending upon income: a person with income up to 133% FPL has a cap of 2% of their income; a person with income up to 200% FPL has a cap of 6.3%; and, a person with income up to 400% FPL has a cap of 9.5%. As an example, a person with income at 200% FPL (\$21,780 in 2011) would have a premium cap of \$1,372 (6.3% of income), so if the second lowest cost silver plan premium was \$4,000, there would be a premium credit of \$2,628 (the

difference between the \$4,000 premium and the \$1,372 cap). Credits are based on annual income. A year-end reconciliation through the Internal Revenue Service could result in a refund to the enrollee or repayment up to a maximum safe harbor of \$300 for an individual and \$600 for a family at or below 200% FPL, and a scaled repayment for those with incomes up to 500% FPL.

People who qualify for premium credits and are enrolled in an Exchange silver level plan will also be eligible for assistance with cost-sharing requirements. In addition to the maximum OOP caps (\$5,950 per individual and \$11,900 per family), cost-sharing subsidies will further reduce OOP maximums by two-thirds for income between 100 and 200% FPL; by one-half for income between 200 and 300% FPL; and, by one-third for income between 300 and 400% FPL.

- 5) BHP. PPACA allows states to establish a BHP to support coverage of low-income individuals not eligible for Medicaid (Medi-Cal in California). BHP eligible individuals are people with income under 200% FPL who would otherwise be eligible for premium credits in the Exchange. Under the BHP, DHHS will transfer to the state for each fiscal year for which one or more standard health plans are operating within the state the amount equal to 95% of the premium tax credits, and cost-sharing reductions, that will be provided for the fiscal year to eligible individuals enrolled in the Exchange. States must assure that cost sharing requirements do not exceed those of a platinum Exchange plan (90% actuarial value) for individuals with income under 150% FPL and those of a gold plan (80% actuarial value) for other BHP enrollees. To qualify, enrollees must be U.S citizens or lawfully present immigrants under age 65, have income that does not exceed 200% FPL, not qualified for Medicare, Medicaid, or Children's Health Insurance Program (CHIP), and not offered employer sponsored insurance that meets PPACA standards for affordability and comprehensiveness. The University California Los Angeles (UCLA) Center for Health Policy Research estimates there are approximately 829,000 individuals in California who would be eligible for BHP, including 46,000 legal immigrants.
- 6) BHP FEASIBILITY. At the request of the California HealthCare Foundation, Mercer assessed the financial feasibility of the BHP option in terms of whether the BHP could potentially be implemented in California at existing Medi-Cal managed care payment rates. The results indicate that California may be able to implement BHP at no cost to the state GF. Mercer estimates that the average 2014 federal BHP monthly subsidy would be between \$441 and \$497 per member per month (PMPM). Using conservative estimates, Mercer estimates the average monthly BHP premium cost to be between \$294 and \$353 PMPM. Mercer acknowledges that these estimates are speculative and that there are many provisions and details of PPACA that are still unknown. Another report by the Institute for Health Policy Solutions (IHPS) points out that the federal subsidy amounts are highly sensitive to the benchmark plan in the Exchange and that IHPS and the Congressional Budget Office have estimated a lower premium amount (\$392 PMPM), which means federal funding available for BHP could be hundreds of millions of dollars less than is assumed by estimates to date (i.e., Mercer).
- 7) IMPACT ON CONSUMERS. If the BHP uses Medi-Cal providers and plans, it could provide continuity for populations switching between Medi-Cal and the BHP. It could also provide coverage at a lower cost than Exchange coverage, assuming Medi-Cal provider rates. Savings would be passed on to BHP enrollees in the form of lower premiums, cost-sharing,



or additional benefits. BHP enrollees would not be subject to year-end reconciliation. To the extent that HFP plans participate, parents and their children could enroll in the same plan. On the other hand, BHP enrollees would not be able to enroll in the Exchange, may be limited in their choice of mainstream health plans, and would not be eligible for tax credits. In addition, there may still be disruption in coverage as income fluctuates (at slightly higher income levels) and people move between BHP and the Exchange.

- 8) IMPACT ON SAFETY NET. Traditional and safety net providers are those providers who typically serve Medi-Cal, low-income, and uninsured patients. They include public hospitals and primary care clinics, including FQHCs. California, through its Medi-Cal Managed Care Program has three models of managed care delivery; two of those models, Local Initiatives and County Organized Health Systems have networks that include and in some cases are required to include traditional and safety net providers. The BHP, as contemplated in this bill, creates discount premiums for a plan designated a CPP, which obtains that designation based on the percentage of traditional and safety net providers in its network. To the extent the BHP preserves a patient base and revenue stream for traditional and safety net providers, those providers will benefit. FQHCs, however, are not guaranteed higher Prospective Payment System (PPS) rates as they are in Medi-Cal and the Exchange, and may be disadvantaged. Because of historically low reimbursement rates, provider access and financial solvency is a concern in Medi-Cal and may be a factor in the ability of Medi-Cal plans and providers to compete in the Exchange, but may not be an issue in BHP.
- 9) IMPACT ON EXCHANGE. Mercer estimates approximately 1.8 million would enroll in the Exchange (even with a BHP). Mercer suggests that the BHP population could represent a less healthy (and more costly) risk profile than the remaining Exchange population above 200% FPL because people with lower incomes tend to have more health issues. The level of premiums and cost-sharing in BHP and in the Exchange will have a direct impact on the risk of the population that enrolls in either place. Higher premium and cost-sharing levels increase the level of adverse risk and lead to higher enrolled population risk, because only those people who really need coverage will be willing to pay for it, especially at higher premium and cost-sharing levels. Lower premiums and cost-sharing levels, as would be offered in the BHP as compared to what the same population would get in the Exchange, could result in better risk in BHP because lower income people with more health issues would not be in the Exchange risk pool. Mercer indicates that plan participation, consumer choice, and risk dynamics for the Exchange population are complicated and beyond the scope of their analysis.

The IHPS report indicates that the BHP would substantially reduce the size of the Exchange's core tax credit population by more than half. IHPS uses estimates developed by the Urban Institute that indicate that there are over 2.3 million Californians with income up to 400% FPL, and a half of them have income under 200% FPL and would be eligible for BHP. IHPS states that this reduction in the Exchange population would greatly diminish the Exchange's ability to attract and offer high-value health plans that would compete for three out of four individual market purchasers.

Based on the 2009 California Health Interview Survey, a chart prepared by the UCLA Center for Health Policy Research indicates in the potential BHP eligible population 67% self-report their health status as good or better, and 33% indicate they have a chronic condition (any physical or mental condition that limits daily activities). This compare to the 87% of the

potential Exchange eligible population who self-report their health status as good or better, and 20% indicate they have a chronic condition.

- 10) **SUPPORT.** The California Association of Health Insuring Organizations (CAHIO) believes BHP is a better option compared to the Exchange because it can offer a more affordable benefit than the Exchange. CAHIO identifies many advantages to establishing BHP as an extension of HFP, such as, MRMIB already has a competitive health plan selection process, appropriate plan oversight, it would reduce administrative start-up expenses, and could maintain the family unit as existing HFP plans are more likely to participate in BHP. The Local Health Plans of California (LHPC) supports the BHP because LHPC believes it will offer a better benefit at lower cost to low-income working families, the BHP will provide continuity and convenience of unified care for parents and children who are in HFP, it will allow safety net providers and their health plan networks to preserve their patient base and revenue streams, and the BHP has the potential to raise the level of compensation for those providers participating in HFP and provide a more sustainable funding base.
- 11) **SUPPORT IF AMENDED.** The California Primary Care Association requests amendments to ensure that FQHCs receive PPS reimbursement in the BHP. The Western Center on Law and Poverty (Western Center) supports this bill because they believe, based on the Mercer study, that premiums and cost sharing for this low-income group will be much lower than it would be in the Exchange. However, Western Center believes the BHP should be administered by DHCS or the Exchange in order to provide seamless transitions for this population with volatile income. The Service Employee International Union requests amendments to house the BHP in the Exchange and address adverse selection scenarios that could make the Exchange or BHP pool unsustainable.
- 12) **SEEKS AMENDMENTS.** Health Access California has a strong policy preference that BHP be operated by the Exchange. Maternal and Child Health Access (MCH) requests an amendment that this bill "shall not diminish the right of a woman to pregnancy-related care under the Medi-Cal Program under Welfare and Institutions Code sections 14132(u) and 14134.5." MCH wants to preserve pregnancy related benefits and protections on cost-sharing and due process for women with income up to 200% FPL who qualify for Medi-Cal pregnancy services. MCH raises questions about whether these women would be eligible for BHP for non-pregnancy services and if so, questions, how the programs would coordinate. The American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME) seeks amendments to put BHP in the Exchange. AFSCME believes the Exchange will be undermined and have less bargaining power without the BHP population, covering some, but not all parents of HFP children further complicates things, and that MRMIB has privatized (enrollment) providing poor customer service.
- 13) **OPPOSITION.** The California Right to Life Committee opposes any health care program that includes abortion and family planning services with tax payer dollars, and any health care programs that would include minors who could obtain these services without parental notification or consent. The Orange County Board of Supervisors thinks that as many individuals and groups as possible should be served in a competitive, private sector market and that government programs should focus on serving our lowest income individuals who would otherwise be unable to secure coverage.

14) POLICY QUESTIONS.

- a) Should the impacts of pulling a significant federal subsidy population out of the Exchange to create a separate health coverage program be measured and monitored over time? Mercer, Urban Institute, IHPS and others have anticipated some of the potential impacts of creating a BHP on the Exchange but there is no certainty in any of those studies. Should California create a BHP it may be useful to conduct an evaluation over a period of time after the program has experience with enrollment, plan participation, federal subsidies, etc., to determine the long-term viability of the program and impact on the Exchange. A sunset of the program could accompany the evaluation to give policymakers an opportunity to revisit the utility of the BHP.
- b) Is MRMIB the best entity to administer the BHP? While MRMIB has demonstrated many accomplishments establishing and operating health coverage programs, there are potentially greater advantages to locating the BHP at either DHCS or the Exchange. At present, there is uncertainty about the future of the HFP. A recent proposal by the Governor would have transferred HFP to Medi-Cal to be operated as a Medi-Cal expansion. In addition federal authorization of CHIP is time limited. There may be advantages in leveraging purchasing power of the Medi-Cal program or selective contracting of the Exchange that should be taken into consideration.
- c) Is there urgency to making a policy decision about the BHP at this time? Federal rules are expected on the BHP this fall which may help California evaluate with more confidence the tradeoffs associated with implementing a BHP.

REGISTERED SUPPORT / OPPOSITION:

Support

Local Health Plans of California (sponsor)  
California Association of Health Insuring Organizations  
California Association of Public Hospitals and Health Systems  
California Chiropractic Association  
Congress of California Seniors  
Disability Rights Legal Center  
Molina Healthcare of California  
Planned Parenthood Affiliates of California  
Santa Clara County

Opposition

American Federation of State, County and Municipal Employees, AFL-CIO  
California Right to Life Committee, Inc.  
Orange County Board of Supervisors

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June 28, 2011

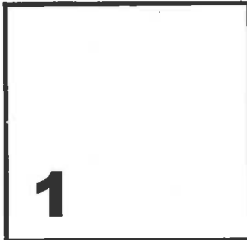
**State of California**  
**Financial Feasibility of a**  
**Basic Health Program**

MERCER

Prepared with funding from the  
California HealthCare Foundation

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## Executive Summary

Mercer Government Human Services Consulting (Mercer), assessed the financial feasibility of the Basis Health Program (BHP) option, as defined in the Patient Protection and Affordable Care Act (ACA) in California. The feasibility determination, prepared with funding from the California HealthCare Foundation (CHCF) is based on whether the BHP option could potentially be implemented in California at existing Medi-Cal managed care payment rates at no cost to the State (i.e., entirely funded by federal subsidies).

The task of assessing the feasibility of the BHP option in the State of California is broken down into the following steps:

- Estimate the size and demographic characteristics of the population eligible for the Exchange in California and the subsets likely to enroll in the BHP and Health Benefit Exchange (Exchange)
- Estimate the Silver-Level benefits and premiums likely to be offered in the Exchange
- Calculate the resulting federal premium and cost-sharing subsidies that would be made available to fund the State BHP based on the estimated Silver-Level benefits offered in the Exchange
- Estimate the premiums that would be required to fund health care benefits to the BHP population up to 200% of the Federal Poverty Level (FPL) at existing Medi-Cal managed care provider payment rates
- Calculate the resulting difference between the estimated federal BHP subsidies available and the estimated BHP premiums and identify the risk factors that could significantly alter the results and the conclusion about financial feasibility

The results of the analysis outlined above indicate that the State of California may be able to implement the BHP option at no cost to the state general fund. Mercer estimates the average 2014 federal BHP monthly subsidy to be between \$441 and \$497 PMPM. Using our conservative assumptions with respect to health status and costs, Mercer estimates the average monthly BHP premium cost to cover this population to be between \$294 and \$353 PMPM with very low premiums and cost-sharing levels. Based on these

estimates, under any scenario there is a projected excess of BHP subsidy over BHP costs. In addition, it appears that there would be enough excess funding to allow the State to implement the BHP option at provider reimbursement rates near, or possibly even exceeding, Medicare payment levels.

These estimates are speculative at this early stage with so many provisions of the ACA undefined and specifics of the BHP undetermined. However, the relatively large gap between the estimated premium subsidy and projected health care cost to cover the BHP population is consistent with findings from other studies (non-California specific) on this topic. In fact, three other studies (by Milliman, the Urban Institute and the Community Service Society (CSS)) have analyzed the BHP option and come up with similar results as to the financial feasibility of the BHP. In California, the excess of the federal subsidies over the resulting costs of a BHP could be used to increase provider reimbursement rates, reduce member premiums and cost-sharing (even further than already assumed), expand benefits, and extend outreach to enroll a greater share of this low-income population.

Mercer and CHCF are not advocating for or against the BHP option. The results of this study simply indicate this may be a viable option for the State to consider as it decides how best to implement the many provisions of the ACA. While the results of the analysis do show this to be financially feasible, clearly, implementation of a BHP would not be without some element of risk to the State.

In addition to the question of financial feasibility of a BHP option, the CHCF asked Mercer to address some of the potential impacts that adopting a BHP could have on the Exchange in California. Specifically, the following potential areas of impacts were considered:

- Impact on Exchange risk
- Impact on Exchange self-sustainability
- Impact on the Exchange's ability to selectively contract

#### **Impact on Exchange Risk**

The level of premiums and cost-sharing in a BHP and in an Exchange population (with or without a BHP option) will have a direct impact on the risk of the population that enrolls. That is to say, higher premium and cost-sharing levels increase the level of adverse risk among the enrolled population. With the assumption that a BHP option would only be implemented with reduced premiums and cost-sharing (as compared to what would be available under the Exchange for the same BHP-eligible subgroup), it is reasonable to conclude that the risk of the enrolling population up to 200% FPL would be better under a BHP than the risk of the same population subgroup that would enroll under an Exchange.

It is impossible to be sure how the risk of the remaining Exchange population above 200% FPL would compare to the less than 200% FPL group under an Exchange. However, one could argue that with less disposable income at the lower income (FPL)

levels, the impact of adverse risk would be greater at the lower income levels. If that holds true, Exchange risk may actually improve with the implementation of a BHP.

#### **Impact on Exchange Self-Sustainability**

All Exchanges must be self-sustaining by January 1, 2015. Therefore, it is reasonable to be concerned about removing some Exchange eligible members from the pool of members from which the Exchange may be funded. Our estimate of Exchange membership (net of BHP) is approximately 1.8 million. This net number for California is likely to be larger than any other state's gross Exchange enrollment. Therefore, from a purely fiscal perspective, the somewhat reduced Exchange population should not pose a significant issue with respect to being able to achieve self-sustainability.

#### **Impact on the Exchange's Ability to Selectively Contract**

California's Exchange enabling legislation has authorized the Exchange to use selective contracting. This was most likely set up this way to create some level of competition among licensed health plans for a place in the Exchange. Such competition can be used to drive higher quality and potentially lower costs (or improved efficiency). Therefore, it is reasonable to be concerned as to whether removing some Exchange eligible members from the pool will lower the "demand" to be part of the Exchange.

As mentioned previously, the estimate of Exchange membership (net of BHP) is still approximately 1.8 million. This net number is approximately twice the size of California's Healthy Families Program (HFP) population. MRMIB currently has 24 licensed health plans under contract and competing for the HFP membership of less than 900,000. A group of 1.8 million people constitutes a large pool of potential membership. We cannot speak to the specific size that will ultimately attract the State's desired level of demand for participation in the Exchange. However, if the estimate of Exchange enrollment net of BHP is reasonable, the somewhat reduced Exchange population should not create a dramatic difference with respect to being able to drive competition for selective contracting.



**2**

## Introduction

Mercer assessed the financial feasibility of the BHP option, as defined in the ACA, in California. The analysis was prepared with support from CHCF. The feasibility determination is based on whether the BHP option can be implemented in California at existing Medi-Cal managed care payment rates at no cost to the State (i.e., entirely funded by federal subsidies). Medi-Cal was selected as the benchmark because this program's provider reimbursement rates are typically lower than reimbursement rates of the HFP, or of commercial health plans. Therefore, feasibility is first tested at this lowest level, with further analysis available with respect to other payment levels.

## Background

Under the ACA, Medicaid eligibility will be increased to 133% FPL in 2014 (138% FPL, including the 5% income disregard). The ACA defines health care premium and cost-sharing subsidies for individuals below 400% FPL for purchasing mandatory health care through products offered in the state's Exchange. The BHP option creates a separate state run health program to cover individuals up to 200% FPL, who are not eligible for other government programs. If the BHP option is elected by a state, BHP eligible individuals would not have coverage available through the state Exchange.

The criteria that individuals eligible for coverage under the BHP must meet are as follows:

- Income up to 200% FPL
- U.S. citizen or lawfully present immigrant
- Under age 65
- Not be eligible for coverage under Medicaid (Medi-Cal), Medicare, Children's Health Insurance Program (CHIP) or Military/CHAMPUS-TRICARE
- Not have access to Employer-Sponsored Insurance (ESI) that meets certain ACA standards (comprehensive and affordable)

Therefore, the two groups of individuals that would be covered by a BHP are:

- Adults with modified adjusted gross income (MAGI) between 133% and 200% FPL
- Lawfully present individuals with income below 133% FPL, not eligible for Medi-Cal or HFP because of immigration status

The ACA includes the following requirements related to a BHP option:

- Cover the minimum essential benefits (not yet fully defined)
- Member premiums must not *exceed* premiums charged for the second lowest cost Silver-Level plan offered through the Exchange
- For individuals up to 150% FPL, cost-sharing cannot *exceed* Platinum-Level (10%)
- For individuals 151% to 200% FPL, cost-sharing cannot *exceed* Gold-Level (20%)
- Plan offered is either a managed care system or offers similar benefits of care management [e.g., Fee-For-Service (FFS) + Enhanced Primary Care Case Management (EPCCM) may work]
- To the extent feasible, the consumer is offered a choice of options
- Plan medical loss ratio can be no less than 85%
- Plan selection through a competitive process

Section 1331 of the ACA provides for financing of BHPs in two ways. The federal government will pay states a premium subsidy of 95% of what it would have paid for the BHP members (premium credit) under the Exchange. In addition, the federal government will pay states a cost-sharing subsidy, based on the cost-sharing subsidy available under the Exchange. These subsidies vary by income as defined by the ACA in relation to the FPL.

**3**

## Project Scope and Approach

The task of assessing the feasibility of the BHP option in the State of California is broken down into the following steps:

- Estimate the size and demographic characteristics of the population eligible for the Exchange in California and the subsets likely to enroll in the BHP and Exchange
- Estimate the Silver-Level benefits and premiums (second lowest price) likely to be offered in the Exchange
- Calculate the resulting federal premium and cost-sharing subsidies that would be made available to fund the state BHP, based on the estimated Silver-Level premium and cost-sharing offered in the Exchange
- Estimate the premiums that would be required to fund health care benefits to the BHP population up to 200% FPL at existing Medi-Cal managed care provider payment rates
- Calculate the resulting difference between the estimated federal BHP subsidies available and the estimated BHP premiums and identify the risk factors that could significantly alter the results and the conclusion about financial feasibility

Each of these steps is discussed in more detail, along with results, in the following section (Analysis and Findings) of this report. There have been other studies done and reports published on the BHP option, including the aspect of financial feasibility. However, CHCF is interested in examining the financial feasibility of the BHP option specifically for California. It is important to note that the analyses performed included the assumption that there would not be modifications to existing program eligibility requirements, other than those required by law. Therefore, the assumption used was that eligibility and coverage for Medi-Cal, HFP and the Access for Infants and Mothers Program (AIM) would remain at least at their current levels, in addition to the new coverage requirements of ACA.

**4**

## **Analysis and Findings**

### **Demographic Characteristics of the Uninsured Population Eligible for the Exchange**

The primary data source used by Mercer for estimating the size and demographic characteristics of the population eligible for the Exchange was the Census Bureau annual Current Population Survey (CPS) dataset, which breaks down the population of all fifty states. California-specific CPS data for 2007 – 2009 was used as the base, or starting point, of the demographic analysis. We compared the results of this analysis to multiple other California-specific studies and/or data sources and found very comparable results.

Mercer's estimate of the total Exchange and BHP *eligible* population is 4,454,000. It is important to understand that not everyone who is eligible for the Exchange or a BHP option will enroll. As a point of reference, the October 2010 issue of Health Affairs estimated that approximately 18.5% of Californians eligible for Medi-Cal or the HFP have not enrolled. These programs have little to no premiums required of their members. Therefore, it is reasonable to assume an even higher percentage of eligible members would not enroll in a BHP option or Exchange, which will both have some premium requirements for members.

There are three tables displayed on the following pages that show estimated enrollment for the Exchange (net of BHP), the BHP population, and then finally, the combined total enrollment for all Exchange-eligible populations. The assumptions that drive these enrollment estimates are addressed in the bullet points that precede each table.

In estimating the size of the Exchange eligible and enrolling population (net of BHP), Mercer incorporated the following working assumptions:

- The Exchange risk pool (net of BHP) will consist entirely of adult individuals and families with incomes above 200% FPL
- There would not be any children below 250% FPL, due to maintenance of effort requirements for CHIP
- Individuals with existing government-provided health benefits – Medicare and Military/CHAMPUS-TRICARE – will remain in these programs and will not be eligible for, or covered by, the Exchange
- The number of individuals with ESI will not change significantly with the implementation of the ACA in 2014
- Virtually all individuals between 200% and 400% FPL, with privately purchased individual policies, will migrate to the Exchange to take advantage of federal premium and cost-sharing subsidies
- Relatively few individuals above 400% FPL will enroll in the Exchange; instead they may enroll in non-Exchange offered products
- An assumed 70% of the eligible 200 – 400% FPL group will enroll and only 25% of those greater than 400% FPL will enroll (due to the fact that the over 400% FPL group will receive no government assistance under the Exchange)

Table 1 below displays the estimated Exchange (Net of BHP) eligible population assumed to *enroll* in the Exchange.

**Table 1 – Total Population Estimated to Enroll in the Exchange**

	200% – 400% FPL		400% FPL and Above		Total
	Females	Males	Females	Males	
<b>Average Adult Age</b>	<b>40.8</b>	<b>38.9</b>	<b>44.8</b>	<b>43.2</b>	<b>40.6</b>
<b>0-18</b>	107,190	124,784	22,061	28,262	<b>282,297</b>
<b>19-24</b>	88,855	102,498	10,561	14,645	<b>216,559</b>
<b>25-34</b>	136,834	180,862	23,008	35,179	<b>375,883</b>
<b>35-44</b>	111,072	132,757	22,682	31,378	<b>297,889</b>
<b>45-54</b>	142,436	134,659	34,757	39,393	<b>351,245</b>
<b>55-64</b>	101,394	82,950	34,100	36,162	<b>254,606</b>
<b>Total</b>	<b>687,781</b>	<b>758,510</b>	<b>147,169</b>	<b>185,019</b>	<b>1,778,479</b>

The working assumptions related to the BHP eligible and enrolling population are as follows:

- The BHP risk pool will consist entirely of adults, ages 19 through 64, with incomes up to 200% FPL
- Children up to 200% FPL will be covered by the HFP or Medi-Cal, and will not be enrolled in the BHP
- Legal immigrants with residency status less than five years will be eligible for the BHP, including those below 133% FPL, who are currently ineligible for federally funded Medicaid benefits
- Individuals with existing government-provided health benefits – Medi-Cal, HFP, Medicare and Military/CHAMPUS-TRICARE – will remain in these programs and will not be eligible for, or covered by, the BHP

- The number of individuals with ESI will not change significantly with the implementation of the ACA in 2014 (assuming some employers will drop coverage while others will add coverage)
- Virtually all individuals up to 200% FPL, with privately purchased individual policies, will migrate to the BHP due to the incentives of minimal premiums and low levels of cost-sharing
- Assume 70% of the BHP eligible population will actually enroll

Table 2 below displays the estimated BHP eligible population assumed to *enroll* in the BHP option.

