

CALIFORNIA STATE ASSOCIATION OF COUNTIES
BOARD OF DIRECTORS
Thursday, September 9, 2010
10:00am - 2:00pm
CSAC Conference Center, Sacramento, CA

A G E N D A

Presiding: Tony Oliveira, President

10:00am PROCEDURAL ITEMS

- | | | |
|----|---|--------|
| 1. | Roll Call | Page 1 |
| 2. | Approval of Minutes from June 3, 2010 Meeting | Page 3 |

10:10am ACTION ITEMS

- | | | |
|----|---|--------|
| 3. | Consideration of November 2010 Ballot Initiatives | Page 8 |
| | • Paul McIntosh, CSAC Executive Director | |
| | • Elizabeth Howard Espinosa, Karen Keene & Jean Hurst | |

Proposition 19: The Regulate, Control and Tax Cannabis Act of 2010.

Changes California law to legalize Marijuana and allow it to be regulated and taxed.

Page 12

Proposition 21: State Parks & Wildlife Conservation Trust Fund Act of 2010.

Establishes \$18 annual vehicle license surcharge to help fund State Parks and wildlife programs and grants free admission to all State Parks to surcharged vehicles.

Page 36

Proposition 23: Measure to Suspend Assembly Bill 32.

Suspends air pollution control laws requiring major polluters to report and reduce greenhouse gas emissions that cause global warming until unemployment drops below specified level for full year.

Page 40

Proposition 26: The Stop Hidden Taxes Measure.

Increases legislative vote requirement to two-thirds for State levies and charges. Imposes additional requirement for voters to approve local levies and charges with limited exceptions.

Page 43

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| 4. | Consideration of CSAC Realignment Working Group Principles | Page 61 |
| | • Jean Hurst & Elizabeth Howard Espinosa | |

12:00pm LUNCH

1:00pm

INFORMATION ITEMS

- 2:00pm

ADJOURN

CALIFORNIA STATE ASSOCIATION OF COUNTIES

Board of Directors

2010

<u>Section</u>	<u>County</u>	<u>Director</u>
U	Alameda County	Keith Carson
R	Alpine County	Terry Woodrow
R	Amador County	Louis Boitano
S	Butte County	Bill Connelly
R	Calaveras County	Merita Callaway
R	Colusa County	Mark Marshall
U	Contra Costa County	Federal Glover
R	Del Norte County	David Finigan
R	El Dorado County	Norma Santiago
S	Fresno County	Henry Perea
R	Glenn County	John Viegas
R	Humboldt County	Mark Lovelace
S	Imperial County	Gary Wyatt
R	Inyo County	Susan Cash
S	Kern County	Jon McQuiston
R	Kings County	Richard Valle
R	Lake County	Anthony Farrington
R	Lassen County	Lloyd Keefer
U	Los Angeles County	Don Knabe
R	Madera County	Ronn Dominici
S	Marin County	Susan Adams
R	Mariposa County	Lyle Turpin
R	Mendocino County	Carre Brown
S	Merced County	Hubert "Hub" Walsh
R	Modoc County	Jeff Bullock
R	Mono County	Duane "Hap" Hazard
S	Monterey County	Fernando Armenta
S	Napa County	Brad Wagenknecht
R	Nevada County	Ted Owens
U	Orange County	John Moorlach
S	Placer County	Jim Holmes
R	Plumas County	Sherrie Thrall
U	Riverside County	John Tavaglione

U	Sacramento County	Roger Dickinson
R	San Benito County	Reb Monaco
U	San Bernardino County	Paul Biane
U	San Diego County	Greg Cox
U	San Francisco City & County	Eric Mar
S	San Joaquin County	Larry Ruhstaller
S	San Luis Obispo County	Bruce Gibson
U	San Mateo County	Richard Gordon
S	Santa Barbara County	Joni Gray
U	Santa Clara County	Liz Kniss
S	Santa Cruz County	Tony Campos
S	Shasta County	Glenn Hawes
R	Sierra County	Lee Adams
R	Siskiyou County	Jim Cook
S	Solano County	Mike Reagan
S	Sonoma County	Valerie Brown
S	Stanislaus County	Vito Chiesa
R	Sutter County	Larry Munger
R	Tehama County	Robert Williams
R	Trinity County	Judy Pflueger
S	Tulare County	Steve Worthley
R	Tuolumne County	Richard Pland
U	Ventura County	Kathy Long
S	Yolo County	Matt Rexroad
R	Yuba County	Roger Abe

President: Tony Oliveira, Kings
 First Vice President: John Tavaglione, Riverside
 Second Vice President: Mike McGowan, Yolo
 Immed. Past President: Gary Wyatt, Imperial

SECTION: U=Urban S=Suburban R=Rural

CALIFORNIA STATE ASSOCIATION OF COUNTIES
BOARD OF DIRECTORS
Thursday, June 3, 2010
Hyatt Regency Hotel, Sacramento
M I N U T E S

Presiding: Tony