**Table 2 – Total Population Estimated to Enroll in the BHP**

	< 150% FPL		150% – 200% FPL		Totals
	Females	Males	Females	Males	
<b>Average Age</b>	39.0	39.9	42.9	39.9	<b>40.8</b>
<b>19-24</b>	16,584	14,026	24,568	39,276	<b>94,454</b>
<b>25-34</b>	25,360	25,911	46,260	76,201	<b>173,732</b>
<b>35-44</b>	22,768	22,988	65,237	59,968	<b>170,961</b>
<b>45-54</b>	19,301	25,355	65,034	50,555	<b>160,245</b>
<b>55-64</b>	13,513	12,694	49,645	48,174	<b>124,026</b>
<b>Total</b>	<b>97,526</b>	<b>100,974</b>	<b>250,744</b>	<b>274,174</b>	<b>723,418</b>

Table 3 below, displays the total Exchange and BHP eligible population estimated to *enroll* in the Exchange and the BHP combined. It is important to understand that the figures in this table do not reflect our estimate of the number of people that would enroll in the Exchange absent a BHP. This is because we would assume a smaller percentage of individuals up to 200% FPL would actually enroll in the Exchange, as compared to a BHP, due to the higher premiums and cost-sharing requirements.

**Table 3 – Total Population Estimated to Enroll in the BHP and Exchange Combined**

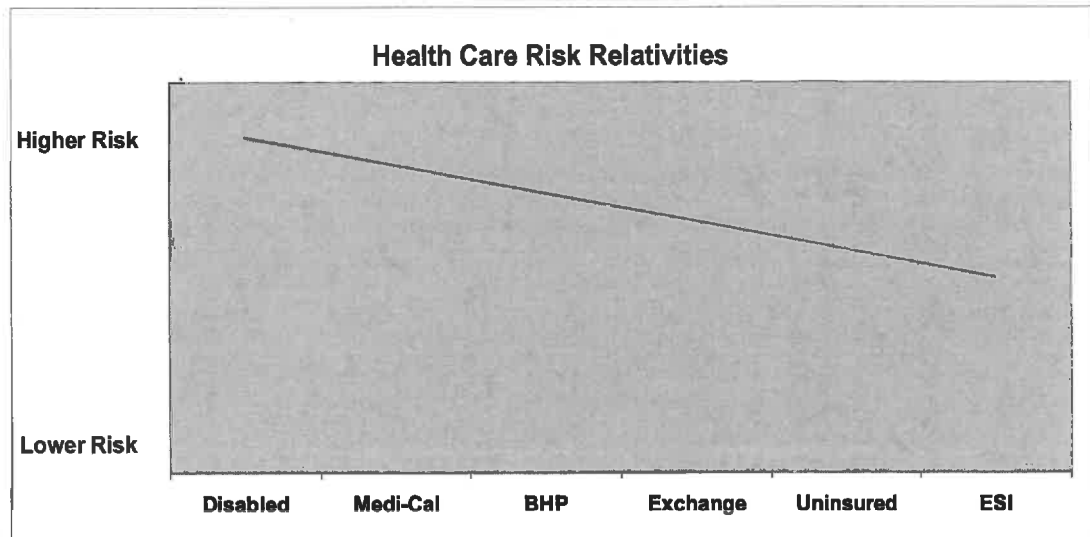
	Females	Males	Total
<b>Average Adult Age</b>	<b>41.6</b>	<b>39.8</b>	<b>40.6</b>
<b>0-18</b>	129,251	153,046	<b>282,297</b>
<b>19-24</b>	140,568	170,445	<b>311,013</b>
<b>25-34</b>	231,462	318,153	<b>549,615</b>
<b>35-44</b>	221,759	247,091	<b>468,850</b>
<b>45-54</b>	261,528	249,962	<b>511,490</b>
<b>55-64</b>	198,652	179,980	<b>378,632</b>
<b>Total</b>	<b>1,183,220</b>	<b>1,318,677</b>	<b>2,501,897</b>

### Relative Health Status of Populations

Generally, health status improves as income increases, resulting in decreasing average health care costs. Conversely, health status declines as income decreases resulting in increasing health care costs. Relative health status also improves for those who are employed, both because employed individuals have higher incomes than the unemployed and because they are healthy enough to work.

Since Medicaid (Medi-Cal) represents the lowest income population, this population group is assumed to have the highest health care risk and utilization levels, with the disabled Medicaid population generating higher costs than the non-disabled Medicaid population. The uninsured population represents a mix of relatively healthier individuals, who view purchasing coverage as uneconomical, and those with existing health conditions representing additional risks that cause health insurers to typically deny coverage or make the premiums unaffordable. This mix has been shown to reflect an overall average health status that is better than the Medicaid population – with lower average health care risk and utilization – but is somewhat worse than the ESI covered population.

These assumed health care cost relativities, as illustrated in the graph below, are consistent with the self-reported health status scores collected as part of the CPS dataset. While these self-reported scores are subjective and do not easily convert to a numerical rating scale, they confirm the generally held actuarial assumptions and support developing projected health care costs under the ACA from these income relativities.



## Silver-Level Benefits and Premiums Offered in the Exchange

Section 1331 of the ACA authorizes the BHP and defines the premium and cost-sharing subsidies based on the “Essential Health Benefits”, yet to be fully defined by the Secretary of Health and Human Services (HHS). Because the concept of Essential Health Benefits is modeled on the Federal Employee Health Benefits Program (FEHBP), Mercer estimated the 2014 Silver-Level premiums based on a typical FEHBP plan of benefits.

The Silver-Level of benefits is defined by the ACA as having an actuarial value of 70%, meaning that 70% of the total health benefit costs (excluding plan administration, risk and profit charges) are paid by the plan, with the remaining 30% paid by the member through per service cost-sharing in the form of deductibles, coinsurance and copayments. Mercer defined the level of member cost-sharing and estimated the premium using its proprietary Uninsured Model, which uses a national, commercial employee benefit and cost database, adjusted for the California health care market.

To project future health care costs from the base data, Mercer used current annual commercial health care unit cost and utilization trends for the 18 distinct Categories of Service (COS) employed in the Uninsured Model to project costs for the target year of 2014.

A demographic profile is defined as the relative distribution of a population by age and gender. The Exchange demographic profile used to estimate the Silver-Level premiums in 2014 was developed from the population in the CPS dataset in the 200% and above FPL income levels.

Mercer adjusted this demographic profile slightly by assuming that younger people, who are less likely to have ongoing health care needs, will be slightly (or somewhat) less likely to comply with the federal mandate to purchase coverage through the Exchange, while older people, conversely, are slightly (or somewhat) more likely to have ongoing health care needs, and be more likely to comply with the federal mandate to purchase coverage through the Exchange. Therefore, while we assume an average of 70% of the Exchange eligible population between 200% and 400% FPL will enroll, we assume that only 60% of the youngest age brackets will enroll and 80% of the oldest age brackets will enroll. This adjustment increased the average age of the estimated enrolled population by about one year.

We also assumed the population that enrolls in the Exchange will be primarily in the 200% – 400% FPL income bracket because they are eligible for the premium and cost-sharing subsidies. Those with incomes exceeding 400% FPL will not have any subsidies available to them under the Exchange and may be able to find more attractive coverage options outside the Exchange, thus, we assume that only 25% of individuals above 400% FPL will purchase coverage through the Exchange. The demographic profile of the uninsured Exchange eligible population expected to enroll and pay



premiums is 53% male, with an average age of 41 and estimated to be 1.8 million, as shown in Table 1 earlier in this section.

In addition to adverse selection due to age, the enrolled population in the Exchange will experience adverse selection in all age brackets at both extremes of the health spectrum. Less healthy individuals with above average health care risk will select against the insurers in the Exchange by enrolling at premium levels insufficient to cover the health care risks they present (i.e., they will enroll), while some of the healthier individuals with little to no health care risk will opt-out of the Exchange and avoid the unnecessary and unreasonably-high health care premiums (i.e., they will not enroll).

This adverse selection, which will increase the average risk levels of the members who purchase coverage in the Exchange, will be somewhat offset by the fact that the BHP premium and cost-sharing subsidies will be based on the second lowest Silver-Level premium offered in the Exchange. As with any other product or service in the marketplace, Mercer anticipates that there will be a range of premiums offered at the Silver-Level by the health insurers participating in the Exchange, some of which will overestimate the resulting risk pool (at higher premium levels), while others will underestimate the resulting risk pool (at lower premium levels). Thus, it's possible that the BHP premium and cost-sharing subsidies, based on the second lowest Silver-Level premium offered in the Exchange, will underestimate the ultimate risk level and be lower than the average. Consequently, to be conservative, Mercer developed the BHP subsidy estimate by not including an adverse selection risk loading into the projected 2014 Silver-Level premium estimate.

In order to create a range of possible premium and cost-sharing subsidies, two different pricing scenarios were utilized (lower and higher). The key differences between these scenarios were varying the annual trend and administrative loading percent that were applied as well as varying the cost-sharing subsidy calculation. The two different sets of annual trends (weighted across all categories of service) were 7.9% for the lower scenario and 8.9% for the higher scenario, on a PMPM basis. The health plan administrative loading was set at 12% (lower) and 15% (higher). Finally, to further differentiate scenarios, we utilized 95% (lower) and 100% (higher) for the cost-sharing subsidy calculation. See the discussion below on the issue of 95% versus 100% for the cost-sharing subsidy.

The resulting Silver-Level premiums for the year 2014, priced for the demographics above, as calculated by the Uninsured Model, are \$441 PMPM for the lower scenario and \$486 PMPM for the higher scenario.

The 2011, CalPERS statewide health insurance premium rates for single employee coverage, range from \$448 PMPM to \$850 PMPM (midpoint of \$649 PMPM) and the 2011, non-postal FEHBP premium rates range from \$438 PMPM to \$814 PMPM (midpoint of \$626 PMPM). The rates for these plans typically reflect actuarial values in excess of 90% (higher actuarial value equates to lower member cost-sharing, compared to the 70% Silver-Level projected for the Exchange). Reducing the actuarial values of

these plans (CalPERS and FEHBP) to the 70% Silver-Level, produces premiums comparable to the \$441 and \$486 PMPM estimates when projecting them forward three years to 2014. These comparisons and discussion were included to demonstrate a reasonableness check of Mercer’s independent Exchange premium estimate.

**Federal BHP Premium and Cost-Sharing Subsidy Calculations**

The BHP federal premium and cost-sharing subsidy formula is not clearly defined. Section 1331(d)(3)(A)(i) of the ACA defines it as, “... equal to 95 percent of the premium tax credits ..., and the cost-sharing reductions under section 1402 ...” which can be interpreted as either

- 95% x [Premium Subsidy + Cost-Sharing Subsidy] or
- 95% x Premium Subsidy + 100% x Cost-Sharing Subsidy

The Premium Tax Credit is defined mathematically as:

*The Premium (for the second lowest Silver-Level Benefit Plan) – the member share of premium, as determined by the applicable premium offset percentage (based on income as defined in Section 1401(b)(3)(A)(i) and as specified in Table 4 below).*

**Table 4 – Premium Offset Percentages (of Income)**

	Low-End Premium Offset %	High-End Premium Offset %	Cost-Sharing (Actuarial Value)
100% – 133% FPL	2.00%	3.00%	94%
133% – 150% FPL	3.00%	4.00%	94%
150% – 200% FPL	4.00%	6.30%	87%
200% – 250% FPL	6.30%	8.05%	73%
250% – 300% FPL	8.05%	9.50%	
300% – 400% FPL	9.50%	9.50%	

Section 1402(c)(2), defines the additional cost-sharing subsidy as “... the issuer of a qualified health plan ... shall further reduce cost-sharing under the plan in a manner sufficient to – (A) in the case of an eligible insured whose household income is ... not more than 150% of the poverty line ... increase the plan’s share of the total allowed costs of benefits provided under the plan to 94% of such costs; ... in the case of an eligible insured whose household income is more than 150% but not more than 200% of the poverty ... increase the plan’s share of the total allowed costs of benefits provided under the plan to 87% of such costs.” Mercer interprets this language to mean that those between 100% and 150% FPL have plans with an effective actuarial value of 94% (paying an average of 6% cost-sharing) and those between 150% and 200% FPL have plans with an effective actuarial value of 87% (paying an average of 13% cost-sharing). See Exhibit 1, on the following page, for cost-sharing percentages by benefit level.

**Exhibit 1 – Cost-Sharing Percentages by Benefit Level**

Bronze	Silver < 150% FPL	Silver 150% - 200% FPL	Gold	Platinum
40% Of Health Care Cost Paid By Member	5% Of Health Care Cost Paid By Member	13% Of Health Care Cost Paid By Member	20% Of Health Care Cost Paid By Member	10% Of Health Care Cost Paid By Member
	24% Of Health Care Cost Paid by Federal Cost-Sharing Subsidy	17% Of Health Care Cost Paid by Federal Cost-Sharing Subsidy		80% Of Health Care Cost Paid By Plan
60% Of Health Care Cost Paid By Plan	70% Of Health Care Cost Paid By Plan	70% Of Health Care Cost Paid By Plan	80% Of Health Care Cost Paid By Plan	80% Of Health Care Cost Paid By Plan

Mercer estimates the 2014 FPL for a single adult will be \$12,196, which would generate the Exchange premium offset amounts shown in Table 5 below.

**Table 5 – Estimated Exchange Premium Offset Calculation**

One Adult	\$ Income	Premium Offset %	Annual	Monthly
100% FPL	\$12,196	2.00%	\$ 244	\$ 20
138% FPL	\$16,830	3.29%	\$ 554	\$ 46
144% FPL	\$17,502	3.65%	\$ 640	\$ 53
150% FPL	\$18,294	4.00%	\$ 732	\$ 61
175% FPL	\$21,343	5.15%	\$1,099	\$ 92
200% FPL	\$24,392	6.30%	\$1,537	\$128

Figures in the table are rounded

The 138% level is used in this table since FPL levels below this will be covered by Medi-Cal (133% FPL + 5% income disregard). The number of people estimated below this income level (legal immigrants not currently eligible for Medi-Cal) is very small. Since 144% FPL is midway between the lower BHP population income segment of 138% – 150% FPL and 175% FPL is midway between the upper BHP population income segment of 150% – 200% FPL, Mercer used the 144% and 175% midpoints to represent the average of each population segment for pricing purposes.

Using this Exchange demographic profile, the weighted net federal BHP premium and cost-sharing subsidies range from about \$441 PMPM to \$497 PMPM. Calculations are shown in Tables 6 and 7, below.

**Table 6 – Calculation of the Estimated BHP Subsidy (Lower Scenario)**

	< 150% FPL	150% – 200% FPL	Combined
<b>Total Projected Health Care Cost</b>	\$554	\$554	\$554
<b>- 30% Member Cost-Sharing</b>	<u>\$166</u>	<u>\$166</u>	<u>\$166</u>
<b>= 70% Plan Covered Health Care Cost</b>	\$388	\$388	\$388
<b>+ 12% Administrative Loading</b>	<u>\$ 53</u>	<u>\$ 53</u>	<u>\$ 53</u>
<b>= Silver Level Premium PMPM</b>	<b>\$441</b>	<b>\$441</b>	<b>\$441</b>
<b>- BHP Premium Offset</b>	<u>\$ 53</u>	<u>\$ 91</u>	<u>\$ 81</u>
<b>= Gross Premium Subsidy</b>	\$388	\$350	\$360
<b>x 95% = Net Premium Subsidy</b>	<b>\$368</b>	<b>\$332</b>	<b>\$342</b>
<b>Gross Cost-Sharing Subsidy</b>	\$133	\$ 94	\$105
<b>x 95% = Net Cost-Sharing Subsidy</b>	<b>\$126</b>	<b>\$ 89</b>	<b>\$100</b>
<b>Total Estimated BHP Net Subsidy PMPM</b>	<b>\$494</b>	<b>\$421</b>	<b>\$441</b>

Figures in the table are rounded

**Table 7 – Calculation of the Estimated BHP Subsidy (Higher Scenario)**

	< 150% FPL	150% – 200% FPL	Combined
<b>Total Projected Health Care Cost</b>	\$593	\$593	\$593
<b>- 30% Member Cost-Sharing</b>	<u>\$180</u>	<u>\$180</u>	<u>\$180</u>
<b>= 70% Plan Covered Health Care Cost</b>	\$413	\$413	\$413
<b>+ 15% Administrative Loading</b>	<u>\$ 73</u>	<u>\$ 73</u>	<u>\$ 73</u>
<b>= Silver Level Premium PMPM</b>	<b>\$486</b>	<b>\$486</b>	<b>\$486</b>
<b>- BHP Premium Offset</b>	<u>\$ 53</u>	<u>\$ 91</u>	<u>\$ 81</u>
<b>= Gross Premium Subsidy</b>	\$433	\$395	\$405
<b>x 95% = Net Premium Subsidy</b>	<b>\$411</b>	<b>\$375</b>	<b>\$385</b>
<b>Gross Cost-Sharing Subsidy</b>	\$142	\$101	\$112
<b>x 100% = Net Cost-Sharing Subsidy</b>	<b>\$142</b>	<b>\$101</b>	<b>\$112</b>
<b>Total Estimated BHP Net Subsidy PMPM</b>	<b>\$553</b>	<b>\$476</b>	<b>\$497</b>

Figures in the table are rounded

**Estimated 2014 BHP Expenses**

Like the Exchange demographic profile, the BHP demographic profile used to estimate the BHP premium and cost-sharing, was developed from the population in the CPS dataset in the up to 200% FPL income levels. Mercer adjusted the BHP demographic profile to a greater extent than the Exchange demographic profile because the lower income level of the BHP population provide greater incentives for younger, healthier individuals to avoid unnecessary expenses on their limited incomes.

While we assume an average of 70% of the BHP eligible population will enroll, we assume that only 50% of the youngest age brackets will enroll, while 90% of the oldest age brackets will enroll. This adjustment increased the average age of the estimated enrolled BHP population by about two years.

The demographic profile of the uninsured BHP eligible population expected to enroll and pay premiums is 52% male with an average age of 41 and estimated to be 0.7 million, as displayed in Table 2 previously.

To estimate the BHP Expenses in 2014 for this population, Mercer used the Calendar Year (CY) 2009 Medi-Cal Managed Care encounters and related FFS experience from the membership of a large subset of Medi-Cal plans that reported the most reliable and complete encounter data. As was done for the Exchange rate assumptions, Mercer developed two different scenarios (lower and higher) to show a range of potential BHP costs.

The following assumptions were used for the higher BHP cost scenario:

- Health status increases with income, as noted previously. Since the BHP eligible population sits just above the Medi-Cal population on the income scale, the BHP health care risk should be slightly better than the Medi-Cal experience
- The Medi-Cal populations that best reflect the health care risk of the BHP eligible population are the adults in the Adult & Family Category of Aid (COA) group and the Disabled Medi-Cal Only (i.e., non-dual eligible) COA group
- Incidence of disability increases as income levels decrease. The current Medi-Cal mix of the adult population is about 80% from the Adult & Family COA group and 20% non “share-of-cost” Disabled Medi-Cal Only COA group. To be very conservative, Mercer assumed the disabled health status risk composition of the BHP eligible population would approach the Medi-Cal mix, so a 15% Disabled blend was used with 85% Adult & Family experience
- The State would establish minimal premium and cost-sharing levels, similar to, or slightly above the current HFP levels, to help maximize enrollment and not discourage access to vital health care services
- Since the current HFP monthly premiums are \$4 for the lowest income Category A (up to 150% FPL) and \$16 for income Category B (up to 200% FPL), Mercer priced a \$10 monthly premium for the less than 150% FPL income group and a \$20 premium for the 150% – 200% FPL income group
  - Since Mercer calculated the current HFP Category A cost-sharing level to equate to about a 98% actuarial value and the Category B cost-sharing level to equate to about a 96% actuarial value, Mercer priced the less than 150% FPL income group BHP plan with a 98% actuarial value and the 150% – 200% FPL income group BHP plan with a 96% actuarial value
- Again, for conservatism, health care cost and utilization trends for the five year period from CY 2009 to the first year of the BHP, CY 2014, will be approximately 1/2% above the upper bound of the range of Mercer estimates used in the pricing of 2011 – 2012 Medi-Cal managed care rates

- The administrative loading (including profit/risk/contingency) for the BHPs would represent 12% of the premiums, which is higher than current Medi-Cal managed care payment levels (to be conservative)

After the CY 2009 encounter data for the relevant Medi-Cal managed care health plans were extracted by COA and COS for ten distinct age and gender brackets, they were adjusted for known reporting anomalies. FFS health care costs for benefits not provided by the Medi-Cal managed care health plans, but covered under Medi-Cal FFS (e.g., AIDS and psychotropic drugs) were added to the total to develop complete costs for covering these Medi-Cal members. This was done to better represent the ultimate essential benefits to be defined under ACA.

Once the CY 2009 Medi-Cal MCO data were completed and adjusted to the statewide levels used for rate setting and the FFS costs were added, the resulting data were projected forward five years, using the current Medi-Cal unit cost and utilization trends to develop estimated CY 2014 health care costs for both the Adult & Family and Disabled COAs. These costs were then loaded with a 12% factor for administration, profit and risk/contingencies to develop final, estimated statewide MCO premiums for females and males in each of five age brackets for both COAs.

The adult female Medi-Cal membership in the 19-44 age brackets significantly overrepresent maternity costs due to Medicaid eligibility rules. In many cases, women become eligible for Medicaid, not only because of their income, but because of a combination of their incomes and pregnancy status. Consequently, the female age 19-44 Medi-Cal health care risk is much higher than the normal, commercially covered populations, where the incidence of pregnancies is not unnaturally inflated. Under current Medi-Cal eligibility rules, almost all pregnant women below 200% FPL are eligible for coverage. As an added measure of conservatism, Mercer calculated the projected BHP health care costs with 25% of the Medi-Cal pregnancy experience included. It is important to note that if actual BHP maternity experience is greater than what was included in the cost base, it will mean that the State is achieving corresponding savings by removing the maternity experience from Medi-Cal. Therefore, we believe this 25% figure is very conservative.

The resulting premiums by age bracket were then combined in the ratio of 85% Adult & Family COA and 15% Disabled COA to develop blended rates. The projected membership by age and gender for both BHP income categories were then multiplied by the estimated BHP demographic mix to develop a weighted, estimated gross BHP rate of \$373 PMPM.

Mercer then calculated the impact of the \$10 and \$20 member premiums for the less than 150% FPL and 150% – 200% FPL income brackets, respectively, assuming that only 50% of the premiums will ultimately be collected (to be conservative). Added to this, Mercer applied the 2% cost-sharing paid by the less than 150% FPL income group and the 4% cost-sharing paid by the 150% – 200% FPL income group, to reduce the \$373

PMPM gross BHP rate to a net cost to the State of \$353 PMPM for the BHP, as shown in Table 8, below.

**Table 8 – Estimated BHP Premium Rates (Higher Scenario)**

Pregnancy Costs Included	< 150% FPL	150% – 200% FPL	Combined
<b>Gross MCO Premium</b>	\$369	\$374	<b>\$373</b>
<b>Gross Member Contribution</b>	\$10	\$20	<b>\$17</b>
<b>Collection Offset Percentage</b>	50%	50%	<b>50%</b>
<b>Net Member Contribution</b>	\$5	\$10	<b>\$9</b>
<b>Member Cost-Sharing</b>	\$6	\$13	<b>\$11</b>
<b>Net MCO Cost to State</b>	<b>\$358</b>	<b>\$351</b>	<b>\$353</b>

Figures in the table are rounded

Because this scenario reflects compounded conservatism of several assumptions, Mercer developed an alternate lower cost scenario that has a higher probability, with the following adjustments:

- The Medi-Cal mix of the population will be 90% Adult & Family and 10% Disabled, instead of the 85%/15% mix used in the most conservative scenario
- Health care cost and utilization trends for the next five year period from CY 2009 to the first year of the BHP, CY 2014, will be at the midpoint of the range of the Mercer estimates used in the pricing of 2011 – 2012 Medi-Cal managed care rates
- The administrative loading for the Medi-Cal MCOs operating similar BHPs would represent 10% of the premiums, instead of 12%
- Only 10% of the pregnancy costs will be included in the premium rates, instead of the 25%
- 75% of the premiums will be collected, instead of the 50% assumption

This lower scenario produces a weighted, estimated gross BHP rate of \$316 PMPM. The impact of the same member premiums and cost-sharing referenced above, reduces the \$316 PMPM gross BHP rate to a net cost to the State of \$294 PMPM for the BHP, as shown in Table 9, below.

**Table 9 – Estimated BHP Premium Rates (Lower Scenario)**

Pregnancy Costs Removed	< 150% FPL	150% – 200% FPL	Combined
<b>Gross MCO Premium</b>	\$312	\$318	<b>\$316</b>
<b>Gross Member Contribution</b>	\$ 10	\$ 20	<b>\$ 17</b>
<b>Collection Offset Percentage</b>	75%	75%	<b>75%</b>
<b>Net Member Contribution</b>	\$ 8	\$ 15	<b>\$ 13</b>
<b>Member Cost-Sharing</b>	\$ 5	\$ 11	<b>\$ 9</b>
<b>Net MCO Cost to State</b>	<b>\$299</b>	<b>\$292</b>	<b>\$294</b>

Figures in the table are rounded

### Surplus/(Deficit) of Estimated Federal BHP Subsidies over BHP Premiums

In calculating the CY 2014 BHP premium subsidy and BHP cost estimates, Mercer employed conservative assumptions on both sides. The actual Exchange subsidies may be higher due to the risk profile of the likely actual Exchange enrolled population and the pent-up demand this previously uninsured population will bring with it. Similarly, the risk profile of the likely BHP enrolled population should have lower average costs than the current Medi-Cal enrolled population, and should have a lower incidence of disability and pregnancy than was used in the BHP cost estimates.

In order to reflect the most conservative scenario, Table 10, below, calculates the difference between the lowest estimated BHP subsidy and the highest cost BHP estimate. This reflects the minimum potential difference (excess) of BHP subsidy and BHP cost estimates. The table also reflects the maximum potential difference resulting from the subsidy and cost estimates.

**Table 10 – Calculation of the Estimated BHP Subsidy Surplus/(Deficit)**

	Minimum Difference PMPM	Maximum Difference PMPM
<b>Estimated Monthly Federal Subsidy</b>	\$441	\$497
<b>Net Estimated Monthly BHP Costs</b>	\$353	\$294
<b>Difference = Excess</b>	\$ 88	\$203

The \$88 PMPM gap between the estimated premium subsidy and BHP costs for the most conservative scenario represents about 25% of the \$353 Net BHP costs, which allows for a large margin of error in these estimates and assumptions. For the more aggressive scenario, the \$203 PMPM gap represents almost 70% of the Net BHP costs. The size of these gaps should not be affected by the actual number of Californians with incomes less than the 200% FPL level and eligible for the BHP, although it will be affected by the relative risk profile of the percentage that decides to enroll.

Another factor worth noting is that the federal BHP subsidies do not include state mandated benefits, which must be funded entirely by the states. By using the actual Medi-Cal costs to develop the estimated BHP rates, the current California mandated benefits are already included on the cost side of the ledger. Given that California has one of the larger sets of state mandated benefits, an expansion of the definition of Essential Health Benefits could have the impact of increasing the federal BHP premium subsidies without adding any costs to the BHP rates, as these benefits may already be included in the current Medi-Cal costs.



## Conclusion on Financial Feasibility

Under any scenario based on the estimated subsidy and costs modeled in this analysis, the result is that it would be financially feasible for California to offer a BHP option at Medi-Cal provider reimbursement levels, with no costs to the State. These results are consistent with estimates and projections included in other papers written on the BHP option that were not specific to California (e.g., Milliman, the Urban Institute, and CCS).

Since the ACA does not allow a state to retain or use excess funding for anything but the BHP, there appears to be room under each scenario to offer a BHP at reimbursement rates above current Medi-Cal levels. The following bullets offer a point of reference for the current Medi-Cal reimbursement levels for the three most significant COS (Hospital Facility, Physician, and Pharmacy).

- An analysis of data from the 2008 California Office of Statewide Health Planning and Development (OSHPD) Hospital Annual Disclosure Reports estimates Medi-Cal managed care hospital per diem reimbursement rates to be approximately 89% of Medicare reimbursement levels. Based on this same data source, Medi-Cal managed care per diem rates are approximately 43% of Commercial inpatient rates
- A 2009 CHCF nationwide survey of Medicaid physician reimbursement rates found California physician fees to be approximately 56% of the Medicare fee schedule. Based on Mercer's experience, commercial physician reimbursement tends to run anywhere from 100% to 130% of Medicare. Taking the average of this range (115%) would put Medi-Cal physician reimbursement at approximately 49% of commercial reimbursement levels
- Based on Mercer's experience, Medi-Cal managed care prescription drug reimbursement levels are roughly equivalent to Medicare and commercial levels

For purposes of this discussion, we will assume that these three COS are representative of all reimbursement levels for Medi-Cal. That is to say, we will assume that all COS roll up to one of these three, broad COS (Hospital – Facility, Physician – Professional and Pharmacy). On a weighted basis, this would mean that current Medi-Cal reimbursement levels are approximately 81% of Medicare rates (the weighting of 89% facility, 56% professional and 100% pharmacy).

Under the most conservative scenario, there is an excess of approximately 25% funding (i.e., 25% higher estimated subsidy than the estimated net BHP costs). Therefore, even under this scenario, our model projects that there is enough room to raise BHP reimbursement levels from current Medi-Cal (assumed to be 81% of Medicare) to 100% of Medicare for Facility and Pharmacy and 90% for Physician/Professional services.

Under the less conservative scenario, there was an excess of approximately 70% funding (i.e., 70% higher estimated subsidy than the estimated net BHP costs). If this scenario plays out, there would appear to be enough room to raise BHP reimbursement levels to 110% of Medicare for Facility, 100% for Pharmacy and 125% for Physician/Professional.

**5**

## **BHP Impact on the Exchange**

This section of the report addresses some of the potential impacts that adopting a BHP option could have on the Exchange in California. Specifically, the following potential areas of impacts are discussed:

- Impact on Exchange risk
- Impact on Exchange self-sustainability
- Impact on the Exchange’s ability to selectively contract

Finally, we close with a host of “Other Considerations” related to the analyses performed and included in this report.

### **Impact on Exchange Risk**

As illustrated by the Health Care Cost Relativities graph in the previous section, the BHP population in the up to 200% FPL income group (BHP group) should represent a less healthy (and more costly) risk profile than the remaining Exchange population above 200% FPL. In addition, the level of premiums and cost-sharing in a BHP and in an Exchange population (with or without a BHP option) will have a direct impact on the risk of the population that enrolls. Specifically, higher premium and cost-sharing levels increase the level of adverse risk and lead to higher enrolled population risk. With the assumption that a BHP option would only be implemented with reduced premiums and cost-sharing (as compared to what would be available under the Exchange for the same BHP-eligible subgroup), it is reasonable to conclude that the risk of the enrolling population, up to 200% FPL, would be better under a BHP than the risk of the same population subgroup that would enroll under an Exchange.

It is impossible to be sure how the risk of the remaining Exchange population above 200% FPL would compare to the less than 200% FPL group under an Exchange.

However, one could argue that with less disposable income at the lower income (FPL) levels, the impact of adverse risk would be greater at the lower income levels. If that holds true, Exchange risk may actually improve with the implementation of a BHP. On the other hand, at higher income levels the subsidy is considerably lower than at lower income levels. Therefore, the motivation to participate within the Exchange versus the outside market is much lower for the healthiest segment of the Exchange population. Plan participation, consumer choice and risk dynamics for the Exchange population are complicated and beyond the scope of this analysis.

## **Impact on Exchange Self-Sustainability**

All Exchanges must be self-sustaining by January 1, 2015. There will be no federal funds available for states to use for the ongoing operations of the Exchanges after this date. Therefore, it is reasonable to be concerned about removing some Exchange eligible members from the pool of members from which the Exchange may be funded. Based on the population estimates included in the previous section, the BHP population is approximately 723,000 members. However, the estimate of Exchange membership (net of BHP) is approximately 1.8 million. This net number for California is likely to be larger than any other state's gross Exchange enrollment (California's total population is 48% larger than the next closest state – Texas). From a purely fiscal perspective, the somewhat reduced Exchange population should not pose a significant issue with respect to being able to achieve self-sustainability.

## **Impact on The Exchange's Ability to Selectively Contract**

California's Exchange enabling legislation has authorized the Exchange to use selective contracting. While the details regarding how this selective contracting will occur are still under development, ultimately it means that not every willing health plan will be allowed to participate in California's Exchange. This was most likely set up this way to create some level of competition among licensed health plans for a place in the Exchange. Such competition can be used to drive higher quality and potentially lower costs (or improved efficiency). Therefore, it is reasonable to be concerned as to whether removing some Exchange eligible members from the pool will lower the "demand" (i.e., competition) to be part of the Exchange.

As mentioned previously, the estimate of Exchange membership (net of BHP) is approximately 1.8 million. This net number is approximately twice the size of California's HFP population. MRMIB currently has 24 licensed health plans under contract and competing for the HFP membership of less than 900,000. A group of 1.8 million people constitutes a large pool of potential membership. We cannot speak to the specific size that will ultimately attract the State's desired level of demand for participation in the Exchange. However, if the estimate of Exchange enrollment net of BHP is reasonable,

the somewhat reduced Exchange population should not create a dramatic difference with respect to being able to drive competition for selective contracting.

## Other Considerations

As illustrated in Table 5 in the previous section, the income band spanning 138% and 200% FPL is a rather narrow range of only \$7,562 annually. Sommers and Rosenbaum, in the February 2011 issue of Health Affairs, published a study which showed that over the course of a year, approximately 50% of the people at this income level will experience earnings fluctuations which will move them above or below the 138% FPL BHP eligibility threshold, rendering them ineligible for the specific coverage they have, and requiring them to re-enroll in the coverage for the income category they move to. This churning of coverage will also likely exist above or below the 200% BHP upper income eligibility threshold, requiring them to disenroll from the BHP and enroll in the Exchange (or vice versa). We did not attempt to model this phenomenon and have not made any adjustment to our analysis to account for this.

By using the Medi-Cal provider reimbursement rates in the CY 2009 data, we have not modeled the increased reimbursements for primary care providers (PCPs) to the Medicare levels mandated by the ACA for CY 2013 and CY 2014. As the law currently stands, these PCP reimbursement rates will revert to their current levels starting in 2015, however, some states are contemplating leaving the PCP reimbursement rates intact after 2014.

The ACA currently requires Exchange participating health plans to offer Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) as part of their provider networks. In addition, payment for these FQHCs and RHCs is to be at the prospective payment rates used by the states' Medicaid programs. In California, these payment rates tend to be significantly higher than regular physician Medi-Cal and even commercial payment levels. As the ACA stands today (before regulations are published), these requirements do not exist for a BHP option. Mercer did not make any adjustment to the estimated BHP or Exchange health care costs to account for this requirement.

All estimates in this report are based upon the information available at a point in time and are subject to unforeseen and random events. Therefore, any estimates or projection must be interpreted as having a likely range of variability from the estimate. Mercer has prepared these projections exclusively for the California HealthCare Foundation. These estimates may not be used or relied upon by any other party or for any other purpose than for which they were issued by Mercer. Mercer is not responsible for the consequences of any unauthorized use. The estimates and projections included in this report are not a guarantee of results which might be achieved.

Further, the estimates set forth in this report have been prepared before all regulations needed to implement the ACA and Health Care Education and Reconciliation Act (HCERA) have been issued, including clarifications and technical corrections and without

guidance on complex financial calculations that may be required. Accordingly, these estimates are not Actuarial Opinions. The State of California is responsible for all decisions related to the policy direction of the Exchange and a BHP option. Such decisions should be made only after the State's careful consideration of alternative future financial conditions and legislative scenarios and not solely on the basis of the estimates illustrated here.

Because of numerous uncertainties about the health care marketplace in 2014, the analyses and findings contained in this report are preliminary and subject to change for many reasons, including, but not limited to:

- Uncertainties regarding the ACA
  - Key terms and provisions in the law remain undefined, or not yet fully defined, more than a year after it was enacted, such as the definition of the “Essential Health Benefits” that will be required for all products offered in the Exchange, and which will drive the BHP premium and cost-sharing subsidies
  - Key terms and provisions of the law conflict. For example, Section 1331(a)(2)(A)(ii) defines the BHP cost-sharing subsidies to be a minimum of Platinum-Level benefits (90% actuarial value) for individuals between 100% – 150% FPL and Gold-Level benefits (80% actuarial value) to individuals between 150% – 200% FPL, while Section 1402(c)(2) defines the additional cost-sharing subsidies to be a minimum of 94% actuarial value for individuals between 100% – 150% FPL and 87% actuarial value to individuals between 150% – 200% FPL
  - Key terms and provisions of the law are unclear, such as the precise definition of “actuarial value” and the formula for the BHP cost-sharing subsidy (100% or 95%)
- Decisions about how the State would structure a BHP, such as the premiums and cost-sharing levels, which will impact the risk profile of those who enroll, and how the state decides to legislate and regulate the health care marketplace under the ACA
- Uncertainties regarding consumer behavior under the ACA, for example:
  - What will be the level of compliance with the federal insurance mandate?
  - Will those above 400% FPL, not eligible for premium subsidies, purchase health care in the Exchange, or migrate to other products outside it, leaving the Exchange with a potentially lower income and less healthy risk pool?
  - How will the 90-day grace period for non-payment of premiums and the lack of a penalty for re-enrollment affect coverage persistency and premium payments in a BHP and/or in the Exchange?



July 9, 2012

*Dedicated to the promotion,  
protection and improvement  
of the health of all Californians*

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Yolo County

**Executive Director**  
Judith Reigel

The Honorable Felipe Fuentes  
Chair, Assembly Appropriations Committee  
State Capitol, Room 2114  
Sacramento, CA 95814

RE: SB 703/Hernandez – SUPPORT

Dear Assembly Member Fuentes:

The County Health Executives Association of California (CHEAC) respectfully supports Senate Bill 703, which would create the Basic Health Plan (BHP), a health insurance alternative to the California Health Benefits Exchange (Exchange) for low-income individuals who do not qualify for Medi-Cal.

The BHP would make available more affordable coverage to individuals earning between 133% and 200% of the federal poverty level, while providing these lower-income Californians with equal or better federally subsidized benefit levels. This would increase the number of low-income uninsured who purchase health insurance and significantly reduce the number of uninsured in California. In addition to improving health outcomes for these newly insured individuals, uncompensated care costs to our health care safety net, including county clinics and hospitals, will be reduced.

For the above reasons, CHEAC supports SB 703. Please do not hesitate to contact us if you have any questions about our position.

Sincerely,

*As signed*

Judith Reigel  
Executive Director

cc: The Honorable Ed Hernandez, OD  
Members, Assembly Appropriations Committee

**County Health Executives Association of California**

1127 11<sup>th</sup> Street, Suite 309, Sacramento, CA 95814 • 916.327.7540 TEL • 916.441.4093 FAX  
www.cheac.org

August 10, 2011

The Honorable Ed Hernandez  
California State Senate  
State Capitol, Room 4085  
Sacramento, CA 95814

**RE: SB 703 - OPPOSE**

Dear Senator Hernandez:

On behalf of the Kaiser Permanente Medical Care Program, I regret to inform you of our **opposition to SB 703**, which establishes a basic health plan (BHP) in California. Pursuant to ongoing conversations with you and your staff, our concerns include impacts on the robustness of the California Health Benefits Exchange, less-than-adequate rates paid to providers and further fragmentation of health coverage for low-income consumers.

***SB 703 creates risks for the California Health Benefits Exchange marketplace.***

At the most recent board meeting of the California Health Benefits Exchange, the Board voted to oppose SB 703 unless the legislation is set aside for 2011. The Board expressed significant and distinct concerns with the impacts the BHP may have on the Exchange. We share many of these concerns.

Kaiser Permanente is working assiduously to ensure successful implementation of the Affordable Care Act at both national and state levels. Success of the California Health Benefits Exchange will rely on a large pool of consumers in a competitive marketplace with high quality, affordable health coverage offered by numerous plans. According to estimates, SB 703 and the BHP will remove between one-third and one-half of consumers, perhaps up to one million individuals, from the Exchange and partition them in a separate program.

***SB 703 likely burdens provider networks with low rates.***

According to initial analysis of the BHP, the core financing of the program will only be cost-beneficial to the state and low-income consumers if rates paid to providers are significantly lower than rates likely to be paid in the Exchange. Less-than-adequate rates paid in the BHP may create access problems and further exacerbate cost shifts to commercial purchasers.

***Establishing an additional program further fragments access to care.***

A core feature of the Patient Protection and Affordability Act is to provide consumers with streamlined and simplified access to health coverage. SB 703, by establishing a new low-income health program separate from the Exchange and from the Medi-Cal Program, further fragments access to care. If the BHP is established, consumers will move between two and three programs as income changes in the fairly narrow band between 138% and 200% of FPL.

Legal & Government Relations  
1215 K Street, Suite 2030  
Sacramento, CA 95814  
Phone: (916) 448-4912  
Fax: (916) 973-6476

SB 703 creates risks for the Exchange. In addition, the BHP will likely further fragment access to care for low-income consumers, exacerbate network adequacy concerns and increase cost shifts to commercial purchasers. For these reasons, we must oppose SB 703.

Sincerely,



Teresa Stark  
Director, State Government Relations

cc: Assembly Appropriations Committee Members  
Julie Souliere, Assembly Republican Consultant  
Lark Park, Governor's Office  
Marjorie Swartz, Assembly Health Committee Consultant





July 19, 2012

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**TO:** CSAC Executive Committee

**FROM:** Efren Carillo, Chair, CSAC Housing, Land Use and Transportation Committee  
Chair, CSAC High Speed Rail Working Group  
DeAnn Baker, Senior Legislative Representative  
Kiana Buss, Senior Legislative Analyst

**RE:** CSAC Priorities and Advocacy on High Speed Rail Implementation

The CSAC Board of Directors approved establishing a Task Force under the purview of the CSAC Housing, Land Use and Transportation Committee to review CSAC's position on High Speed Rail (HSR). The initial meeting of the Task Force was held on July 9. The CSAC Task Force on High-Speed Rail decided it was best for CSAC to focus on issues related to implementation of the California High-Speed Rail Project, especially in light of the Legislature's recent action to pass SB 1029 and Governor's signing of the bill that appropriates state and federal funds to begin construction of the Initial Operating Segment through the Central Valley. SB 1029 also appropriates funds to upgrade numerous existing transit, rail and intercity rail system for connectivity purposes.

It should be noted that following the initial meeting of the Task Force, CSAC staff met with High-Speed Rail Authority staff (Dennis Trujillo, Chief of External Affairs and Gregg Albright, Interim Deputy Director of Planning) to discuss the initial concerns raised. They committed to working with CSAC to improve communications with counties and discuss appropriate mitigation. As such, they welcome further communication with CSAC to address the concerns of affected counties. Specifically, we agreed that a staff level working group would be most productive to identify and work through implementation issues and concerns.

**Action Requested:** Attached is a first draft of the policies and priority issues related to implementation of the HSR Project that the Task Force identified during our meeting. We are seeking support from the CSAC Executive Committee to proceed with further discussions with the HSR Authority based on the issues outlined in the document.

## CSAC Policies & Priority Issues for Implementation of the California High-Speed Rail Project

---

CSAC has supported the California High-Speed Rail (HSR) project since February 2007 when the CSAC Board of Directors approved a resolution expressing support for the allocation of state bond funds for the further development and completion of the project as described in the High-Speed Rail Authority's (Authority) completed business and implementation plans as well as the approved environmental documents to date.

Since that time, the HSR project has changed in terms of the design, implementation, and cost of the proposed project. Counties have had over five years of experience working with the Authority on the project and specifically local impacts that necessitate additional CSAC policy and identification of priority issues critical to the successful implementation of the HSR project.

### **Policies & Priority Issues**

Openness, Transparency, & Accountability. It is imperative that the Authority work with counties and other affected parties in an open, transparent, consistent fashion. As is required of county staff, the Authority staff and its consultants must be educated and up to date on the issues specific to a particular county and must be ready to discuss the issues openly and be accountable for the commitments and decisions made during meetings with counties.

Robust Environmental Review. While CSAC supports streamlined environmental review processes for projects with little to no environmental impact or for projects critical to public safety, the California HSR project is the largest public works project in decades and deserves the full spectrum of environmental review.

Public Comment. Counties need adequate time and resources in order to provide meaningful and comprehensive comments on environmental documents, changes to the business and implementation plans, etc. The Authority should provide longer public comment periods than required by law considering the complexity of the proposed HSR project. Further, similar to what has occurred with the Bay Delta Plan, the Authority should provide counties financial resources to support enough staff to provide meaningful and comprehensive feedback on the proposed project.

Conflicts with General Plans & Other Local Plans. The Authority must understand and respect the role of local elected officials in land use decisions. The proposed HSR alignment is in direct conflict with some local general plans and elements of general plans. Specifically, the proposed alignment is inconsistent with flood zones, urban growth boundaries, etc. The Authority should work to ensure conflicts with local plans are minimized and mitigation of unavoidable impacts.

Direct and Indirect Economic Impacts. The HSR project will create both positive and negative direct and indirect economic impacts in California and specifically in the local communities where the project is located. Looking at dairy and agriculture again, the California economy depends on dairy and agricultural production in the Central Valley and counties and other local communities depend on the tax revenues dairy and agricultural production generates. Both direct and indirect economic impacts should be mitigated to the extent possible.

Mitigation of Local Impacts. The Authority must mitigate local impacts to the greatest extent feasible. For instance, the Initial Operating Segment (IOS) through the Central Valley has the potential to significantly affect dairy production. If impacts to dairy and other agricultural production are unavoidable, then the Authority should work to mitigate those impacts. For example, securing the permits necessary to move a dairy is costly and time consuming. The Authority can work with its state agency partners, the Governor, and the Legislature to streamline the permitting process to relocate dairy and agricultural production. The cost of the environmental review for the relocation of dairy and agricultural productions should also be borne by the Authority as a part of the cost of the entire HSR project.

Additionally, the proposed HSR project can potentially, depending on the final alignment, affect air quality, water quality, hydrology, mineral resources, utilities, service systems, noise, etc. The project can interrupt existing mass transit services and create a different or increased demand for critical emergency services. These impacts must also be mitigated.

DRAFT

## California County Officials Appointed to NACo Posts

California will have strong representation at the national level as 1212-13 NACo President Chris Rodgers has appointed the following California county officials to key positions:

<b>Santa Barbara County Supervisor Salud Carbajal</b>	Chair, Environment, Energy and Land Use Steering Committee
<b>Merced County Supervisor Hub Walsh</b>	Chair, Human Services and Education Steering Committee
<b>Alameda County Supervisor Scott Haggerty</b>	Vice Chair, Large Urban County Caucus
<b>Sonoma County Supervisor Efren Carrillo</b>	At-large position on NACo Board of Directors and member of the New Generation Task Force
<b>Alameda County Supervisor Keith Carson</b>	Three-year appointment to the NACo Finance Committee

CSAC congratulates these individuals and we look forward to them representing California.

# Preliminary Conference Program

*Schedule Subject to Change. All events will take place at the David L. Lawrence Convention Center unless otherwise noted.*

## Friday, July 13

• 7:30 a.m. – 5:00 p.m.  
**Registration**

• 8:00 a.m. – 5:00 p.m.  
**Steering Committee,  
Subcommittee and Affiliate  
Meetings**

*All delegates are welcome to attend any NACo Steering or Subcommittee Meeting.*

• 8:30 a.m. – 5:00 p.m.  
**Technology Summit**  
*Additional Registration Required*

## Saturday, July 14

• 7:30 a.m. – 5:00 p.m.  
**Registration**

• 8:00 a.m. – 5:00 p.m.  
**Steering Committee,  
Subcommittee and Affiliate  
Meetings**  
*All delegates are welcome to attend any NACo Steering or Subcommittee Meeting.*

• 4:00 p.m. – 5:30 p.m.  
**Exhibit Hall Reception**  
*For all exhibitors and attendees! Stroll the exhibit hall aisles and get an advance look at the suppliers showcasing their products and services.*

## Sunday, July 15

• 8:30 a.m. – 4:00 p.m.  
**Registration**

• 9:00 a.m. – 12:00 Noon  
**Concurrent Educational  
Sessions**

• 10:00 a.m. – 2:30 p.m.  
**Exhibit Hall Open**

• 12:30 p.m. – 1:30 p.m.  
**Exhibit Hall Lunch**  
*Grab a bite while perusing the many products and services on display.*

• 2:30 p.m. – 4:30 p.m.  
**Opening General Session**

• Evening  
**Conference-Wide Event**

## Monday, July 16

• 8:30 a.m. – 4:00 p.m.  
**Registration**

• 9:00 a.m. – 11:30 a.m.  
**NACo Board of Directors  
Meeting**

• 9:00 a.m. – 12:00 Noon  
**Concurrent Educational  
Sessions**

• 10:00 a.m. – 2:30 p.m.  
**Exhibit Hall Open**

• 12:00 Noon – 1:00 p.m.  
**Exhibit Hall Luncheon**  
*Grab a bite while perusing the products and services on display! You may want to take in a quick massage in the Center Lounge!*

• 2:30 p.m. – 4:30 p.m.  
**General Session**

• **Open Evening**  
*Enjoy the fantastic restaurants in Pittsburgh!*

## Tuesday, July 17

• 8:00 a.m. – 2:00 p.m.  
**Registration**

• 8:30 a.m. – 9:45 a.m.  
**Concurrent Educational  
Sessions**

• 10:00 a.m. – 12:00 Noon  
**Election of Officers and  
Business Meeting**

• 7:00 p.m. – 9:30 p.m.  
**Inaugural Reception**  
*Celebrate with your fellow attendees the end of another productive conference and welcome to office your new NACo President!*



## Conference-wide Event

Sunday, July 15th • 6:30 p.m. to 9:00 p.m.

Muhammad Ali once said, "Champions are made of something they have deep inside them - a desire, a dream, a vision."

The NACo 2012 Annual Conference is about honing that desire, dream and vision - and Allegheny County is proud to host this event in "our house." That's why on Sunday, July 15th, conference attendees will be our guests at Heinz Field, home of the six-time Super Bowl Champion Pittsburgh Steelers. In addition to enjoying a spectacular view of the City of Pittsburgh and its beautiful riverfronts, you'll join us at a true tailgate party where you'll get a taste of Pennsylvania along with entertainment from local and regional groups.

Because we are such good sports, we want to make sure that you are properly "suited-up" for the fun we have planned for you. Show pride in your home team (or ours!) by wearing your favorite team jersey to the party, no matter the sport! Those "sporting" a jersey will be eligible to win fun prizes and more.





**2012-13 State Budget  
Week of June 25, 2012**

June 29, 2012

**TO:** CSAC Board of Directors  
County Administrative Officers  
CSAC Corporate Associates

**FROM:** Paul McIntosh, CSAC Executive Director  
Jim Wiltshire, CSAC Deputy Executive Director

**RE:** **Budget Action Bulletin No. 2**

---

**General Fund Budget Summary  
(\$ in millions)**

	<b>2011-12</b>	<b>2012-13</b>
<b>Prior Year Balance</b>	<b>-\$2,685</b>	<b>-\$2,882</b>
Revenues and Transfers	\$86,830	\$95,887
<b>Total Resources Available</b>	<b>\$84,145</b>	<b>\$93,005</b>
Non-Proposition 98 Expenditures	\$53,938	\$54,534
Proposition 98 Expenditures	\$33,089	\$36,804
<b>Total Expenditures</b>	<b>\$87,027</b>	<b>\$91,338</b>
<b>Fund Balance</b>	<b>-\$2,882</b>	<b>\$1,667</b>
Reserve for Liquidation of Encumbrances	\$719	\$719
Special Fund for Economic Uncertainties	-\$3,601	\$948
Budget Stabilization Account	-	-
<b>Total Available Reserve</b>	<b>-\$3,601</b>	<b>\$948</b>

**BUDGET OVERVIEW**

On Wednesday, June 27, Governor Brown signed the 2012-13 budget into law, a package totaling 27 bills. The budget closes a \$15.7 billion deficit and includes a reserve of \$948 million. The budget, as enacted, is balanced into future fiscal years.

The budget is based on voter approval of the Governor's initiative on the November ballot, which contains five- and seven- year tax increases as well as constitutional

guarantees of county funding for 2011 Realignment. In case the initiative fails, the budget includes nearly \$6 billion in trigger cuts (see table below) that would fall mainly on schools, including K-14 and higher education. Even with the tax measures, the state's General Fund spending has declined by \$11.6 billion (-11.4 percent) over the past five years, and General Fund spending as a share of the state's economy is at its lowest level since the early 1970s.

The budget package implements a superstructure for the funding of 2011 Realignment, about which more details can be found in the following pages.

The budget also implements significant permanent cuts. Among these are limiting CalWORKs recipients who do not meet federal work requirements to two years of benefits, eliminating Healthy Families and transferring those children to Medi-Cal, and extraordinary cuts to trial courts. Cal Grants will be restricted to institutions that meet minimum graduation requirements, essentially excluding most for-profit universities. Governor Brown used his blue pencil veto authority to reduce the number of child care slots by 14,000 and cut county administrative funding of CalFresh by \$23 million, and has negotiated five percent pay reductions for much of the state workforce. Lastly, the budget relies on nearly \$1.5 billion in General Fund benefit from the dissolution of redevelopment agencies, both from the dispersal of liquid assets.

Finally, the budget plan will reduce the state's budgetary borrowing from \$35 billion last year to less than \$9 billion by the end of 2015-16.

**Ballot Trigger Reductions**  
(\$ in millions)

<b>Expenditure Reductions</b>	<b>2012-13</b>
Proposition 98	\$5,353.8
University of California*	250.0
California State University*	250.0
Developmental Services	50.0
City Police Department Grants	20.0
Department of Forestry and Fire Protection	10.0
Flood Control	6.6
Local Water Safety Patrol	5.0
Fish and Game: Non-Warden Programs	2.5
Park Lifeguards	1.4
Fish and Game: Wardens	1.0
Department of Justice	1.0
Park Rangers	0.1
<b>TOTAL</b>	<b>\$5,951.4</b>

*\* This level of savings may be offset by Cal Grant increases if the universities raise tuition.*

**REALIGNMENT**

SB 1020 (Chapter 40, Statutes of 2012), the Realignment fiscal superstructure bill, was signed by the Governor on June 27. For a detailed summary of the measure, please see CSAC’s SB 1020 reader’s guide. The guide is based on the June 25 version of the bill. For additional information on public safety related realignment issues, please see the Administration of Justice section of this Budget Action Bulletin. For key details on the child welfare, alcohol and drug, and mental health realignment aspects of the budget trailer bills, please see the Health and Human Services section of this Budget Action Bulletin.

For a complete list of budget bills (including trailer bills) and links to language, please scroll to the end of this Budget Action Bulletin.

**ADMINISTRATION OF JUSTICE**

In the justice area, there are four key trailer bills of interest. In the table below, we identify the key areas covered by each bill. Additionally, there are two General Fund appropriations of note contained in the main budget bill, AB 1464.

<b>SB 1020</b>	<b>2011 Realignment Fiscal Structure</b>
<b>SB 1021</b>	<b>Public Safety Omnibus Trailer Bill</b> Courts, court security, DJJ, CDCR, alternative custody and medical parole expansion, Board of State and Community Corrections, county-to-county inmate transfer authority
<b>SB 1022</b>	<b>Public Safety Capital Outlay</b> Revisions to AB 900 state facility authority; shift of AB 900 relinquished Phase I funds to Phase II jail construction; \$500 million in additional jail construction bond capacity; other changes related to CDCR projects
<b>SB 1023</b>	<b>AB 109 and other Public Safety Realignment Clean up</b> AB 109 sentencing changes; mandatory supervision clarification; revocation process changes; streamlining of local public safety subvention programmatic provisions

Below, we provide more details on each of the bills, organized by general subject matter.



## 2011 REALIGNMENT FISCAL STRUCTURE

As counties are aware, AB 118 (Chapter No. 40, Statutes of 2011) established a temporary, one-year fiscal structure for the array of programs and services transferred to county responsibility under 2011 Realignment. An act of the Legislature is needed to, among other things, put in place a permanent account structure, provide clarification on establishment of base years by program, and specify how base and growth funding levels are calculated and apportioned among accounts. SB 1020 (Chapter 40, Statutes of 2012), the 2011 Realignment fiscal structure bill, is both lengthy and technically complex, given the interactions – primarily on the health and human services side – between and among various accounts.

CSAC staff has updated its reader's guide to reflect the provisions contained in the enacted bill (the clean, chaptered version of the bill is not available at the time of this writing). The guide is intended to assist in navigating through the fiscal structure trailer bill. With a focus primarily on the law enforcement components of the measure, we have summarized below the structure and key highlights of the bill:

- **Part I: Establishes the necessary funds for 2011 realignment at both the state and local levels (Government Code Section 30025)**
  - Creates separate accounts for support services (HHS) and law enforcement programs, effectively creating a firewall
  - Creates five separate subaccounts for law enforcement programs
  - Specifies transferability provisions applicable only to the HHS subaccounts
  - Permits creation at local level of reserve account specific to support services
  - Expands permissible uses of funds in district attorney/public defender account to support planning, implementation, and training activities related to revocation proceedings
  
- **Part II: Recreates in statutory form generally the same mandate and funding protections negotiated for Governor's constitutional amendment (GC Section 30026.5)**
  - Outlines various aspects of mandate protections in the realignment context
  - Adds certain new provisions, such as creating share of costs for HHS programs
  - Specifies which of these provisions remain in effect if the November 2012 initiative passes

- **Part III: Allocates funds to and among various state-level accounts, subaccounts, and growth accounts (GC Sections 30027-30027.9)**
  - Recognizes that “base year” will differ among programs (e.g., Community Corrections Account (AB 109) base gets established in 2015-16, once program is fully implemented)
  - Specifies that once base year is established, funding levels will be calculated as the previous year’s base allocation plus any growth attributable to the program or account (i.e., a “rolling” base)
  - Guarantees funding base of \$489.9 million to local public safety subvention programs, funded first by vehicle license fees (VLF) and, if proceeds are insufficient to meet funding guarantee, then by an infusion of necessary sales tax funds
  - Dedicates VLF growth to only the new “Enhancing Law Enforcement Activities Subaccount” (specified public safety subventions programs)
  - Specifies that sales tax growth will be proportionately shared between HHS and law enforcement programs
  - Details shares of growth attributable to state-level accounts and subaccounts across programs; on law enforcement side, growth to the state-level subaccounts will be assigned as follows:

<b>DA/Public defender revocation activities</b>	<b>5%</b>
<b>Trial court security</b>	<b>10%</b>
<b>Previously realigned juvenile justice functions</b>	<b>10%</b>
<b>Community corrections (AB 109)</b>	<b>75%</b>

- **Part IV: Allocates state funds to local funds (GC Section 30029-30029.12)**
  - Clarifies that cash received from sales tax in the period from August 16 to August 15 is attributable to the July to June fiscal year
  - Makes county-by-county allocation for trial court security
  - Makes two-year (2012-13 and 2013-14) county-by-county allocation for AB 109
  - Makes two-year (2012-13 and 2013-14) county-by-county allocation for district attorney/public defender revocation activities
  - Specifies programs (i.e., Citizens’ Option for Public Safety (COPS), Juvenile Justice Crime Prevention Act, Booking Fees, Rural and Small County Sheriffs’ Local Assistance, Juvenile Probation and Camps Funding, and various other local assistance programs currently administered by the California Emergency Management Agency (CalEMA)) to be funded out of the Enhancing Law Enforcement Activities Subaccount (*NOTE: other*

*details related to funding formulas and allocations within these programs are contained in the Law Enforcement subvention trailer bill)*

- Enumerates various factors that DOF can consider when specifying allocation of growth attributable to local AB 109 accounts
- Directs counties, beginning in 2015-16, to place ten percent of law enforcement sales tax growth into local innovation fund for dedication back to any or all of the following programs: trial court security, previously realigned juvenile justice programs/functions, AB 109 programs, and District Attorney/Public Defender revocation activities

## PUBLIC SAFETY OMNIBUS BILL

### **Trial Court Security**

Modifications to provisions governing trial court security services (Government Code Sections 69920-69927) are included in the public Safety Omnibus bill, SB 1021 (Chapter No. 41, Statutes of 2012) and reflect a consensus product arrived at through discussions among CSAC, the California State Sheriffs' Association (CSSA), and the Administrative Office of the Courts. The changes were necessitated by the new realignment funding structure for court security.

### **Juvenile Justice Reforms**

This trailer bill language includes provisions intended to carry out the Governor's May Revision proposal that recasts his January budget proposal to close the Division of Juvenile Justice (DJJ), beginning with ceasing intake of youthful offender commitments on January 1, 2013. The 2012-13 budget enacts the various elements of the May Revision proposal to keep DJJ open as a placement option for youthful offenders, but makes one significant change to the new fee structure (highlighted below). The key juvenile justice reforms include:

- A new fee structure that will charge counties \$2,000 per month (\$24,000 annually) for each ward committed to the DJJ by a juvenile court **on or after July 1, 2012** (*the prospective application of the fee is a new feature of the budget*);
- A change in the DJJ age jurisdiction from 25 to 23 years, applied prospectively;
- Termination of DJJ juvenile parole (i.e., supervision responsibilities that remain with the state for the juvenile offender population) six months early (on January 1, 2013 instead of July 1, 2014); and;
- Reduction of administrative staffing levels within the California Department of Corrections and Rehabilitation (CDCR) headquarters and DJJ facilities.

The trailer bill also makes clear that the trigger fee — that was part of the 2011-12 budget and originally scheduled to be levied against counties beginning January 1 of this year — is **permanently suspended**.

### **County-to-County Transfer Authority**

SB 1021 revises Penal Code Section 4115.5 relative to counties' authority to contract with one another for housing inmates. The revised section eliminates proximity restrictions, meaning that any two consenting counties can enter into an agreement to house inmates in the county jail. The bill imposes reporting requirements on the extent to which the transfer authority is exercised, and it places a three-year sunset on this section.

### **CDCR: Implementation of Blueprint Provisions**

The public safety omnibus trailer bill also incorporates various provisions to facilitate monitoring and tracking of CDCR's progress toward meeting the goals, timelines, and performance goals outlined in the blueprint report, the department's long-term plan for reducing costs and operating more efficiently.

### **Expansion of Medical Parole Program and Alternative Custody Program**

SB 1021 also grants CDCR the ability to expand an existing female offender alternative custody program as well as the medical parole program.

### **AB 109 Data Collection Efforts**

The trailer bill directs the Board of State and Community Corrections (BSCC) to work with the Administrative Office of the Courts (AOC), CSAC, CSSA and the Chief Probation Officers of California (CPOC) to develop baseline and ongoing data collection instruments intended to capture the local impact of AB 109 implementation.

### **Judicial Branch**

The budget makes significant reductions to the courts (\$544 million), which are offset by various other actions outlined in SB 1021 – use of local courts' funding reserves (\$235 million), redirection of \$11 million from the Administrative Office of the Courts (AOC), and a reduction of court construction funds achieved by slowing certain activities associated with 38 construction projects (\$240 million). In addition, the budget contains a \$50 million ongoing cut that will be imposed proportionately to trial courts statewide, as well as reductions totaling \$19 million to state-level judicial branch operations.

SB 1021 makes a number of changes to court-related fees, which will increase revenue to the courts by:

- Eliminating the statutory sunsets on court fee increases imposed in the 2010-11 budget including surcharge on first paper filing fees, the summary judgment motion fee, the pro hac vice fee, the court operations assessment (previously the security fee), and the telephone appearance fee.

- Increasing existing fees (complex case fee, motion fee, first paper filing fee, and jury deposits), as well as establishing new fees (will deposit fee, new court reporter fee, and a 20 percent increase in the appellate court filing fees).

The trailer bill also enacts a variety of provisions related to trial court funding and operations such as restricting expenditures on the court case management system except for limited purposes, placing future limitations on local courts' carryover balance, and establishing a statewide trial court reserve.

#### **PUBLIC SAFETY CAPITAL OUTLAY**

##### **Additional Resources for Jail Construction**

Trailer bill SB 1022 (Chapter No. 42, Statutes of 2012) carries out the Governor's May Revision proposal to authorize additional bond capacity in support of up to \$500 million in local criminal justice facility construction and renovation. Key provisions include:

- Funds can be used by county sheriff or county department of corrections to add/renovate local detention facilities as well as add programming and treatment space
- Counties are responsible for 10 percent match with allowance for reduction in match for counties with population levels below 200,000
- Funding criteria is to be determined by the BSCC with preference given to counties most likely to proceed successfully in a timely manner

##### **AB 900 Updates and Revisions**

The trailer bill makes a number of changes relative to AB 900, the jail and prison constructions measure from 2007. Recognizing that, with the implementation of realignment and the corrections system's blueprint reference above, the state's prison capital outlay needs have changed, the bill revises the state's AB 900 authority and dedicates expenditures to specified projects.

Of greater interest to counties is that the trailer bill also contains the necessary language to transfer \$171.3 million of AB 900 Phase I funding to Phase II to account for Santa Barbara, San Benito and Kern counties exercising their right to relinquish their conditional Phase I awards in order to apply for funds under the conditions outlined in Phase II.

##### **AB 109 AND OTHER PUBLIC SAFETY REALIGNMENT CLEAN-UP**

This trailer bill, SB 1023 (Chapter No. 43, Statues of 2012) contains a number of technical and clarifying clean-up changes to public safety realignment as originally implemented in AB 109, AB 117 and subsequent legislation enacted in 2011. It is

important to note that there are a number of sentencing changes throughout SB 1023 – some requiring state prison terms for specified offenses and some requiring local jail terms for specified offenses. Below we highlight the main broad policy areas of interest to counties by subject area.

#### **Post-release Community Supervision**

- Clarifies that *each* revocation – while an offender is on Post Release Community Supervision (PRCS) (or parole)– may be subject to a maximum 180-day period in county jail
- Requires that inmates discharging from prison onto PRCS must be notified of their terms and conditions of PRCS, and removes requirement that the offender sign the notification

#### **Revocation Process**

- Confirms revocation process for offenders on any of the four types of community supervision under the court’s jurisdiction: PRCS, probation, parole and mandatory supervision. Courts remain responsible for revocation process for probationer, PRCS and those under mandatory supervision effective October 1, 2011; courts assume responsibility for revocation process of parolees effective July 1, 2013.

#### **Mandatory Supervision**

- Provides clarification on mandatory supervision terms, specifically:
  - that a term of mandatory supervision qualifies as a prior term for purposes of imposing a sentence enhancement; and,
  - that any period of time that an offender on mandatory supervision has absconded shall not be counted towards completion of the mandatory supervision term
- Allows an offender on mandatory supervision to petition for transfer to another county

#### **County Jails**

- Allows, upon receipt of court authorization, for a sheriff or any official responsible for a local jail facility, to release jail inmates up to 30 days early if the jail facility exceeds its population cap
- Revises Penal Code Section 3056 to make jurisdictional lines more clear. Specifically, clarifies that if a parole violator is under the county sheriff’s supervision and authority while the parolee is detained in county jail for a parole violation or placed in an alternative custody program by the sheriff to serve their revocation term. Once the revocation term is concluded, state parole assumes responsibility for the parolee.

### **County Authority to Contract**

- Removes January 1, 2015 sunset date on county's authority to contract with public community correctional facilities for the detention of local inmates.

### **Local Law Enforcement Subventions**

As noted above, the underlying statutes associated with the various local public safety subvention programs – funded out of the 2011 Realignment Enhancing Law Enforcement Activities Subaccount — are contained in a separate trailer bill. These changes have two primary objectives: 1) to simplify and streamline the statutory structure underlying each of the local public safety subvention programs, with a view toward eliminating outdated or – in view of the realigned funding construct – unnecessary provisions; and, where possible, to give counties greater flexibility and, 2) designate specific formulaic allocations for each program (which are intended to ensure the same distributions as would otherwise have occurred absent realignment).

Again, nothing in the proposed revisions is intended to alter the current funding methodology for the programs and services funded through the local public safety subventions, which include:

- COPS
- Juvenile Justice Crime Prevention Act
- Juvenile Probation and Camps Funding
- Rural and small county sheriffs local assistance
- Booking fee “replacement” revenue
- Various public safety local assistance programs currently administered by the CalEMA (e.g., Cal-MMET, High Tech Theft Apprehension Program, and others); note that administration of these programs will transfer to BSCC on July 1, 2012

### **GENERAL FUND APPROPRIATIONS**

#### **CCP Planning Grants and Foundation Training Funds**

The 2012-13 main budget bill, AB 1464 (Chapter No. 21, Statutes of 2012) contains an additional round of training funding – within BSCC's budget – to each county's community corrections partnership (CCP) to support the ongoing planning work associated with AB 109 implementation. Grant funding totals \$7.9 million, to be distributed to the 58 counties — as it was in 2011-12 — in the following manner:

- \$100,000 grants to counties with populations of 200,000 or less
- \$150,000 grants to counties with populations of 200,001 to 749,999
- \$200,000 grants to counties with populations of 750,000 or more

Counties that accept these funds are required to provide the BSCC a copy of their realignment implementation plan – within 60 days of its adoption or any revisions – as recommended and adopted by their county board of supervisors.

Further, the BSCC budget contains \$1 million to be distributed in three equal amounts to the foundations CPOC, CSSA and CSAC. The three foundations have until 2015 to expend the funds on statewide realignment training efforts.

#### **Local Police Grants**

The main budget bill also appropriates \$20 million through the BSCC for distribution to local police departments. The funds will be distributed to city police departments based on a formula to be developed by the BSCC in consultation with DOF. It is important to note that this funding is slated for elimination in the Governor's trigger cut list should his ballot initiative fail in November.

#### **OTHER PROVISIONS OF NOTE**

Finally, there are two other justice-related budget items of interest:

- The Department of Justice's budget is decreased by \$10 million, which is intended to be offset by a \$1 increase in the penalty assessment (contained in SB 1006, the general government trailer bill) that is dedicated to support the state's forensic labs. Specifically, the authority to collect the relevant penalty assessment in Government Code Section 76104.7 is increased from \$3 to \$4 for every \$10.
- The funding that supports sheriffs' water patrols through the Department of Boating and Waterways is subject to a partial trigger cut if the Governor's November 2012 initiative were to fail. As specified in AB 1497, half of the guaranteed funding (\$5 million) would be reduced as part of the trigger cuts.

#### **AGRICULTURE AND NATURAL RESOURCES**

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SB 1018 (Chapter No. 39, Statutes of 2012) is the Public Resources budget trailer bill and contains the following information.

#### **REORGANIZATION OF STATE GOVERNMENT**

The final budget includes the Governor's proposal to reorganize the Regional Water Quality Control Boards (Regional Boards). The Governor signed into law his proposal that reduces the number of Regional Board members on each regional board from nine



to seven, and eliminates the categorical selection of individuals who may serve on the board, including the municipal and county government seats. CSAC opposed this provision of this proposal. Trailer bill language does direct the Governor to appoint members of the Regional Boards to consider both public and non-public members and directs the Governor to make appointments on the basis of demonstrated interest or proven ability in the field of water quality, including water pollution control, water resource management water use, or water protection. Trailer bill language also states that members shall be appointed on the basis of his or her ability to attend a substantial number of meetings of the board. In addition, the budget revises the conflict of interest rules for Regional Board members, a proposal CSAC supported.

#### CLIMATE CHANGE

The California Air Resources Board (CARB) will begin to auction greenhouse gas (GHG) emissions allowances through the AB 32 Cap and Trade Program in 2012-13. Revenue estimates for the program are expected to be approximately \$1 billion in the first year. The budget includes a new legislative oversight process for the expenditure of these funds, including a new fund account for Cap and Trade revenues and additional legislative oversight of actions taken by the Western Climate Initiative. Trailer bill language also directs the Department of Finance to develop a framework, or investment plan, for Cap and Trade revenues if the Legislature fails to enact such a plan by the end of session this year. CSAC is currently supporting AB 1532, a measure by Assembly Speaker Perez that would establish such a framework. Trailer bill language also provides for the return of certain funds to ratepayers of Investor Owned Utilities from funds related to the auction or sale of allowances.

#### STATE PARKS

The Governor did take his blue pencil to the state parks budget, reducing the amount legislators allocated to state parks by \$31 million. This cut included a reduction of the funds from the Off Highway Vehicle (OHV) account to state parks, originally set at \$21 million. The Governor reduced that transfer by \$14 million, allowing for seven million from this account to still be directed towards keeping state parks open, with the remaining \$14 million to be transferred to the OHV Trust Fund. The budget does create some flexibility for state parks by creating a two-year continuous appropriation from the State Parks and Recreation Fund for revenue generating activities and creates an Enterprise Fund for entrepreneurial capital projects and increases flexibility of existing funding sources for all state parks.

## GOVERNMENT FINANCE AND OPERATIONS

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### REDEVELOPMENT

One of the many contentious issues during this year's budget debate was redevelopment. AB 1484 (Chapter No. 26, Statutes of 2012) makes a number of changes to the process of unwinding the former redevelopment agencies, and in doing so puts significant administrative requirements on counties, particularly auditor-controllers.

The chief benefit to counties from AB 1484 is the validation of existing passthrough agreements. The possibility of their invalidation arose earlier this month in a legislative budget proposal. CSAC quickly expressed strong opposition to the proposal, which would have depleted county general funds by hundreds of millions of dollars. AB 1484 as signed by the Governor instead expressly validates those agreements, preserving them until a successor agency is dissolved. Also, any passthroughs not made by redevelopment agencies in 2011-12 are to be paid from future property tax allocations.

The most widely controversial portions of the bill have to do with penalties for certain types of noncompliance. For example, county auditor-controllers must determine the amount owed by each successor agency to taxing entities and send a demand by July 9, 2012, otherwise the county faces severe penalties, including the possible withholding of mid-July sales and use tax disbursements from the Board of Equalization (BOE). Successor agencies and their sponsoring entities are also subject to these same penalties if their Recognized Obligation Payment Schedules (ROPS) are submitted late, or if they fail to remit requirements funds demanded by the county auditor-controller for dispersal to other taxing entities, or if they improperly transferred funds to another agency or private entity.

Another notable provision in AB 1484 is authority for successor agencies to use bonds issued before 2011, including affordable housing bonds, for the purposes for which they were sold. Many successor agencies, other local agencies, and housing advocates had complained about half-completed projects and bond funds lying idle.

Housing advocates were also happy to report that certain assets and some housing funds may be retained locally for those purposes, including repayments of SERAF loans to the low and moderate income housing funds and real property acquired for affordable housing purposes.

Sponsoring agency loans may also be repaid beginning in 2013-14 under the new law, provided oversight boards allow them and the interest rate and term of years are reasonable.

The trailer bill contains a number of clean-up provisions, for example, clarifying that successor agencies are separate entities, that they are able to avail themselves of Chapter 9 bankruptcy protection if necessary, and that their sponsoring entity may loan them funds subject to oversight board approval. Successor agencies may also bond to save money and to smooth payment spikes and balloons.

#### DRY-PERIOD FINANCING FOR CHARTER SCHOOLS

The budget includes a provision, which CSAC opposed, that allows a county to provide charter schools with the same sort of dry-period financing that regular public schools can receive. The financing would be restricted until after public schools have received all the loans they need. The loans are permissive, not required. The enacting language seems to indicate that the funds would be loaned from the funds of the county specifically, and not the county treasury.

Treasurer-tax collectors and CSAC expressed the concerns that such loans would be unconstitutional because the great majority of charter schools are private entities. Treasurers who extend credit to private entities or co-mingle public and private funds are personally liable for penalties and forfeiture of public office.

Counties to whom requests are made are advised to exercise extreme caution and consult with both counsel and their treasurer-tax collector.

#### TRIPLE-FLIP AND VLF SWAP BACKFILLS

The enacted budget includes a provision that backfills Amador County for losses related to the accounting maneuvers from a few years ago, the triple-flip and the VLF swap.

Under both of these schemes, counties are reimbursed for state-imposed revenue losses from property taxes that would otherwise go to schools; schools are then backfilled from the state General Fund pursuant to Proposition 98 requirements.

In Amador County, all of the school districts have become “basic aid”, meaning that they are fully funded through property taxes and receive no Proposition 98 funds from the state. The law prohibits counties from accessing these schools' property taxes to reimburse themselves for the triple-flip and VLF swap. The budget item provides Amador County with these funds forgone fiscal year.

AB 1191, by Assembly Member Alyson Huber, would provide a process by which any county could request funding for future shortfalls of this sort. CSAC and RCRC are jointly sponsoring AB 1191. The bill is currently on the Senate Appropriations Committee suspense file.

#### MANDATES

The budget suspends all of the mandates that were suspended last year, and repeals one related to Filipino surveys. The Governor used his blue pencil to suspend two additional mandates related to crime reporting. The budget also states that all mandates suspended in this budget will also be suspended in the following two budget years, though the California Constitution seems to require that mandates be suspended in the budget bill for the fiscal year in question.

The Legislature did not adopt the Governor's proposal to repeal certain mandates and make others explicitly permissive in statute.

Lastly, the budget, as expected, suspends the annual payment for pre-2004 mandates, which statute requires be paid in full by 2021. It also states that the payment will be suspended in the following two budget years. The state owes local agencies roughly \$1 billion, including interest, most of it to counties, for mandates unfunded and unsuspended prior to the passage of Proposition 1A.

#### VOLUNTARY INVESTMENT PROGRAM

One budget trailer bill, SB 1033, creates a process by which counties and other local agencies may voluntarily loan the state money to provide intra-year cash flow, reducing the state's need for outside borrowing. The state would only accept deposits of at least \$200 million, and the fund could never exceed \$10 billion. The rate of return and other terms are determined by the Director of Finance.

#### EMPLOYEE RELATIONS

##### **Retired Annuitants: AB 1028 "Clean-Up"**

Counties will recall that Assembly Bill 1028 (Chapter No. 440, Statutes of 2011), sponsored by the California Public Employees' Retirement System (CalPERS), amended the Public Employees' Retirement Law regarding the requirement that a public agency retiree cannot work for a state or public employer for more than 960 hours per fiscal year without being reinstated from retirement. Unfortunately, AB 1028 added the word "temporary" regarding the appointment of an annuitant, causing much confusion, and prompting legal advice to many public agencies to terminate annuitants. Budget trailer bill, SB 1021 (Chapter No. 41, Statutes of 2012) removes the word "temporary" from the

statute and also clarifies that the 960 hour limit applies to the annuitant regardless of whether he or she works for one or more employers. AB 1481 also clarifies current law regarding pay and benefit restrictions for annuitants.

#### **SCMS Moves to PERB**

SB 1038 (Chapter No. 46, Statutes of 2012), the State Boards and Commission Reorganization trailer bill, includes the transfer of the State Mediation and Conciliation Services (SMCS), currently part of the Department of Industrial Relations (DIR), to the Public Employment Relations Board (PERB). SMCS investigates and mediates labor disputes; PERB will assume all powers, duties and responsibilities carried out by DIR through SMCS.

#### **State Employees**

SB 1006 (Chapter No. 32, Statutes of 2012), the General Government trailer bill, ratifies a memorandum of understanding that includes a mandatory, once-per-month furlough day for state employees from July 1, 2012 to June 30, 2013, and a pay reduction no greater than five percent.

#### **Veterans**

SB 1006 also requires the Department of Veterans Affairs (DVA), by June 30, 2013, to develop a performance-based formula that will incentivize county veterans service offices to perform workload units (specific claim activity that is used to allocate subvention funds to counties and performed by county veterans service offices) that help veterans access federal compensation and pension benefits and other benefits, in order to maximize the amount of federal money received by California veterans. Currently, DVA disburses funds to counties each fiscal year on a pro rata basis based on the staffing level and workload of each county.

### **HEALTH AND HUMAN SERVICES**

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#### **REALIGNMENT**

##### **Fiscal Superstructure**

The HHS elements of the fiscal superstructure, contained in SB 1020, remain similar to what CSAC has reported previously. However, a new special account was created with the Behavioral Health Subaccount at the state level. The Legislature created a Women and Children's Residential Treatment Services Special Account within the Behavioral Health Subaccount and allocated \$5.1 million annually to that special account. SB 1020 requires six counties – Alameda, Los Angeles, Marin, San Diego, San Francisco and San Joaquin – to create county Women and Children's Residential Treatment Services Special Accounts. The local accounts will get 1/12 of \$5.1 million monthly. SB 1020 specifies how much funding each county will receive. It is a local option whether to provide growth to this special account.

### **Child Welfare Services Realignment**

SB 1013 (Chapter No. 35, Statutes of 2012) contains the programmatic child welfare and foster care changes necessary to implement 2011 Realignment. The changes update cost-sharing ratios related to the realigned programs, delete code sections that were otherwise set to expire, and delete obsolete statutory requirements. A few highlights include:

- **Flexibilities for Counties.** SB 1013 provides added flexibility for counties, including permitting counties to establish foster care clothing allowance and specialized care increments based on the local needs of foster children. SB 1013 also allows counties to continue to operate the Transitional Housing Placement-Plus (THP-Plus), Specialized Training for Adoptive Parents (STAP), Options for Recovery, Supportive Transitional Emancipation Program (STEP), and Kinship Supportive Services Program (KSSP). However, for counties that are operating these programs that wish to cease funding, the Realignment Superstructure bill requires that this be considered by the Board of Supervisors during an open discussion of the board.
- **AB 12 Changes.** SB 1013 makes numerous changes related to AB 12, including:
  - Extends eligibility to age 21, starting January 1, 2014
  - Permits counties to draw down federal matching funds to continue services to non-minor dependents who reach age 19 in 2012 in order to bridge these youth to age 20, and likewise makes eligible for federal matching funds, non-minor dependents in care who turn age 20 in 2013 to bridge services until they reach youth to age 21
  - Retains the current state cap on county costs towards AB 12, and specifies that the cap will be removed if there is a certification by DOF in 2015-16 of sufficient realignment revenues to serve this population.
  - Makes changes to the THP-Plus and THP-Plus FC programs
  - Replaces the county-approval process for THP-Plus FC to a Department of Social Services (CDSS), via Child Care Licensing (CCL) licensure process, and requires CDSS to establish a certification process by July 1, 2012 to be used by licensed providers to screen local placement settings. Makes the THP-Plus FC an available licensed placement effective October 1, 2012. Removes the requirement that counties submit plans to CDSS for THP-Plus and THP-Plus FC, but directs THP-Plus FC providers to obtain certifications from county agencies for the need of a local THP-Plus FC program. Continues local THP-Plus programs as optional county programs
- **Increased Penalty Sharing for Counties.** SB 1013 apportions a greater share of federal penalties to those counties whose performance contributed to the state

receiving the penalty and who did not spend a minimum amount of funding on Child Welfare Services (CWS). The minimum amount required to be spent is equal to 90 percent of the amount that the county would have had to spend on CWS to be eligible for the free augment funding prior to 2011 realignment. The county's share of the federal Child and Family Service Reviews penalty will be increased by two percentage points for every percentage point below the county's CWS expenditures that are below the 90 percent. The increased penalty sharing would not apply in fiscal years in which 2011 realignment revenues are not adequate to fully fund the 2011 realignment base, including fully funding foster care assistance and Adoption Assistance Program payments. Small counties, defined as counties with a population of 50,000 or less, are exempt from the minimum expenditure requirement and increased penalty sharing.

### **Substance Use Disorder Treatment Realignment**

SB 1014 (Chapter No. 36, Statutes of 2012) contains the programmatic elements related to implementing the alcohol and drug 2011 Realignment. Major provisions include:

- **Transfer of Department of Alcohol and Drug Programs (DADP) Functions.** Effective, July 1, 2013, transfers the administrative and programmatic functions of DADP to departments within the Health and Human Services Agency.
- **Drug Medi-Cal.** SB 1014 makes programmatic changes necessary to implement and be consistent with the realignment of funding for the Drug Medi-Cal program and the transfer of remaining state responsibility for the program to the Department of Health Care Services (DHCS).
- **Women and Children's Residential Treatment Services (WCRTS).** Declares the state's interest in the WCRTS program, recognizes the eight current programs in six counties, and allows for the establishment of additional programs for the purpose of pursuing four primary goals: 1) demonstrate that alcohol and other drug abuse treatment services delivered in a residential setting and coupled with primary health, mental health, and social services for women and children, can improve overall treatment outcomes for women, children, and the family unit as a whole; 2) demonstrate the effectiveness of six-month or 12-month stays in a comprehensive residential treatment program; 3) develop models of effective comprehensive services delivery for women and their children that can be replicated in similar communities; and 4) provide services to promote safe and healthy pregnancies and perinatal outcomes.
- **Substance Abuse Prevention and Treatment Block Grant (SAPT) County Contracts.** The bill revises various sections to eliminate a county plan requirement and instead requires counties to, within 60 days after notice of the final allocation of SAPT funds, contract for federal funding from the state to provide alcohol and other drug prevention, treatment, and recovery services.

SB 1014 establishes that, when a county decides not to enter into a contract to provide alcohol and drug abuse services or programs, or both, the department shall determine the need for the services or programs and provide the services or programs directly through contract.

The measure removes the population cap for two or more counties to jointly establish county alcohol and other drug programs and removes state authorization for county to county contracts for service.

The bill establishes that funds in each county's Behavioral Health Subaccount of the Support Services Account of the Local Revenue Fund 2011 shall be considered state funds for the purposes of receipt of the federal block grant.

SB 1014 allows the director of DADP to reduce federal funding, on a dollar-for-dollar basis, to a county that has reduced or anticipates reducing expenditures in a way that would result in a decrease in the federal SAPT funds, as specified.

- **Drug Courts.** The bill also makes amendments necessary to implement the realignment of drug court funding pursuant to 2011 Public Safety Realignment.

#### **Mental Health Realignment**

SB 1009 (Chapter No. 34, Statutes of 2012) is the mental health trailer bill and includes restructuring of community-based mental health services at both the state and local level and is necessary to effectuate the 2011 Realignment.

Highlights include:

- **DMH Reorganization.** SB 1009 transfers functions from the Department of Mental Health (DMH) to other state departments.
- **Mental Health Plans.** Allows DHCS to contract with Mental Health Plans, which may include individual counties, counties acting jointly, or an organization or non-governmental entity determined by DHCS to meet mental health plan standards. It provides that if a county decides not to contract with the DHCS, or is unable to meet standards set by DHCS, the county is to inform DHCS. Further, DHCS shall ensure that Specialty Mental Health Services are provided to Medi-Cal beneficiaries and DHCS may contract as specified in order to provide this assurance of service delivery. In addition, if a county does not contract with the State for specialty mental health services, then DHCS shall work with DOF and the Controller to sequester funds from any county that is unable or unwilling to contract as specified.



- **First Right of Refusal.** Declares that Section 14685 of Welfare and Institutions Code, regarding a county's first right of refusal to serve as a mental health plan, be repealed on November 7, 2012 if Section 36 has been added to Article XIII of the California Constitution as of that date.
- **Early and Periodic Screening, Diagnosis and Treatment (EPSDT).** Expresses the intent of the Legislature to develop a performance outcome system for the EPSDT Program that will improve outcomes at the individual and systems levels and will inform fiscal decision making related to the purchase of services. DHCS, in collaboration with the California Health and Human Services Agency, and in consultation with the Mental Health Services Oversight and Accountability Commission, shall create a plan for a performance outcome system for EPSDT. By no later than September 1, 2012, a stakeholder advisory committee shall be convened for the purpose of developing this plan. This bill specifies objectives for this purpose and requires DHCS to provide a plan, including milestones and timelines for EPSDT mental health outcomes by no later than October 1, 2013.
- **Federal Audits.** This trailer bill also modifies federal audit exceptions against the state regarding federal funds expended by counties.
- **Expenditures.** Provides for specified Realignment accounts to be used for certified public expenditures to be consistent with federal Medicaid requirements.

#### HHS BUDGET ISSUES

In addition to the 2011 Realignment-related fiscal and programmatic measures outlined above, the Governor signed the following bills into law that include HHS-related budget items:

AB 1467	Health Omnibus
SB 1041	Human Services Omnibus
SB 1008	Health Coordinated Care Initiative
SB 1036	Human Services Coordinated Care Initiative
AB 1470	State Mental Hospitals
AB 1494	Healthy Families Program Shift
SB 1016	Education/Child Care

#### CalWORKS

The Governor had proposed a significant redesign of the CalWORKs program in his January and May budgets. He and lawmakers reached a compromise that severely limits the time on aid for new recipients, effective January 1, 2013. The changes discussed below can be found in AB 1471 as enrolled.

**New Time Limit**

The Legislature further reduced the time on aid and welfare-to-work services for new CalWORKs recipients from 48 months to 24 months. After 24 months, recipients are expected to meet federal work requirements with some exceptions and extensions (although extensions may only be granted to no more than 20 percent of a county's caseload in six-month increments, up to 48 months total). The federal work requirements require 20 hours of work a week for single parents with a child under age 6; 30 hours a week for a single parent with a child over age 6; and 35 hours a week with two parents. Also, the 24 months of welfare-to-work services do not need to be consecutive.

Current recipients will be eligible for the 24 months of welfare-to-work services starting in January, unless they reach their 48-month lifetime limit before the full 24 months. The details of the extension criteria and implementation will be developed by CDSS and issued in an All County Letter by November 1, 2013.

**Young Child Exemption**

AB 1471 eliminates the current work exemption for parents with one child aged 12-24 month or two children under age 6 (called "temporary young child" exemption) by sunsetting it on January 1, 2013. However, a new, one-time exemption for parents with a child under the age of two would be implemented, and each month of the exemption would not count toward the recipient's total time limit. Please also note that the Governor's proposal to cut child-only grants by 27 percent was rejected.

**Earned Income Disregard**

AB 1471 includes a return to an Earned Income Disregard for CalWORKs recipients meeting federal work requirements of the first \$225 and 50 percent of any remaining earned income. This becomes effective on October 1, 2013.

**Single Allocation**

AB 1471 also approved annual reporting for the CalWORKs child-only caseload, and directs the state to seek federal approval for annual reporting for the CalFresh caseload as well. Because of this change, the Single Allocation was reduced by \$26.5 million.

The budget makes other cuts to the Single Allocation related to the temporary extension of the young-child exemption and the new exemption outlined in AB 1471. As a result, the total reductions to the Single Allocation in 2012-13 amount to \$205.7 million.

**Work Incentive Nutritional Supplement program**

The compromise also delays the effective date for the Work Incentive Nutritional Supplement (WINS) program to January 1, 2014, and reduces the additional food assistance benefit from \$40 to \$10 per month.

### **Child Care**

The Governor had sought nearly \$500 million in savings and restructuring in subsidized child care programs, and the legislative compromise tallies \$532 in savings. The compromise embodied in AB 1016 includes a reduction in the number of available slots (29,600 child care slot as opposed to the Governor's proposed elimination of 54,800), and 8.7 percent across-the-board cut, and a suspension of the cost-of-living adjustments in both 2013-14 and 2014-15. The Governor also vetoed another \$20 million to the subsidized child care voucher program (excluding current and former CalWORKs families) when he signed the budget.

Also, the compromise shifts state preschool funding from the General Fund to Proposition 98 funding, but the Governor vetoed \$29.9 million with his blue pencil.

Also, the Legislature rejected the Governor's proposal to provide a \$50 nutritional supplement to non-CalWORKs families that utilize subsidized child care and are meeting work participation requirements. The Legislature also rejected the Governor's restructuring proposals.

### **CalFresh (SNAP, Food Stamps)**

The Governor had sought to reduce administrative funding for the CalFresh program by \$45 million, but the Legislature instead directed that the cut be taken from unexpended funding in the previous fiscal years first. If this method is unable to recoup the full \$45 million, then it would be taken from the 2012-13 balance. However, the Governor vetoed an additional \$23 million from CalFresh administration on a one-time basis – making the total reduction \$68 million.

### **In-Home Supportive Services (IHSS)**

The Governor had proposed a number of changes and reductions for the In-Home Supportive Services (IHSS) program, including reducing provider hours by seven percent and eliminating domestic services. The Legislature developed a compromise package, as outlined below and signed by the Governor.

- **Reduction in Provider Hours.** Instead of the seven percent ongoing reduction in hours as proposed by the Governor, the Legislature extended a 3.6 percent reduction in authorized IHSS hours that sunsets in June 2012 through July 1, 2013. This saves the state nearly \$60 million in 2012-13.
- **Eliminating Domestic Services.** The Governor had proposed to eliminate domestic services and related services for IHSS consumers living with other adults who are not participants in the IHSS program for a savings of \$164 million. The Legislature rejected this reduction.

- **IHSS Provider Tax.** The federal government has not approved the IHSS provider tax approved in the 2011-12 budget. The delay in implementation has resulted in lost General Fund savings of \$57.3 million in 2011-12 and \$95.4 million in 2012-13. The Administration is assuming the tax will be implemented October 1, 2012.
- **IHSS Trigger Cuts.** The state has been prevented from implementing the December 2011 IHSS 20 percent trigger cuts through a court injunction and legislative action. The 2012-13 budget includes funding for the program at current levels in light of the injunction.

### **Coordinated Care Initiative**

In January, the Governor introduced a number of major policy changes within the Medi-Cal program aimed at improving care coordination, particularly for people on both Medi-Cal and Medicare. The Administration called the package the Coordinate Care Initiative (CCI). Please recall that the CCI included the following elements:

- *Dual Eligible Demonstration Projects:* Existing law allows up to four demonstration sites to improve care coordination for individuals receiving both Medi-Cal and Medicare – known as dual eligibles. The Administration wanted to expand the number of demonstration sites. The Duals Demonstration Project would expand the managed care benefits to include the In-Home Supportive Services (IHSS) program, as well as Multipurpose Senior Services Programs (MSSP), Community-Based Adult Services, and skilled nursing facility services.
- *Long Term Care Services and Supports:* The Administration proposed to enroll all Medi-Cal beneficiaries (regardless of whether they are in a duals project) into managed care. The Administration is also proposing to make IHSS a managed care benefit, phasing the implementation to align it with the phase-in of the Duals Demonstration Project.
- *Managed Care Expansion:* The Administration also proposed to expand managed care to the 28 counties currently without a Medi-Cal managed care plan. (provisions contained in AB 1467 (Chapter No. 23, Statutes of 2012))

The major CCI elements are included in two trailer bills, SB 1036 (Chapter No. 45, Statutes of 2012) and SB 1008 (Chapter No. 33, Statutes of 2012), as detailed below.

#### **1. SB 1036 – Human Services: Coordinated Care Initiative**

SB 1036 contains a number of changes to the IHSS program, including state collective bargaining for IHSS, creation of a county IHSS Maintenance of Effort (MOE), and creation of a Statewide Authority.

### **MOE provisions**

The county IHSS MOE would replace the county share of costs for IHSS, as long as the CCI and state collective bargaining are in place.

All counties would begin paying the MOE on July 1, 2012.

The MOE base expenditures would be based on each county's IHSS expenditures in 2011-12. The IHSS expenditures include IHSS county administration and public authority administration, defined as the amount actually expended by each county in fiscal year 2011-12, except that for administration the MOE base shall include no more or no less than the full match for the county's allocation from the state.

The MOE would only be adjusted for either of two reasons:

- A county negotiates an increase in IHSS provider wages and/or benefits after July 1, 2012 and before the state takes over bargaining.
- An inflation factor of 3.5 percent. The inflation factor is applied annually beginning July 1, 2014. In years when 1991 Realignment revenues decline (year-over-year negative growth), the inflation factor is zero. DOF shall provide notification to the appropriate legislative fiscal committees and CSAC by May 14 of each year whether the inflation factor will apply for the following fiscal year.

The county IHSS MOE would be adjusted for the annualized cost of locally-negotiated, mediated, or imposed increases in provider wages and/or health benefits.

### **State Bargaining**

SB 1036 moves collective bargaining from the local level to the state for IHSS providers. AB 1496 specifies that collective bargaining would transition to the state once the director of DHCS certifies that enrollment into CCI has finished. SB 1036 and SB 1008 tie the transition to statewide bargaining to enrollment into the CCI. The Legislature approved eight county CCI sites. Please recall that the Administration had originally proposed to transition all 58 counties to state bargaining over a three year period (2014-2016). SB 1008 includes legislative intent language that the CCI will transition statewide. Further legislation will be necessary to move to statewide bargaining in all 58 counties.

A locally bargained memorandum of understanding (MOU) or contract that is in place on the county implementation date remains in effect until it would otherwise expire – unless the union and the Statewide Authority mutually agree to reopen the contract. After the county implementation date, once a locally bargained MOU or contract expires, the Statewide Authority and the union begin negotiations on a new agreement. The Statewide Authority is required to notify the county 90 days prior to making any changes to locally administered health benefits.

SB 1036 states that the scope of representation at the state level includes all matters related to wages, benefits and other terms and conditions of employment. The bill specifically excludes functions performed by or on behalf of counties including:

- Eligibility determination for IHSS
- Assessing, approving and authorizing IHSS services
- Enrolling providers and conducting provider orientation
- Conducting criminal background checks
- Providing assistance to recipients in finding providers through establish of a provider registry, as well as providing orientation to recipients
- Pursuing overpayment recovery collection
- Performing quality assurance activities
- Performing any other function or responsibility required pursuant to statute or regulation to be performed by the county.

SB 1036 contains a new provision not previously discussed with CSAC that allows the state to weigh in on non-economic terms of a contract (Section 110011, paragraph(e)) while local entities are still bargaining. The language requires after July 1, 2012 that any new MOUs or alterations to existing MOUs to be submitted to the CDSS for review. CDSS or the Statewide Authority may determine if there are newly negotiated non-economic terms that are objectionable for a business-related reason, and if so, shall provide written notice to the union. Upon demand from the union, CDSS or the Statewide Authority shall meet and confer with the union over the objection. CSAC is conferring with counsel on this language.

Once the state takes over collective bargaining, state-negotiated changes in provider wages and/or benefits will exclusively be state and federal costs. There is no county share.

#### **Local Bargaining**

Counties will continue to collectively bargain until the state takes over collective bargaining upon certification by the director of DHCS. Local bargaining ceases once the state once the director of DHCS certifies that enrollment into CCI has finished.

The state will continue to approve rates, per existing law (Welfare and Institutions Code Section 12306.1). If the state approves a county-negotiated rate, the state and counties will share in those costs per existing law, and the MOE will be adjusted accordingly.

SB 1036 clarifies that rates and other economic terms will be presumed to be approved by DSS if:



- The combined total of wage and health benefits are up to 10 percent above the current combined total of wages and health benefits paid in that county.
- The rate includes a cumulative total of 20 percent of changes to wages and/or health benefits until the Statewide Authority assumes collective bargaining for a county.

### **Statewide Authority**

SB 1036 creates a joint powers authority, the California In-Home Supportive Services Authority – referred to as the Statewide Authority. The Statewide Authority will meet and confer on wages, benefits and other terms and condition of employment for IHSS providers. The Authority is comprised of five members – two county officials appointed by the Governor, the Director of CDSS, the Director of dhcs, and the Director of the DOF.

SB 1036 also creates an advisory committee of the Statewide Authority comprised of no less than 13 members. No less than 50 percent of the members shall be current or past users of IHSS. At least two members shall be current or former providers. Each union representing IHSS providers shall have a representative on the committee. The advisory committee may include individuals representing organizations that advocate for people with disabilities or seniors.

### **Training**

SB 1036 requires CDSS to develop a training curriculum for IHSS providers by January 1, 2014. The training shall be voluntary. The state is not required to fund the training.

### **IHSS as a Managed Care Benefit**

IHSS will become a managed care benefit no sooner than March 1, 2013 and where CCI is being implemented.

### **Poison Pill**

SB 1036 contains a poison pill trailer bill that would allow the state to end the CCI. If the CCI is halted, state collective bargaining would return to counties and the MOE would revert to the existing share of cost. The MOE would end at the end of a fiscal year.

Under one poison pill, if the federal government does not provide by February 1, 2013 federal approval – or notification indicating pending approval – of a mutual rate setting process, shared federal savings and a six-month enrollment period in the CCI, the act becomes inoperative on March 1, 2013. SB 1036 includes a methodology for determining shared federal savings.

## **2. SB 1008 – Coordinated Care Initiative: Health**

### **Poison Pills**

SB 1008 contains two poison pills, including one identical to the poison pill outlined above.

Additionally, SB 1008 allows the director of DHCS – after consulting with the Director of Finance, stakeholders and the Legislature – to halt all or part of the CCI. This determination can be made if the director determines the quality of care for managed care beneficiaries, efficiency or cost-effectiveness of the program would be jeopardized. If the CCI is halted, state collective bargaining would return to counties and the MOE would revert to the existing share of cost. The MOE would end at the end of a fiscal year.

There is no specificity in the trailer bills about how the MOE would revert back to a share of cost. Likewise, there is no specificity about how the CCI would end. Outstanding questions include:

- Would counties have to pay for state-negotiated changes in wages and benefits under a reversion to a share of cost?
- How does Proposition 1A interact with a change from a MOE to a share of cost?
- Does every aspect of CCI end – such as mandatory enrollment into Medi-Cal managed care and the inclusion of Long Term Services and Supports into managed care?
- Once the director of DHCS triggers the poison pill, can it be executed without additional legislation?

### **CCI Expansion**

SB 1008 includes intent language that the CCI be expanded statewide within three years of the start of the demonstration project, contingent upon statutory authorization and a subsequent budget appropriation.

### **General Provisions**

SB 1008 contains the main elements of the Governor's CCI, which includes major policy changes within the Medi-Cal program aimed at improving care coordination, particularly for people on both Medi-Cal and Medicare.

SB 1008 would establish the CCI and allow up to eight counties to begin demonstration sites no sooner than March 1, 2013. The bill requires dual eligible beneficiaries to enroll into a demonstration site unless the beneficiary makes an affirmative choice to opt out



of enrollment. The measure defines health plan readiness, increase legislative oversight, and specifies additional consumer protections and notification.

The CCI saves \$611.5 million General Fund.

## **MEDI-CAL**

### **Co-Payments**

Despite the federal government's rejection of the state's 2011-12 budget proposal to implement co-payments for Medi-Cal beneficiaries, lawmakers and the Governor have included modified co-payments in the 2012-13 budget act (AB 1467).

The previous co-payments had ranged from \$5 for non-emergency medical services, \$1 for a medical visit, and \$1 for prescription drugs. While these amounts remain in AB 1467, Section 85 has been added that outlines the following co-payments.

- \$50 for nonemergency services received in an emergency department or emergency room when the services do not result in the treatment of an emergency medical condition or admittance to the hospital
- \$50 for emergency services received in an emergency department that treat an emergency medical condition or result in admittance.
- \$3 for each drug prescription or refill, and \$5 for nonpreferred drugs
- \$5 for each physician visit
- \$100 for each hospital inpatient day, up to a maximum of \$200.

These new copayments do not affect the reimbursements for providers. Services that do not require a copayment include emergency services, family planning services, children in AFDC-foster care, a person under 18 years of age or over 65, a person who is an inpatient at a health facility, or a woman receiving perinatal care. The state must garner federal approval before the above co-payments are implemented.

### **Managed Care Shift in Rural Counties**

AB 1467 codifies the state's proposal to shift the current 28 Medi-Cal fee-for-service counties into Medi-Cal Managed Care. The shift is expected to begin in June of 2013 and would affect Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Imperial, Inyo, Lake, Lassen, Mariposa, Modoc, Nevada, Mono, Placer, Plumas, San Benito, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Tuolumne, and Yuba Counties (Section 78).

The measure also identifies a number of factors that a managed care health plan will have to meet to be considered by DHCS, including an action of support by each county's board of supervisors. DHCS will also set up a stakeholder process and has the authority

to implement this transition while regulations are being developed (with a deadline of emergency regulations slated for July 1, 2014).

Further, the shift to managed care must be cost-neutral for the state and receive all federal approvals before proceeding. Lastly, DHCS must provide quarterly updates on the shift to managed care in these counties to the Legislature, beginning January 1, 2014 and ending on January 1, 2016.

#### **Shift Funding from Designated Public Hospitals**

AB 1467 (Section 99) also allows the state to sweep an additional \$21.5 million from the designated public hospitals in 2013-14 to pay for health care coverage for children. Section 110 deletes the “milestone incentive payments” to designated public hospitals under the Medicaid Waiver delivery system reform incentive payments once federal approval of the above methodology and payment changes receive federal approval.

#### **Unexpended Federal Waiver Funds**

If the state is unable to claim the maximum annual amount of Safety net Care Pool funds, then the excess certified public expenditures are to be allocated equally between the state and designated public hospitals. This produces \$100 million in General Fund savings.

#### **Non-Designated Public Hospital Payment Changes**

Non-designated public hospitals have historically been funded similar to private hospitals (50 percent General Fund, 50 percent federal funds), rather than like designated public hospitals (no state General Fund; local funds are used to draw down federal match) for inpatient Medi-Cal fee-for-service. The Legislature approved the Governor’s proposal to align non-designated hospital funding with designated hospitals funding methodology for inpatient Medi-Cal fee-for-service in AB 1467. The sections of AB 1467 described below implement this change. This change results in \$94.4 million GF savings.

- Section 92 allows nondesignated public hospitals to receive safety net care pool payments and delivery system reform incentive pool payments for uncompensated care costs to the extent that additional federal funding is made available or there is leftover funding after payments are made to designated public hospitals.
- Also allows the state to increase the percentage of each intergovernmental transfer (IGT) that it retains for administrative costs to 20 percent. This funding would be used for the Medi-Cal program.

### **Quality Assurance Fee**

The Legislature approved the Governor's proposal to redirect hospital quality assurance fee revenue that was intended to fund supplemental payments to a private hospital. This proposal saves \$150 million General Fund. AB 1467 (Sections 100-103) states that California has received the necessary federal approvals to implement the Low Income Health Program MCE Out-of-Network Emergency Care Services Fund. All funds would come out of the Quality Assurance Fee or federal funds.

The bill also specifies that federal approval of both the Quality Assurance Fee and the supplemental payments to hospitals must be in place. Section 104-5 increases the amount the state can sweep from the Quality Assurance fee for children's health care from \$85 million to \$96.7 million each quarter during the 2012-13 fiscal year and \$144.2 million for each quarter in 2013-14.

Section 106-7 specifies that the state will not make increased capitation payments from the Hospital Quality Assurance Fund until federal approval is gained. Also, that no hospitals will make QA payments until federal approval is received.

### **Denti-Cal Oversight in Sacramento and Los Angeles Counties**

Sections 79-80 of AB 1467 pertain to the Denti-Cal programs in Sacramento and Los Angeles Counties, where significant problems with access to timely care and service delivery for pediatric dental services have been identified. The first section (79) allows Sacramento County to establish a stakeholder advisory group to increase program delivery, with participation by DHCS.

The second section (80) allows the state to invoke its authority to establish a beneficiary dental exception (BDE) process in Sacramento County. The BDE will allow Medi-Cal dental managed care beneficiaries in Sacramento County who are unable to secure timely access to services through their managed care plan. The beneficiary can opt out and move into fee-for-service Denti-Cal and choose their provider. This exception process will remain in effect for as long as all beneficiaries in Sacramento County are mandatorily enrolled in dental health plans. Further, DHCS will administer the BDE process, including emergency visit requests and data collection on outcomes.

Section 115 of AB 1467 also requires DHCS to report to the Legislature on the progress of the Denti-Cal programs in Sacramento and Los Angeles Counties.

### **Low Income Health Program (LIHP).**

- **Capitation Rates.** Section 117 of AB 1467 allows the federally approved capitation rates to apply to the LIHP year, which is July 1, 2011, to June 30, 2012, inclusive, even if federal approval and the necessary contract amendments are not finalized until after June 30, 2012.

- **CMSP LIHP Loan.** Section 118 of AB 1467 authorizes a cash flow loan of up to \$100 million to the County Medical Services Program (CMSP) in 2012-13 and 2013-14 to cope with expenses related to the Health for All LIHP program. Interest on the loan will be pegged to the rate earned in the Pooled Money Investment Account (PMIA). This language was originally contained in SB 1517 (Wolk).
- **Shift Ryan White Patients to LIHPs:** Section 119 of AB 1467 codifies the state's intention to shift persons receiving federal Ryan White Act services to the county LIHPs.

#### HEALTHY FAMILIES PROGRAM (HFP) SHIFT TO MEDI-CAL

The Legislature, after much debate, passed AB 1494 (Chapter No. 28, Statutes of 2012), which shifts all 875,000 HFP beneficiaries into the Medi-Cal program in four phases. AB 1494 was approved once lawmakers were able to insert language requiring close oversight and timely reporting by DHCS to the Legislature on the progress of the shift and its effects on children.

The shift would begin on January 1, 2013 and occur in four phases:

- **Phase 1:** Begins January 2013 and includes roughly 415,000 children currently enrolled in a HFP health plan that matched with an existing Medi-Cal health plan in their area.
- **Phase 2:** Begins April 2013 and includes 249,000 children in a HFP health plan that is a subcontractor of a Medi-Cal managed care health plan in their area.
- **Phase 3:** Begins August 2013 and transitions 173,000 children enrolled in a HFP plan that is not a Medi-Cal managed care plan and does not contract or subcontract with a Medi-Cal managed care plan into a Medi-Cal managed care plan in their county.
- **Phase 4:** Begins no earlier than September 2013 and transitions 43,000 HFP children who live in a county that does not yet have Medi-Cal managed care into a Medi-Cal fee-for-service delivery system. (Please note that AB 1467 authorizes the state to shift the remaining 28 Medi-Cal fee-for-services counties into Medi-Cal managed care starting in June of 2013 – see above for more details)

The measure also requires the Health and Human Services Agency to work with the Managed Risk Medical Insurance Board, DHCS, and the Department of Managed Health Care to develop a transition plan for this transition of children from HFP to Medi-Cal no later than October 1, 2012. It also requires DHCS to submit an implementation plan for

each phase prior to transitioning children, reports on performance and readiness measures of the health plans, and monthly status reports.

#### **CALIFORNIA CHILDREN'S SERVICES (CCS) PROGRAM**

AB 1467 included a provision to allow the use of federal Disabilities Education Act (IDEA) school funding for California Children's Services (CCS) Program costs that are incurred as part of the child's Individualized Education Program (IEP)(Section 1). However, **AB 1494 rescinded this provision**. If enacted, it would have saved the state \$12 million General Fund in 2012-13.

#### **COST OF DOING BUSINESS**

Section 87 of AB 1467 enacts the further suspension of the cost of doing business funding for counties in 2011-12 and 2012-13. This funding has been suspended for more than a decade, and used to assist counties for the cost of eligibility determinations, eligibility redeterminations and case maintenance activities for applicants and recipients of social service and health programs.

#### **MENTAL HEALTH**

##### **Mental Health Services Act (MHSA) Changes**

AB 1467 contains a number of provisions related to how counties develop their three-year MHSA plans that were originally contained within SB 1136 (Steinberg). Below are some specific changes in the measure.

- Creates a new position within DHCS: the Deputy Director of Mental Health and Substance Use Disorder Services, to be appointed by the DHCS Director and the Governor (Section 47).
- Includes language drawn from SB 1136 (Steinberg) that changes the entity to which counties must submit their mental health needs assessments from the Department of Mental Health to the Office of Statewide Health Planning and Development (OSHPD). OSHPD will release the next five-year plan on April 1, 2014 (Sections 55-57). The measure also slightly modifies the requirements for each county's innovative program portion of the mental health plan (Section 58).
- Allows counties to use prevention and early intervention funding to broaden community-based mental health services (Section 59).
- Requires the Mental Health Services Oversight and Accountability Commission to work in collaboration with the State Department of Health Care Services and the California Mental Health Planning Council, and in consultation with the California Mental Health Directors Association (CMHDA), to design a joint plan for a

coordinated evaluation of client outcomes in the community-based mental health system. This effort will be led by the California Health and Human Services Agency (Sections 60-61).

- Also requires counties to submit their three-year program and expenditure plan and annual updates – as adopted by the county board of supervisors – to the Mental Health Services Oversight and Accountability Commission within 30 days of adoption. These plans and expenditures must be certified by each county’s mental health director and auditor-controller, and expenditures must be in accordance with the Mental Health Services Act (Sections 62-63).
- In Section 63 of AB 1467, the language imposes a new mandate on counties during the development of the three-year plan requiring them to “demonstrate a partnership with constituents and stakeholders throughout the process that includes meaningful stakeholder involvement on mental health policy, program planning, and implementation, monitoring, quality improvement, evaluation, and budget allocations.”
- Section 66 adds “innovative programs” to the list of areas eligible for MHSA funding, and Section 68 allows 20 percent of MHSA funds to be used for prevention and early intervention services.
- Allows DHCS to provide a methodology for the distribution of MHSA funding based on each county’s three-year expenditure or annual report (Section 67).
- Creates a new state Annual Mental Health Services Act Revenue and Expenditure Report to be issued by DHCS, in consultation with the Mental Health Services Oversight and Accountability Commission and the California Mental Health Directors Association, and allocates \$200,000 to the project.

### **State Hospitals and Bed Rate Increase**

AB 1470 creates the state Department of State Hospitals and transfers all duties related to state hospitals from the now-defunct Department of Mental Health to the new department. The measure also allows county jail treatment facilities to be treated similarly to state treatment facilities and establishes a regulatory framework for voluntary and involuntary treatment in these facilities.

Sections 113-120 of AB 1470 relate to the state’s plan to increase the rate counties pay to the state for civil commitments in state hospitals. This change will result in at least \$20 million in new costs for counties in 2012-13.

### **FIRST 5 FUNDING**

The Administration had proposed sweeping \$40 million of state First 5 Commission funds for use in the Medi-Cal program for services to children aged birth through 5. The Legislature approved the shift.

## **CHILD SUPPORT**

In January, the Governor asked to suspend the county share of child support collections and redirect it to the state's General Fund. This proposal was approved by the Legislature on a one-time basis for fiscal year 2012-13.

## **INFORMATION TECHNOLOGY**

### **LEADER Replacement System**

The May Revision included \$36.5 million (\$15.3 General Fund) in 2012-13 to replace the existing Los Angeles Eligibility, Automated Determination, Evaluation and Reporting System (LEADER). The Legislature reduced the funding by \$4.7 million, and the new funding level was signed into law by the Governor.

### **New Office of Systems Integration (OSI)**

AB 1467 creates the new Office of Systems Integration within the California Health and Human Services Agency. The new OSI would oversee the Statewide Automated Welfare System (SAWS), the Child Welfare Services/Case Management System (CWS/CMS), Electronic Benefit Transfer (EBT), Statewide Fingerprint Imaging System (SFIS), Case Management Information Payrolling System (CMIPS), and Employment Development Department Unemployment Insurance Modernization (UIMOD) Project (Section 3).

### **OSI Exchange Loan**

AB 1467 allows the new OSI to make a \$5 million loan to the California Health Benefits Exchange (Exchange) for the establishment and operation of the health benefits exchange. The Exchange must repay the loan by June 30, 2016, and the interest on the loan will be pegged at the PMIA interest rate.

## **NEW CALIFORNIA HEALTH ACCESS MODEL PROGRAM**

AB 1467 Creates the California Health Access Model Program and authorizes up to \$1.5 million in the first round and \$5 million in the second round of grant funding for health facilities to demonstrate new or enhanced cost-effective methods of delivering health care services and preventative care for vulnerable populations in a community setting. The funding is provided by the California Health Facilities Financing Authority (Section 5).

## **PUBLIC HEALTH**

AB 1467 repeals a number of state health-related offices and delegates authority for those issues to a new Office of Health Equity (OHE) within the Department of Public

Health (DPH) (Section 8 -14). The measure then establishes the duties of OHE to work toward excellent health and mental health and eliminate disparities in these areas for all Californians. The new OHE shall incorporate the Health in All Policies task force recommendations and research, a deputy director will be appointed by the Governor, an advisory committee will be established, and DPH must work with DHCS to ensure the success of OHE's mission (Sections 42-43).

AB 1467 removes Local Authority to Enforce Public Wading Pool Requirements: Sections 30 -31 repeal the authority of local public health departments to take any enforcement action or collect an annual fee of up to \$6 for enforcement of public wading pools.

AB 1467 also Transfers the Office of AIDS, the Office of Binational Border Health, the Division of Communicable Disease Control, the Division of Chronic Disease and Injury Control, the Office of Oral Health, the California Tobacco Control Program, the Childhood Lead Poisoning Prevention Program, and others to the Department of Public Health. Additionally, the bill transfers the IMPACT Prostate Cancer Treatment Program, the Every Woman Counts program, the Office of Family Planning, the Family PACT Program, and the Women, Infants and Children (WIC) program, among others, to the Department of Health Care Services (Sections 44-46).

## **HOUSING, LAND USE AND TRANSPORTATION**

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### **TRANSPORTATION**

#### **Transportation Tax Swap**

The final budget appropriates \$708.5 million to counties and cities from new gasoline excise tax revenues, or the Highway User Tax Account (HUTA), pursuant to the Transportation Tax Swap (Swap) and formerly Proposition 42 revenues. Counties are estimated to receive approximately \$354 million. This amount is consistent with estimates DOF has provided since January. State highways would receive \$901.7 million, specifically \$193.2 million for the State Highway Operation and Protection Program (SHOPP) and \$708.5 for the State Transportation Improvement Program (STIP). Further, cities would receive an equivalent amount to counties - \$354 million.

#### **HUTA for General Fund Relief**

In accordance with budget trailer bill language (SB 1006, which is identical to AB 1466) adopted by the Legislature and signed by the Governor, the State will take a share of new HUTA for General Fund relief. This action will result in a total loss of \$312 million in state and local transportation funding through 2012-13 and another \$128 million annually on a permanent basis beginning in 2013-14.



The State is able to sweep this share of new HUTA due to an unintended consequence resulting from the Swap. Specifically, existing law directs a specified percentage of old HUTA revenues attributable to OHV to special funds including the OHV Trust Fund, the Harbors and Watercraft Revolving Fund, and the Department of Agriculture Account. This provision of law applies to the base 18-cent HUTA, but was not intended to apply to the new HUTA which replaced Proposition 42 revenues. However, the State Controller has been applying this statute and taking a share of new HUTA since the enactment of the Swap in 2010-11. This money was intended to flow through the new HUTA formula: 12 percent to SHOPP, 44 percent to STIP and 44 percent to cities and counties for local streets and roads.

The Governor included this proposal in the May Revision and, understanding the State's current fiscal situation and that other programs of great importance to counties are facing severe continued cuts in the state budget, CSAC did not outright oppose the proposal to sweep the new HUTA funds in the short term. CSAC did, however, oppose the idea of redirecting these funds on a permanent basis.

CSAC was successful in getting a three-year sunset (and permanent fix to direct these funds to transportation purposes starting in 2015-16) included in the transportation budget trailer bill (AB 1465) which the Legislature passed on June 15. Unfortunately, the Administration was adamantly opposed to a sunset and insisted on a permanent sweep in the final state budget package. While the Governor did sign the transportation trailer bill, the provisions in SB 1006 override the HUTA provisions in AB 1465.

Ultimately, the new HUTA sweep only represents about eight percent of the county share of new HUTA. The specific fiscal impact to counties as a result of this action is the loss of \$40 million in 2010-11 and 2011-12 and \$28 million in 2012-13 and every year thereafter. Further, cities will suffer an identical loss and the State system will experience a significant loss as well.

Important to note is that counties will not actually notice a reduction in funding in 2012-13 and into the future as counties have never received this money because the State Controller has been holding it since the Swap in 2010. Counties will still receive their full share of old HUTA (around \$500-\$550 million annually statewide) and new HUTA which is approximately \$354 million statewide.

CSAC continues to oppose the permanent take and will pursue a sunset and permanent fix in the future.

### **State Funding for Local Project Initiation Documents**

The final budget package also restores funding from the State Highway Account (SHA) for Project Initiation Documents, or PIDs, in lieu of using local funds. A PID is an initial report that outlines the potential scope, cost, and schedule for a transportation project that impacts the state highway. The Administration had originally proposed that the state oversight be funded with local reimbursement rather than SHA funding. While the final package does appropriate funds from the SHA for PIDs, unfortunately, the Governor used his line item veto authority to reduce the amount of funding by \$4.5 million. The final amount appropriated from the SHA for PIDs is \$3.8 million.

### **High-Speed Rail Authority**

The final state budget included general support for the High Speed Rail Authority of \$24.6 million from state bond funds and federal trust funds. Additionally, an appropriation of \$5.8 billion from state and federal funds was made to begin the construction of the Initial Operating Section. It is our understanding that the Legislature intends to focus on High-Speed Rail in greater detail next week.

## **HOUSING**

### **Housing Element Review**

The final 2012-13 state budget provides bond funding to support five new positions at the Department of Housing and Community Development dedicated to housing element review. The additional positions are in response to the additional work load related to SB 375 synchronizing housing elements with the development of regional transportation plans.

## **LAND USE**

### **Repealing Local Coastal Plans and Airport Land Use Commissions**

The final 2012-13 state budget ultimately suspended a number of mandates that were proposed for elimination under the Governor's January budget proposal. Counties will recall that the Administration proposed to repeal two mandates of particular concern to counties from a land use perspective: the development of Local Coastal Plans (LCPs) and the operation of Airport Land Use Commissions (ALUCs) even though these mandates have been suspended for years. The suspension of these mandates was provided for under the budget trailer bill AB 1464, but not the permanent repeal that CSAC opposed.

## **RESTRUCTURING AGENCIES & CONSOLIDATING DEPARTMENTS**

### **Government Reorganization Plan (GRP)**

In his January budget, Governor Brown proposed to reduce the number of state agencies from 12 to ten and eliminate another 39 state entities and nine programs.

Among this reorganization is the consolidation of the California Department of Transportation (Caltrans) with the Department of Motor Vehicles, the High-Speed Rail Authority, the California Highway Patrol, the California Transportation Commission, and the Board of Pilot Commissioners into a new "Transportation Agency".

The proposal would also transfer the functions of the California Housing Finance Authority (CalHFA) to the Housing and Community Development Department (HCD). It should also be noted that the new HCD will be moved from the former Business, Transportation, and Housing Agency (BTH) to a new agency – the Business and Consumer Services Agency (BCS).

The Legislature has held a number of hearings on the GRP. The Legislature has 60 days to object to the GRP, which ends next week on July 3. The Legislature is currently amending various bills to make statutory changes to the Governor's plan. Among other things, the Legislature wants to provide greater independence for the California Transportation Commission (CTC) even though it will now fall under the new Transportation Agency. It is uncertain whether or not the Legislature will make a run at objecting to the plan if Governor Brown does not sign the bills. It is unclear how the merge of HCD and CALHFA will proceed, but they will be under BCS. BTH would no longer exist

The GRP will take effect in July 2013, although, once adopted, the affected departments and agencies can begin to make the necessary transitions.

### Budget Bill and Trailer Bill List

Bill Number	Subject
<u>AB 1464</u>	2012-13 Budget Bill
<u>AB 1465</u>	Transportation
<u>AB 1467</u>	Health
<u>AB 1470</u>	State Mental Hospitals
<u>AB 1472</u>	Developmental Services
<u>AB 1484</u>	Redevelopment
<u>AB 1485</u>	2011-12 Supplemental Appropriations
<u>AB 1494</u>	Healthy Families
<u>AB 1497</u>	Budget Bill Jr.
<u>AB 1499</u>	Elections
<u>AB 1502</u>	Higher Education
<u>SB 1006</u>	General Government
<u>SB 1008</u>	Health: Coordinated Care Initiative
<u>SB 1009</u>	Mental Health Realignment
<u>SB 1013</u>	Child Welfare Services Realignment
<u>SB 1014</u>	Alcohol and Drug Program Realignment
<u>SB 1015</u>	Tax Compliance
<u>SB 1016</u>	Education
<u>SB 1018</u>	Resources
<u>SB 1020</u>	Realignment Superstructure
<u>SB 1021</u>	Public Safety Omnibus Bill
<u>SB 1022</u>	Public Safety Capital Outlay
<u>SB 1023</u>	Public Safety Realignment (general AB 109 cleanup)
<u>SB 1033</u>	Cash Management
<u>SB 1036</u>	Human Services: Coordinated Care Initiative
<u>SB 1038</u>	State Boards and Commission Reorganization
<u>SB 1041</u>	Human Services

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## CSAC

### WASHINGTON BRIEFS

SECOND QUARTER 2012

Washington was bustling with legislative and judicial activity during the second quarter of 2012, as both Congress and the Supreme Court tackled a number of high-profile issues. On Capitol Hill, lawmakers were finally able to reach agreement on a long-awaited reauthorization of surface transportation programs. Congress also was under pressure to reauthorize a broad range of expiring agricultural and nutrition assistance programs, the National Flood Insurance Program (NFIP), user fees for the Food and Drug Administration (FDA), and a student loan interest-rate reduction measure.

For its part, the Supreme Court upheld on a 5 to 4 decision the *Patient Protection and Affordable Care Act* (ACA), which was enacted into law in 2010. Most significantly, the high court ruled that the controversial individual mandate, which is the centerpiece of the health care law, is allowable under Congress' taxing authority in the Constitution.

Aside from the individual mandate, the court also ruled on the law's forthcoming Medicaid expansion. The ACA provides extra funding as an incentive for states to expand their Medicaid coverage, but also includes potential penalties for states that fail to do so. The court determined that the federal government could supply extra Medicaid funding to the states, but that it could not penalize noncompliant states by withholding funds from components of the Medicaid program that existed before the ACA was signed into law.

The reaction to the court's ruling from national leaders followed the tone of this year's presidential campaign, signaling that the political battle over President Obama's signature health care reform law is far from finished. While the president and Democratic leaders claimed victory, congressional Republicans vowed to continue their efforts aimed at repealing the ACA. Any effort to scrap the Act, however, is likely to die in the Democrat-led Senate.

In other developments, Congress continued efforts aimed at approving a new Farm Bill reauthorization. On June 18<sup>th</sup>, the Senate passed its reauthorization package (S 3240) by a vote of 64-35, with the support of Senators Dianne Feinstein (D-CA) and Barbara Boxer (D-CA).

According to the Congressional Budget Office, the Senate Farm Bill is projected to cost roughly \$969 billion over the next ten years. When compared to current funding levels, this equates to a savings of \$23.6 billion.

In terms of the Supplemental Nutrition Assistance Program (SNAP) – formerly known as Food Stamps – the Senate rejected a proposal by Senator Kirsten Gillibrand (D-NY) that would have restored a \$4.5 billion cut to the program. While both California senators voted in favor of the amendment, it was defeated 66-33. The Senate also voted down an amendment by Senator Jeff Sessions (R-AL) that would have further weakened SNAP.

Across Capitol Hill, the House Agriculture Committee is working on a draft bill that is expected to differ significantly from the Senate legislation on the structure of farm support programs and the level of cuts to the SNAP program. The House bill will likely have a savings target of \$33 billion over 10 years, with most of the extra savings coming from deeper cuts to SNAP. The committee is expected to consider its bill early in the third quarter.

On the fiscal year 2013 budget front, the House Appropriations panel has cleared 11 of the 12 annual spending bills, with five measures approved by the full House. In the Senate, the Appropriations Committee has approved nine spending bills; the full chamber has yet to consider any of the fiscal year 2013 appropriations measures.

It should be noted that Senate appropriators are proceeding with a \$1.047 trillion discretionary spending cap, which was set as part of last year's debt limit law (PL 112-25) and is up slightly from the current year's \$1.043 trillion level. For their part, House appropriators have endorsed the \$1.028 trillion spending allocation outlined in the lower chamber's fiscal year 2013 budget resolution.

Congress is unlikely to clear many, or perhaps any, stand-alone appropriations bills this year, and will likely have to resort to combining several bills into an omnibus measure before the current fiscal year ends.

#### **NATIVE AMERICAN AFFAIRS**

This past quarter, the U.S. Supreme Court handed down a ruling on an Indian trust land case that has implications for individuals – as well as local community groups – who oppose federal land-into-trust decisions. In *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak et al*, the Court ruled that Wayland Township, MI resident David Patchak has standing to challenge the secretary of the Interior's acquisition of land upon which the Gun Lake Casino was built. The case has been remanded to the U.S. Circuit Court of Appeals in Washington, D.C., where Patchak's lawsuit can continue.

It should be noted that Patchak's lawsuit claims that the Department of Interior did not have authority to take land into trust for the tribe because it was not "under federal jurisdiction" at the time of the enactment of the *Indian Reorganization Act (IRA)* of 1934. The suit is based on

the Supreme Court's 2009 decision in *Carcieri v. Salazar*, which limits the secretary's trust land acquisition authority to pre-IRA tribes.

In the immediate aftermath of the *Patchak* decision, tribal organizations renewed their calls for Congress to overturn the *Carcieri* decision. For its part, the National Congress of American Indians called the Court's ruling a severe injustice and one that affects all of Indian Country. Other tribal groups also immediately blasted the decision and have been using the court's ruling as a rallying cry to Indian Country to appeal to Congress for action.

On a related matter, Senator Daniel Akaka (D-HI) this past quarter proposed an amendment to the Senate's Farm Bill, which, among other things, would have reversed *Carcieri v. Salazar*. After a protracted debate over the Farm Bill, Senator Akaka's amendment was not brought to the floor for a vote.

Finally, the House approved in May the *Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012* (HEARTH Act). The legislation (HR 205) would extend to any Indian tribe the discretion granted under current law only to the Navajo Nation to lease restricted lands for business, agricultural, public, religious, educational, recreational, or residential purposes without the approval of the secretary of the Interior.

Last year, the Senate Indian Affairs Committee attached a *Carcieri* "fix" bill (S 676) to its version of the HEARTH Act (S 703). Senator Feinstein has placed a hold on the HEARTH Act due to her objections over inclusion of the *Carcieri* fix language.

#### REAUTHORIZATION OF SAFETEA-LU

After months of delay and uncertainty surrounding the prospects for a new long-term transportation reauthorization bill, House and Senate negotiators struck an agreement this past quarter on a two-year highway and transit package (HR 4348). The bill, dubbed the *Moving Ahead for Progress in the 21<sup>st</sup> Century Act*, or MAP-21, authorizes federal transportation investment through September 30, 2014.

All told, the new transportation bill is expected to cost roughly \$120 billion. Highway and transit formula programs will continue to be funded with contract authority, meaning the programs are insulated from the uncertainty of the annual appropriations cycle. Transit new starts, research programs, and administrative expenses will continue to be funded through the federal general fund via the appropriations process.

Notably, MAP-21 is not solely a surface transportation package. Due to other expiring programs, lawmakers included in the legislation provisions that extend federal subsidies for college student loans, as well as provisions providing for a long-delayed reauthorization of the NFIP.

### ***Funding and Implementation***

MAP-21 provides funding for the federal-aid highway program through fiscal year 2014 at current levels, with a modest inflationary adjustment. For fiscal year 2013, the highway obligation limit is set at roughly \$39.7 billion, with the obligation limit rising to nearly \$40.3 billion for fiscal year 2014. Likewise, the bill provides inflationary funding increases for transit programs. Investment levels are set at roughly \$10.6 billion for fiscal year 2013 and \$10.7 billion for fiscal year 2014.

MAP-21 extends federal motor fuel taxes through September 30, 2016; the fuel taxes are the primary source of revenue for the Highway Trust Fund (HTF). The bill also transfers \$2.4 billion from the Liquid Underground Storage Tank Trust Fund into the HTF and shifts \$18.8 billion to the HTF from the General Fund, including \$16.6 billion to the Highway Account and \$2.2 billion to the Mass Transit Account.

### ***Highway Program – State Distribution Formula***

For fiscal year 2013, each state will receive a total apportionment of highway program funds equal to its fiscal year 2012 apportionment. For fiscal year 2014, the formula will begin with the fiscal year 2012 apportionment followed by an adjustment to ensure that no state will receive less than 95 percent of its contribution to the HTF.

With regard to California, the state's highway apportionment will be \$3.54 billion in fiscal year 2013 and \$3.57 billion in fiscal year 2014. The funding will be divided principally among the following programs: Congestion Mitigation and Air Quality Improvement Program (CMAQ) and Metropolitan Planning (the same share of the state's total apportionment as in fiscal year 2009); 63.7 percent of the remaining funds to the National Highway Performance Program; 29.3 percent of the remaining funds to the Surface Transportation Program (STP); and, seven percent of remaining funds to the Highway Safety Improvement Program (HSIP).

### ***“Core” Highway Programs***

Under MAP-21, about 60 programs are either eliminated or consolidated into the following four “core” programs: the National Highway Performance Program; STP; CMAQ; and, HSIP.

With regard to STP, MAP-21 retains the same structure and goals of the previous program to allow states, metropolitan areas, and other areas of states to invest in highway and bridge projects. Activities that previously received dedicated funding via SAFETEA-LU, but are being consolidated under MAP-21, are retained as eligible activities under STP (including border infrastructure projects, as well as certain transportation enhancement-related activities).

Under HSIP, construction and operational improvements on high risk rural roads will be one of a number of allowable highway safety improvement project areas. Although the bill does not provide dedicated funding for the High Risk Rural Roads (HRRR) program, the legislation specifies that if the fatality rate on rural roads in a State increases over the most recent two-year period, the State is required to increase spending on rural roads in the next fiscal year.



Funds spent on rural roads would need to be equal to at least 200 percent of the amount of funding the State received for fiscal year 2009 for such roads:

### ***Off-System Bridges***

In a major victory for CSAC, the final transportation measure retains language from the Senate bill that maintains a dedicated federal funding stream for off-system bridges. Consistent with current law, MAP-21 requires a State to obligate for local bridge projects not less than 15 percent of the funds that were apportioned to it under the Highway Bridge Program in fiscal year 2009. Should State and local officials determine that the State has inadequate needs to justify the expenditure, the Transportation Secretary can rescind the requirement.

### ***Environmental Streamlining***

MAP-21 includes various provisions aimed at shortening the length of the transportation project delivery process. The bill, for example, makes permanent the Surface Transportation Project Delivery Pilot Program, which has allowed California to significantly streamline the process for the delivery of highway projects. Additionally, under the legislation, the program is expanded to include rail, public transit, and multimodal projects.

Although the final package does not establish a program to eliminate duplicative state and federal environmental reviews and approvals (similar to CSAC-endorsed "reciprocity" legislation (HR 2389)), it would require the Government Accountability Office (GAO) to undertake a related study. Pursuant to MAP-21, GAO will be required to review state laws and procedures for conducting environmental reviews. The study will also identify the states that have environmental laws that provide protections and opportunities for public involvement that are equivalent to those provided by federal environmental laws. GAO must submit its findings to Congress no later than two years after the date of the legislation's enactment.

MAP-21 includes several other significant changes to the environmental review and approval process for transportation projects. For example, the bill provides for accelerated decision-making by setting deadlines for decisions by the lead agency, as well as other federal agencies with responsibilities for environmental review. MAP-21 also provides for financial penalties for agencies that do not complete other environmental reviews by certain deadlines.

In addition, the legislation allows for the expanded use of categorical exclusions (CEs), which are actions that do not involve significant environmental impacts and for which neither an environmental assessment nor an environmental impact statement (EIS) is required. The bill will allow CEs to be used for the following: projects within an existing right-of-way; repair and reconstruction of existing roads, highways, and bridges; certain components of multi-modal projects; projects damaged by natural disasters; and, projects receiving minimal federal funds.

### ***Metropolitan Planning Organizations***

With regard to transportation planning, the legislation would ensure that existing Metropolitan Planning Organizations (MPOs) retain their designation as an MPO. The bill also maintains the existing population threshold for the designation of new MPOs (urbanized areas with a

population of more than 50,000 individuals). Within two years of enactment, however, each MPO must include representation by providers of public transportation. It should also be noted that Caltrans will be required to reimburse MPOs for eligible expenditures within 15 days (current law is 30 days).

In addition, MAP-21 improves metropolitan and statewide planning processes to incorporate a more comprehensive performance-based approach. Pursuant to the legislation, MPOs will be required to establish targets to track their progress towards attainment of outcomes for the region. To ensure consistency, these targets will be established in coordination with Caltrans and providers of public transportation. Within five years, the Transportation Secretary will report to Congress on the effectiveness of performance-based planning for each MPO.

#### **TIFIA**

MAP-21 includes a title on “America Fast Forward Financing Innovation,” which would build upon the current Transportation Infrastructure Finance and Innovation (TIFIA) program. TIFIA, which provides direct loans, loan guarantees, and lines of credit to surface transportation projects at favorable terms to leverage private and other non-federal investment in transportation improvements, would be modified by, among other things, increasing the maximum share of project costs from 33 percent to 49 percent. The bill increases annual funding for TIFIA from \$122 million to \$750 million in fiscal year 2013 and \$1 billion in fiscal year 2014. Additionally, the legislation sets aside funding for projects in rural areas at more favorable terms.

#### **Transportation Alternatives**

The final transportation bill consolidates the Transportation Enhancements (TE), Safe Routes to School (SRTS), and Recreational Trails (RTP) programs into a new program called Transportation Alternatives. The legislation sets total funding for the program at two percent of total highway funding (not including the Mass Transit account). Of that funding, 50 percent will be directly allocated to local entities, and the rest will go to the state. States will have some flexibility in how to use the funding allotted to them.

#### **REAUTHORIZATION OF THE SECURE RURAL SCHOOLS ACT**

In a major victory for CSAC and California’s forest counties, MAP-21 includes a one-year continuation (through fiscal year 2012) of the *Secure Rural Schools and Community Self-Determination Act* (SRS). The measure also extends (through fiscal year 2013) funding for the Payments-in-Lieu-of-Taxes (PILT) program. Under the bill, SRS will be funded at 95 percent of fiscal year 2011 levels, and PILT will be fully funded.

In fiscal year 2011, California received a total of \$39.3 million in SRS funding, which was distributed to 32 counties. Accordingly, California counties can expect to receive approximately \$37.4 million in fiscal year 2012.

Although lawmakers in the House and the Senate have proposed legislation that would provide for a long-term reauthorization of the program, those bills have failed to gain traction.

In the Senate, Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) and Ranking Member Lisa Murkowski (R-AK) have sponsored the *County Payments Reauthorization Act* (S 1692), which would essentially continue the current program for an additional five years. The legislation has 32 bipartisan cosponsors, including Senators Feinstein and Boxer.

On the other side of the Capitol, House Republicans have taken a different approach. Natural Resources Committee Chairman Doc Hastings (R-WA) has sponsored the *Federal Forests County Revenue, Schools, and Jobs Act* (HR 4019), which would return the program to one based on active forest management. These reforms would be accomplished largely by rolling back environmental laws and other legal protections, which does not sit well with most Democrats.

#### STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

This past quarter, the Bureau of Justice Assistance (BJA) announced that it was discontinuing its practice of reimbursing state and local jurisdictions for the costs of detaining offenders of “unknown” immigration status. The change, announced as part of the fiscal year 2012 State Criminal Alien Assistance Program (SCAAP) application cycle, will have a significant, detrimental impact on California counties’ SCAAP awards.

Since 1996, BJA has provided variable SCAAP reimbursement amounts to jurisdictions for the costs of incarcerating inmates of both *known* and *unknown* immigration status. An “unknown” inmate is an individual who has had no prior contact with the federal immigration system and whose identity therefore cannot be confirmed by the Department of Homeland Security (DHS).

According to BJA, the practice of providing partial reimbursement credit for unknown inmates was a recognition that some of these individuals could have been undocumented if they had entered the United States illegally and never came into contact with federal immigration authorities. Because there would have been no contact with the federal government, DHS would not be able to confirm the inmate’s status as undocumented.

It should be noted that for the 2011 SCAAP payment cycle, BJA actually increased the SCAAP reimbursement percentage to counties for the cost of unknown inmate days. The decision to boost these payments was based on a DHS review of recent unknown inmate data which showed that of the records that were updated, reviewed, and came back with a known inmate status, 86 percent were attributable to inmates in county facilities. BJA’s 2011 decision was acknowledgement that an extremely high percentage of “unknown” inmates are, in fact, undocumented immigrants.

While BJA’s rationale for its new policy is to “make better use of limited SCAAP funding and to ensure jurisdictions are reimbursed only for known undocumented criminal aliens,” the effect of the policy is to shift dollars from counties to states since counties generally have a higher

percentage of unknown inmates in their correctional facilities. Accordingly, under the new policy, counties would see a dramatic drop in their SCAAP payments, while states would see large gains. By way of illustration, if BJA's new reimbursement policy had been in effect for the 2010 Solicitation Year, California counties' SCAAP allocations would have been cut by over \$18.8 million – from \$40.8 million to \$21.9 million, a decrease of over 46 percent.

There have been a number of efforts aimed at compelling the Department of Justice to reverse its decision. For starters, county government associations, sheriff's departments, and individual counties have written to DOJ and BJA to register their strong opposition to the policy change. CSAC has been and remains a leader in opposing this ill-advised change.

In Congress, a number of lawmakers have written to Attorney General Eric Holder to express their concern and opposition to the new policy. In the House, Congressman Mike Honda (D-CA) joined forces with Congressman John Carter (R-TX) to spearhead a Dear Colleague letter to the attorney general urging the Department of Justice to reconsider its decision. Senator Boxer also sent a letter to the attorney general to highlight the concerns raised by California's counties.

With regard to the fiscal year 2013 budget, the House approved this past quarter its fiscal year 2013 Commerce-Justice-Science (CJS) appropriations bill (HR 5326). The legislation, which would provide a total of \$51.1 billion in fiscal year 2013 spending, represents a \$1.6 reduction in spending. Among other things, the bill would provide \$165 million for the State Criminal Alien Assistance Program (SCAAP), or a proposed cut of \$75 million.

Across Capitol Hill, the Senate Appropriations Committee-approved CJS spending legislation includes \$255 million for SCAAP, or a \$15 million boost in funding. The difference between the two chambers spending bills will need to be reconciled in a House-Senate conference committee later this year.

#### **ARMY CORPS OF ENGINEERS LEVEE VEGETATION REMOVAL POLICY**

This past quarter, CSAC sent correspondence to the U.S. Army Corps of Engineers (Corps) in response to a recent *Federal Register* notice soliciting comments on the agency's updated levee vegetation variance process. The association's comments and recommendations, which were based on technical input provided by member counties, including local flood and stormwater management agencies, were shared with key members of Congress and the Obama administration.

The Corps' vegetation management standards generally require local flood control agencies to remove woody vegetation from levees in order to allow for easier inspections and to reduce any potential weakening of, or damage to, levees from root growth and overturned trees. Levees that the Corps deems to be out of compliance with its vegetation policy would no longer be eligible for federal disaster assistance. Incidentally, in advancing its policy, the Corps cites no documentation that links actual levee failures to the presence of woody vegetation.

Although the Corps does have a “variance” process that allows levee sponsors to request that vegetation remain on levees, California’s local flood agencies have determined that the procedure is unworkable and does not provide sufficient flexibility. Furthermore, according to recent estimates, the per-levee-mile cost to apply for a variance is a significant financial hurdle for local agencies.

Citing fundamental flaws of the Corps’ directives, CSAC is requesting that the agency delay implementation of its levee vegetation management policy. CSAC also is urging the Corps to seek modifications to the policy that: considers regional variations across the nation as directed by Congress in the 1996 Water Resources Development Act; includes variance and exemption provisions where appropriate; conforms to other federal and state laws and allows for risk-based and science-based management decisions; includes local government in a transparent and collaborative process; and, delegates limited authority to approve variances and exemptions to Corps Division commanders.

On a related matter, 35 members of the California congressional delegation sent a letter this past quarter to the assistant secretary of the Army for Civil Works urging the Corps to undertake a number of key revisions to its levee vegetation management standards. While the correspondence notes that the Corps has made constructive attempts to address public safety issues via its new System-wide Improvement Framework (SWIF), the lawmakers are requesting that the Agency revise its variance policy to establish a practical process that considers incremental risk posed by levee vegetation.

In other developments, Representative Doris Matsui (D-CA) introduced legislation (HR 5831) in May that would require the secretary of the Army to undertake a comprehensive review of the Corps’ policy guidelines on vegetation management for levees. The bipartisan bill, entitled the Levee Vegetation Review Act, is cosponsored by 30 members of the California congressional delegation.

Under HR 5831, the secretary would be required to take into account several key factors when undertaking the policy review process, including the varied interests and responsibilities in managing flood risks, such as the need to provide the greatest safety benefit with limited resources. The bill also would require the secretary to consider factors that promote and allow for variances from the national guidelines on a regional or watershed basis. Additionally, the legislation would require the secretary to solicit and consider the views of the National Academy of Engineering as part of the review process.

#### **CLEAN WATER ACT – SECTION 404 PERMITTING**

There was no action this past quarter on Representative Gary Miller’s (R-CA) bipartisan legislation that would streamline the Clean Water Act’s (CWA) Section 404 permitting process. The bill, entitled the *Flood Control Facility Maintenance Clarification Act* (HR 2427), would

provide a narrow permitting exemption for maintenance removal of sediment, debris, and vegetation from flood control channels and basins.

On a related matter, Representative John Mica (R-FL) introduced legislation (HR 4965) this past quarter that would block the Environmental Protection Agency (EPA) and the Corps from finalizing their joint “waters of the U.S.” guidance. The legislation was approved by the House Transportation and Infrastructure Committee on June 7<sup>th</sup> on a 33-18 vote. Mica’s bill is a companion measure to Senator John Barrasso’s (R-WY) legislation (S 2245), which was introduced earlier this year.

The proposed EPA-Corps guidance, which is under final review at the Office of Management and Budget (OMB), would expand the scope of the CWA to give the agencies regulatory authority over additional waters within the United States, including those waters now considered entirely under state jurisdiction.

The pending guidance is of concern to county governments for a variety reasons. For example, the guidance in its current form would likely result in the Corps asserting jurisdiction over county ditches via the Section 404 program. Such agency action would create additional regulatory burdens on counties and would impose additional costs.

#### **PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM**

This past quarter, the Federal Housing Finance Agency (FHFA) posted its Notice of Proposed Rulemaking (NPR) on Property Assessed Clean Energy (PACE) programs. FHFA was required to proceed through a formal rulemaking process after a U.S. District Court in California ruled that the agency had violated the Administrative Procedure Act in its decision to block Fannie Mae and Freddie Mac from purchasing residential mortgages with PACE assessments.

The court, however, did not rule that FHFA’s policy was illegal, only that the process was flawed. Despite having to proceed through a public comment process, the agency is not necessarily required to change its policy regarding PACE. It should also be noted that FHFA has appealed the decision, and if the appeal is successful, the agency would no longer be required to undertake a formal rulemaking process.

In response to an Advanced Notice of Proposed Rulemaking issued in January, FHFA received over 33,000 comments, including one submitted by CSAC. For the most part, FHFA acknowledges that the majority of these comments included support for PACE programs. It was not enough, however, for the agency to change its position. FHFA continues to maintain that PACE programs increase the financial risks to Fannie Mae and Freddie Mac. Accordingly, the NPR prevents federal lenders from purchasing loans that are subject to senior PACE liens.

Furthermore, the NPR criticizes PACE legislation – the PACE Assessment Protection Act of 2011 (HR 2599) – sponsored by Representatives Mike Thompson (D-CA), Dan Lungren (R-CA), and Nan Hayworth (R-NY). FHFA believes that the underwriting standards proposed in HR 2599 are

too complex, incomplete, and impractical to implement. The agency concludes that these standards would not adequately protect mortgage holders from financial risk.

FHFA is now seeking comments on the proposed rule, as well as on the potential alternatives. Written comments must be received on or before July 30, 2012.

#### **TEMPORARY ASSISTANCE FOR NEEDY FAMILIES REAUTHORIZATION**

This past quarter, the Senate Finance Committee held a hearing on the impact of poverty on American families. The hearing included an examination of programs that are designed to address poverty, such as the Temporary Assistance for Needy Families (TANF) program. One of the issues that the panel focused on was the fact that, in many states, TANF caseloads did not increase as much during the recession as would have been expected, and in some states, caseloads actually declined.

A concern expressed by some members of the Finance Committee was that a significant share of spending under the TANF program is not clearly identified by states. Incidentally, GAO has found that 71 percent of TANF funds are now spent on non-cash assistance services. For his part, the committee's ranking member, Senator Orin Hatch (R-UT), indicated that the spending and composition of the TANF caseload essentially shows that program has become a child welfare initiative.

Across Capitol Hill, the House Ways and Means Committee's Human Resources Subcommittee held a similar hearing on TANF, focusing on how much spending is directed to programs that fulfill TANF work requirements and how that spending is calculated. According to subcommittee Chairman Geoff Davis (R-KY), there is cause for concern that some States are no longer matching federal spending as reliably as they once did. In addition, Davis noted that States' ability to claim a broad range of items as TANF spending has eroded key features of the federal-state partnership. These issues may be addressed as either part of a long-term TANF reauthorization package or as part of another TANF extension bill.

At this point, no long-term reauthorization measure has been introduced in either the House or Senate. Accordingly, it is clear that there will not be a full TANF reauthorization bill considered this year. What is less clear, however, is whether another short-term bill will include additional policy changes, such as limiting the types of activities states may use to claim excess maintenance of effort credits.

We hope this information is useful to California county officials. If you have any questions or comments, please feel free to contact us.



CALIFORNIA STATE ASSOCIATION OF COUNTIES  
FINANCE CORPORATION

August 2, 2012

**To:** CSAC Executive Committee  
**From:** Nancy Parrish, Executive Director, CSAC Finance Corporation  
**RE:** CSAC Finance Corporation Update

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**New Program Development**

**Medicare Eligible Retiree Healthcare**

On July 20<sup>th</sup> the CSAC Finance Corporation issued a request for proposals for a program to offer more affordable healthcare options for Medicare eligible county retirees. Unlike virtually every other product or service in the marketplace, group Medicare plans are typically significantly more expensive than individual plans. By partnering with a provider who offers one or more individual plans, the CSAC Finance Corporation seeks to offer significant savings to employers and/or retirees on these costs. Employers who cover some or all of the cost of retiree healthcare would benefit from less costly plans and by shifting the cost of employees who are eligible for Medicare but have not utilized the program. Additionally, much of the administrative burden would be moved to the provider or exchange. In counties where retirees are responsible for some or all of the cost of benefits, those retirees will benefit from any savings generated and enjoy greater choice in selecting the benefits that best suit their needs.

**Onsite Employee Healthcare Facilities**

We have visited the Santa Barbara County facility and are working with their staff to begin producing a request for proposals for this program. We expect to issue the bid in late 2012.

**Trendline Health**

Trendline provides employee health care and workers' compensation prefunding utilizing a statistical and actuarial model to quantify costs over a three year period. Utilizing this information, a county can turn a previously unpredictable, growing expense into a predictable fixed liability that creates savings by funding the net present value. Give that this is primarily a public finance program; we have referred them to CSCDA.

**The following are highlights of existing CSAC Finance Corporation programs:**

**CalTRUST**

- CalTRUST currently has assets of approximately \$1.1 billion and 143 participant accounts.
- CalTRUST expects assets to reach \$1.2 billion and to increase the number of participants to 150 this year.
- The next meeting of the CalTRUST Board of Trustees will be held September 12, 2012.



**California Communities (CSCDA)**

- CSCDA is cooperating with the State Auditor's office to complete the audit requested by the State Treasurer and we expect to have a final report in late August.

**U.S. Communities**

- We are working with U.S. Communities staff to increase our collaborative marketing activities. Initially we are focused on the providers for the new temporary staffing and facilities solutions to actively market those contracts throughout the state. Both of these contracts have significant potential for our members.

**Coast2CoastRx**

- Coast2Coast is now offered in 21 counties and is saving participants in California over \$2.8 million each month.

**General Information**

- The next meeting of the CSAC Finance Corporation Board of Directors will be held September 13<sup>th</sup> & 14<sup>th</sup>, 2012.
- We continue to meet with individual counties and their department heads to present our programs and benefits. Please let us know if you would like a meeting set with your county's department heads.

**CSAC Board of Directors**

The CSAC Board of Directors has appointed Robert Bendorf, CAO of Yuba County, to its Board. Robert brings a wealth of experience and is extremely committed to supporting the Finance Corporation.

If you have any questions regarding any CSAC Finance Corporation programs please do not hesitate to contact us via phone, 916.650.8120, or via email, [nparrish@counties.org](mailto:nparrish@counties.org); Laura Labanieh Campbell at 916.650.8186 or [llabanieh@counties.org](mailto:llabanieh@counties.org).



**August 2, 2012**

**To:** CSAC Executive Committee  
**From:** John Samartzis, Director of Corporate Relations  
**RE:** **Corporate Membership & Sponsorship Update**

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The CSAC Corporate Membership and Sponsorship Program is growing steadily. For this fiscal year, we have invoiced and received nearly \$250,000 in membership and sponsorship. That figure is more than double what the program earned in the previous fiscal year.

We are developing a Technology Summit which we expect to hold in conjunction with the Annual Conference in November. We have invited the CIO's from Los Angeles and San Diego Counties and are seeking another one or two from some smaller rural counties. The Summit is designed to educate county supervisors and staff on innovative technologies that can help improve services and productivity and/or reduce costs. We are still developing the agenda, but likely topics include shared services, security and cloud-based services. We expect the Technology Summit to attract more IT companies as members and sponsors to and provide our members with critical information.



# County Counsels' Association of California

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## MEMORANDUM

### BOARD OF DIRECTORS

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### EXECUTIVE DIRECTOR

Jennifer B. Henning

**To: Supervisor Mike McGowan, President, and  
Members of the CSAC Executive Committee**

**From: Jennifer Henning, Litigation Coordinator**

**Date: August 2, 2012**

**Re: Litigation Coordination Program Update**

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This memorandum will provide you with information on the Litigation Coordination Program's activities since your last regular meeting in April.

### I. New Case Activity Since Last Executive Committee Meeting

#### ***Berkeley Hillside Preservation v. City of Berkeley***

Previously published at: 203 Cal.App.4th 656 (1st Dist. Feb. 15, 2012)(A131254),  
*petition for review granted* (May 23, 2012)(S201116)

The city approved a permit for a single-family home, concluding the project was exempt from CEQA under the in-fill and single-family residence exemptions. Plaintiffs challenged the city's action, arguing that the categorical exemptions should not apply to the project, and thus CEQA review was required. The First Appellate District agreed with plaintiffs, and held that "a categorical exemption does not apply where there is any reasonable possibility that the proposed activity may have a significant effect on the environment." The city sought Supreme Court review, which CSAC supported, and review has now been granted. CSAC will file a brief in support of the city in the California Supreme Court.

#### ***Building Industry of the Bay Area v. City of Santa Rosa***

Pending in the First Appellate District (filed Aug. 8, 2011)(A132839)

On behalf of its members, the BIA challenged an ordinance that required applicants for discretionary development approvals to annex to the City's Special Tax District. The trial court granted summary judgment in favor of the BIA. The BIA was then granted over \$240,000 in attorney fees under the private attorney general statute (Code of Civil Procedure section 1021.5). The city has appealed the attorney fee award, arguing that a trade association that is funded by members with a direct pecuniary interest in the outcome of the litigation is not entitled to fees under 1021.5. CSAC will file a brief in support of the city.

***City of Auburn v. Sierra Patient & Caregiver Exchange***

Pending in the Third Appellate District (filed Nov. 9, 2011)(C069622)

A medical marijuana dispensary secured a business license to operate in the City of Auburn as a florist, but undercover police efforts revealed it was a dispensary. The city sought an injunction to close the operation, claiming it was a public nuisance since the city's zoning code expressly bans medical marijuana dispensaries. The trial court granted the injunction. On appeal, defendant argues that the city's total ban on dispensaries is preempted by state law, and that the city's nuisance abatement action violated his procedural due process rights. CSAC will file a brief in support of the city.

***City of Livermore v. Baca***

205 Cal.App.4th 1460 (6th Dist. May 16, 2012)(H034835), *petition for review pending* (filed June 25, 2012)(S203534)

This eminent domain case involves establishing damages for taking four commercial properties. The trial court determined in pre-trial motions to exclude all of the land owner's proffered evidence supporting his claims of temporary and permanent severance damages. The appellate noted that it was "wary of the practice of disposing of a claim" through pre-trial motions in eminent domain actions. The court went on to review each evidentiary ruling and found that the trial court erred in excluding the evidence. CSAC is requesting depublication of this opinion.

***City of San Diego v. Bd. of Trustees of the Calif. State University***

Previously published at: 201 Cal.App.4th 1134 (4th Dist. Div. 1 Dec. 13, 2011)(D057446), *petition for review granted* (Apr. 18, 2012)(S199557)

The city brought this action against CSU's certification of an EIR and approval of a revised master campus plan for CSU San Diego, challenging the CSU's refusal to guarantee funding for off-campus environmental mitigation. During the CEQA process, the city identified approximately \$20 million in necessary traffic and infrastructure costs required for the total campus build-out. And while the CSU acknowledged at least \$6 million of these costs, it alleged it met its obligation to secure funding by making a budget request to the Legislature, even if the Legislature does not ultimately appropriate the funds. The trial court ruled in favor of CSU, finding it met its obligations by simply asking for an appropriation. The city appealed, and the Court of Appeal reversed, concluding that CSU's interpretation would leave local agencies with the entire burden of off-site impacts of CSU projects. The Supreme Court has granted review. CSAC will file a brief in support of the city in the California Supreme Court.

***County of Alameda v. Workers' Compensation Appeals Bd.***

Writ Petition Pending in the Third Appellate District (filed May 1, 2012)(C070960)

Labor Code §4656(c)(2) limits aggregate disability payments for a single injury occurring on or after January 1, 2008, to 104 compensable weeks within five years from the date of injury. A deputy sheriff employed by Alameda County injured his knee in September 2009. He was paid 52 weeks of indemnity payments at his full salary in accordance with Labor Code §4850, followed by 52 weeks of temporary disability benefits,

bringing the total disability payments to 104 weeks. The workers' compensation judge determined that Labor Code §4850 benefits were not included in the 104-week limitation, thus essentially qualifying the deputy sheriff for up to a third year of disability benefits. Alameda County has filed a writ petition in the Third Appellate District arguing that when Labor Code §4656(c)(2) was amended in 2008, there was a conscious decision by the Legislature to include Labor Code §4850 benefits within the 104-week disability payment limitation. CSAC filed a brief in support of Alameda County.

***Cole v. Town of Los Gatos***

205 Cal.App.4th 749 (6th Dist. Apr. 27, 2012)(H035444), *petition for review / depublication pending* (filed June 6, 2012)(S202785)

Plaintiff was hit by a drunk driver while trying to get into her car, which she parked near a city park on city property. She sued the driver and the city, alleging as to the city that the property was a dangerous condition since it was configured to induce people to park their cars right near a site where drivers were induced to drive off of the road to bypass stalled traffic. The trial court granted the city's summary judgment motion, but the Sixth District reversed. In concluding that there was evidence raising issues of fact concerning the existence of a dangerous condition and a causal relationship between the characteristics of the property and plaintiff's injuries, the court specifically rejected *City of San Diego v. Superior Court* (2006) 137 Cal.App.4th 21 because the opinion created an "extremely restrictive rule for determining when the conduct of a third party will operate as a superseding cause excusing a public entity from liability for a dangerous condition of its property." CSAC requested depublication and supported the city's petition for review, but both were denied.

***Griffith v. Pajaro Valley Water Management Agency***

Pending in the Sixth Appellate District (filed Mar. 26, 2012)(H038087)

CSAC previously supported an unsuccessful effort for Supreme Court review in an earlier stage of this case after the Court of Appeal concluded that the water agency's groundwater wells charge was a property-related fee subject to Prop. 218 (*Pajaro Valley Water Mgmt. Agency v. Amrhein*). In response to *Amrhein*, the water agency reenacted the charge in compliance with the voting requirements Proposition 218. Ballots in that election were weighted by the dollar amount to be paid by each pursuant to rules the agency adopted for the conduct of the election. The fee was approved, but the "no" votes would have defeated it if a one-vote-per-parcel rule had applied. The trial court upheld the fee against this Prop. 218 challenge, but plaintiff has appealed. CSAC will file a brief in support of the water agency in the Court of Appeal.

***McDonough v. Superior Court (City of San Jose)***

204 Cal.App.4th 1169 (6th Dist. Apr. 10, 2012)(H038126), *request for depublication pending* (filed June 1, 2012)(S202970)

The San Jose City Council adopted a ballot question and title for a measure that would modify retirement benefits for current employees and retirees and establish a more limited retirement plan for future employees. Four current and retired city employees

brought this challenge to the ballot question and title, which read: "PENSION REFORM: To protect essential services, including neighborhood police patrols, fire stations, libraries, community centers, streets and parks, shall the Charter be amended to reform retirement benefits of City employees and retirees by: increasing employees' contributions, establishing a voluntary reduced pension plan for current employees, establish pension cost and benefit limitations for new employees, modify disability retirement procedures, temporarily suspend retiree COLAs during emergencies, require voter approval for increases in future pension benefits?" The Sixth District agreed with petitioners that the ballot title and question was not impartial and therefore violated Elections Code sections 10403 and 9051. CSAC has requested that the opinion be depublished.

***McMillan v. County of Siskiyou***

Unpublished Opinion of the Third Appellate District, 2012 Cal.App.Unpub. LEXIS 3791 (3rd Dist. May 21, 2012)(C067581), *request for publication pending* (filed June 20, 2012)(S203447)

The vested rights doctrine generally provides that a landowner whose use becomes non-conforming as the result of a zoning change may continue that use as long as it is not substantially changed or intensified. In an unpublished opinion, the court in this case addresses the issue of when a successor in interest may obtain vested rights due to the acts of its predecessor in interest. Briefly, it holds that a successor landowner cannot establish vested rights unless its predecessor-in-interest actually asserted a claim for vested rights after the zoning change made its use non-conforming. CSAC has requested that the opinion be published.

***Mission Springs Water District v. Verjil***

Pending in the Fourth Appellate District, Division Two (filed Nov. 17, 2011)(E055176)

The Mission Springs Water District adopted a rate increase in compliance with Prop. 218. Rate payers filed an initiative petition to reduce the rates and impose a cap on future increases. The District sought declaratory relief, challenging the validity of the initiative. The initiative proponents filed a demurrer and a special motion to strike the district's complaint under the anti-SLAPP statute, both of which were denied. The initiative proponents have appealed the denial of the motion to strike. They claim the district had a mandatory duty to either adopt the initiative or call an election, and filing the declaratory relief action (rather than an expedited writ under the Elections Code) effectively withheld the initiative and constituted a SLAPP suite as arising from "protected activity" for purposes of the anti-SLAPP statute. CSAC will file a brief in support of the water agency.

***People v. Wildomar Patients Compassionate Group***

Unpublished Opinion of the Fourth Appellate District, 2012 Cal.App.Unpub. LEIXS 2212 (4th Dist. Div. 2 Mar. 22, 2012)(E052728), *request for publication denied* (filed June 20, 2012)(S201909)

The City of Wildomar's zoning code expressly prohibited the operation of a dispensary within the city. Wildomar Patients Compassionate Group (WPCG) sought a

writ of mandate challenging the ordinance. WPCG then opened its dispensary in violation of the city's code, which prompted the city to bring an enforcement action against WPCG. The trial court granted the city's motion for a preliminary injunction, finding the dispensary operation to be unlawful and a public nuisance. The court rejected WPCG's arguments that the city's express ban on dispensaries under the zoning code is preempted by federal and state law, and also violated equal protection rights under the California Constitution. WPCG appealed, but the Fourth District affirmed in an unpublished opinion, concluding that neither the CUA nor the MMP expressly or impliedly preempt local prohibitions on dispensaries. CSAC requested publication of the opinion, but the request was denied.

***Schmeer v. County of Los Angeles***

Pending in the Second Appellate District (filed Apr. 16, 2012)(B240592)

In 2010, Los Angeles County adopted an ordinance prohibiting affected stores from providing plastic bags to customers. The ordinance also required that a store charge 10 cents for each recyclable paper bag provided to a customer. The 10 cents is retained by the store to cover its compliance costs, including recovering its actual costs for providing the paper bags. The 10 cents is not remitted to the county and does not generate any revenue for the county. Plaintiffs, plastic bag manufacturers and taxpayers, filed this challenge the ordinance alleging that the 10 cent charge on paper bags is an invalid tax under Prop 26. The trial court upheld the ordinance, concluding that because the county does not collect or spend any of the 10 cent charge, it is not a special tax under Prop 26. Plaintiffs have appealed. CSAC will file a brief in support of Los Angeles County.

**II. Amicus Cases Decided Since Last Executive Committee Meeting**

In addition to the new amicus cases already decided, which are discussed above, the following amicus cases have been decided the Board's last meeting in April:

***Citizens for Open and Public Participation v City of Montebello***

Unpublished Opinion of the Second Appellate District, 2011 Cal.App.Unpub.LEXIS 9976 (2d Dist. Dec. 30, 2011)(B232700), *request for publication/petition for review denied* (Apr. 11, 2012)(S199867)

**Outcome: Negative**

The Second District issued an unpublished opinion involving the Brown Act's real property negotiations provision. In the decision, the court rejects the argument that the Brown Act's exemption for real property negotiations is strictly limited to price and terms of payment. Instead, the court concludes that a discussion of relocations costs, sales, and environmental issues can be construed as part of the price and terms of payment, such that discussion of those issues in closed session does not violate the Brown Act. CSAC requested publication, but the request was denied.

***Coito v. Superior Court (State of California)***

--- Cal.4th ---, 2012 Cal.LEXIS 5823 (June 25, 2012)(S181712)

**Outcome: Positive**

A mother of a minor who drowned in the Tuolumne River sued several state departments and the City of Modesto for wrongful death. After depositions had been noticed, counsel for the state provided an investigator with questions for witnesses. The investigator recorded the witnesses' statements and prepared a memo for the state's attorney. The recorded statements were later used to examine one of the witnesses in the deposition. Plaintiff subsequently made a demand for document production, including discovery of witness statements. The State objected based on attorney-client privilege. The trial court declined to order production of the witness statements, with the exception of the statement that was used in the deposition. Plaintiffs filed a writ to compel production, which a divided Fifth District granted. The Supreme Court reversed. The Court first concluded that "recorded witness statements are entitled as a matter of law to at least qualified work product protection. The witness statements may be entitled to absolute protection if defendant can show that disclosure would reveal its 'attorney's impressions, conclusions, opinions, or legal research or theories.'" The Court went on to find that a witness' identity is not automatically protected, but that the privilege could be invoked if "disclosure would reveal the attorney's tactics, impressions, or evaluation of the case (absolute privilege) or would result in opposing counsel taking undue advantage of the attorney's industry or efforts (qualified privilege)." CSAC filed an amicus brief in this case supporting the State.

***Filarsky v. Delia***

--- U.S. ---, 132 S.Ct. 1657 (Apr. 17, 2012)(10-1018)

**Outcome: Positive**

Plaintiff, a firefighter, was placed off-duty for 12 shifts after he became ill following response to a toxic spill. Given a history of disciplinary problems, his supervisors believed he may not have been truthful about the extent of his injuries/illness, so the city hired a private investigation firm to conduct surveillance. The surveillance found evidence that plaintiff was undertaking a construction project at his home. He was ordered to appear at an internal affairs interview conducted by a private attorney, Filarsky, hired by the city to conduct the internal affairs investigation. During the interview, he would not consent to a warrantless search of his home to prove he hadn't undertaken certain construction activities, and when he declined he was ordered to allow inspection of construction materials at his home to confirm they had not been installed. Plaintiff brought this action alleging Fourth Amendment violations. The Ninth Circuit concluded plaintiff's right under the Fourth Amendment to be protected from a warrantless, unreasonable, compelled search of his home was violated. The city and its employees were granted qualified immunity because the right was not clearly established at the time of the constitutional violation, but Filarsky's request for qualified immunity was denied. The United States Supreme Court reversed on issue of qualified immunity for the private attorney, and concluded that a private individual temporarily retained by the government is



entitled to seek qualified immunity from a § 1983 suit. CSAC filed a brief in support of the private attorney retained by the city in this matter.

***Florence v. Board of Chosen Freeholders of the County of Burlington***

--- U.S. ---, 132 S.Ct. 1510 (Apr. 2, 2012)(10-945)

Outcome: Positive

The Third Circuit Court of Appeals, in a 2-1 decision, upheld a policy of strip searching all detainees before they are transferred to the general population prison. The court noted there is a split in the circuits on the issue, but found that balancing the jail's security interests at the time of intake before arrestees enter the general population against the privacy interests of the inmates, the strip search procedures are reasonable. The United State Supreme Court granted certiorari and affirmed: "The question here is whether undoubted security imperatives involved in jail supervision override the assertion that some detainees must be exempt from the more invasive search procedures at issue absent reasonable suspicion of a concealed weapon or other contraband. The Court has held that deference must be given to the officials in charge of the jail unless there is 'substantial evidence' demonstrating their response to the situation is exaggerated. *Block*, 468 U. S., at 584-585 (internal quotation marks omitted). Petitioner has not met this standard, and the record provides full justifications for the procedures used." CSAC filed a brief in support of Burlington County.

***Neighbors for Smart Rail v. Exposition Metro Line Construction Authority***

204 Cal.App.4th 1480 (2d Dist. Apr. 17, 2012)(B232655)

Outcome: Positive

This case involves a planned expansion of high capacity transit service from West Los Angeles to Santa Monica. The EIR used a dynamic approach for its baseline, which considered the traffic and air quality changes that were likely to occur over time. This approach recognized that a "no project" analysis would not mean that conditions would stay the same, but that changes in traffic and air quality are expected without the project. Petitioner challenged the use of the dynamic baseline, arguing that under *Sunnyvale West Neighborhood Assoc. v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351, a baseline as it might exist in the future cannot substitute for a comparison with current existing conditions. The Second District affirmed. The court specifically rejected the *Sunnyvale* ruling and held instead that use of projected future conditions as a baseline for analyzing environmental impacts is proper under certain circumstances. CSAC filed a brief in support of the Authority.

***NetJets Large Aircraft v. Guillory***

--- Cal.App.4th ---, 2012 Cal.App.LEXIS 725 (4th Dist. Div. 3 June 21, 2012)(G044970),  
*petition for rehearing pending* (filed July 6, 2012)

Outcome: Positive

This case appeals a trial court ruling striking down legislation designed to capture escaped assessments on "fractionally owned aircraft." Under fractionally owned aircraft programs, plaintiffs sell fractional ownership in their aircraft fleets, which permits the

owners to use a certain number of hours of aircraft time, but does not guarantee use of a particular aircraft at a particular time. Before 2007, these fractionally owned aircraft escaped property tax assessment. In 2007, the Legislature passed SB 87 on a 2/3 vote (Rev. & Tax Code, §§ 1160-1162), which directed Assessors to: 1) identify the fractionally owned aircraft flying into and out of California airports; 2) require the fractionally owned aircraft managers to report the number of California takeoffs and landings for their aircraft; 3) assign a lead county assessor to each fractional aircraft manager to simplify the reporting process; 4) designate the fractional management companies in control of the fractional aircraft fleets as the appropriate assessee; and 5) issue escape assessments for all years in which the statute of limitations for issuing escape assessments on taxable property had not expired. The Fourth District reversed, holding that “the tax on the fractionally owned aircraft assessed by the Legislation is constitutional and lawful, as against the substantive challenges raised by respondents.” CSAC filed a brief in support of the Assessors.

***Neville v. County of Sonoma***

206 Cal.App.4th 61 (1st Dist. May 21, 2012)(A132673)

**Outcome: Positive**

Sonoma County terminated plaintiff, the county’s Agricultural Commissioner / Commissioner of Weights and Measures. She challenged her termination, arguing that that county lacked the authority to terminate her because under the Food and Agriculture Code, the Ag Commissioner is appointed to a four year term, and can only be removed pursuant to the terms of sections 2181 et seq., which require a determination of some level of wrongdoing by the Director of the Department of Pesticide Regulation and a hearing before a specified state trial board. She further argued that similar provisions in the Business and Professions Code prevented the county from terminating her from her position as Commissioner of Weights and Measures. (Bus. & Prof. Code, § 12214 et seq.) The trial court denied her petition for writ of mandate, and the First District affirmed. The court rejected plaintiff’s argument that the county’s home rule powers under article XI, section 1, subdivision (b) did not permit her termination because she was an officer, not an employee. “Our Supreme Court has indicated that section 1, subdivision (b) of article XI of the California Constitution applies to both employees and officers when they are performing local functions.” The court also took note of the legislative history of the relevant statutes and concluded there was no Legislative attempt to divest counties of their authority to remove their employees. In sum, the court concluded that “the state has sole jurisdiction over licensing and revoking a license of the commissioner and sealer but the county has authority to appoint and terminate the employment of commissioners and sealers when the county determines that the performance of local tasks is unsatisfactory.” CSAC filed a brief in support of the county.

***Salmon Protection and Watershed Network v. County of Marin***

205 Cal.App.4th 195 (1st Dist. Apr. 20, 2012)(A133109), *petition for review denied* (July 11, 2012)(S202887)

**Outcome: Positive**

The county adopted its General Plan in 2007. Plaintiff had concerns with the plan, and the county attempted to resolve those issues through negotiations. Part of the negotiations included tolling the statute of limitations period for challenging the General Plan under CEQA. After several tolling periods and attempts to reach agreement, plaintiffs nevertheless filed this CEQA action challenging the General Plan. Two landowners who obtained development rights under the adopted General Plan, intervened. They argued that the county did not have the authority to toll the statute of limitations period for challenging the General Plan, and that Plaintiff's action was therefore time-barred. Plaintiff and the county both filed demurrers to intervenors' argument, which were granted without leave to amend. Intervenors appealed, and the First District affirmed, holding that a public agency and a party disputing the adequacy of an EIR prepared in connection with the adoption of a general plan amendment can effectively agree to toll the limitations period for filing a petition challenging the adequacy of the EIR. CSAC filed a brief in support of Marin County.

***Tomlinson v. County of Alameda***

54 Cal.4th 281 (June 14, 2012)(S188161)

**Outcome: Positive**

Plaintiffs challenged the county's decision to approve a subdivision development, deeming it exempt from CEQA under the categorical exemption for in-fill development (Cal. Code Regs., tit. 14, § 15332). The First Appellate District first determined that the requirement to exhaust administrative remedies does not apply to an action challenging an exemption determination, rejecting even the plaintiffs' acknowledgment that the exhaustion requirement applied to their claim. The California Supreme Court granted review and reversed, concluding that the exhaustion-of-administrative-remedies provision applies to a public agency's decision that a project is categorically exempt from environmental law requirements. CSAC filed an amicus brief in support of Alameda County.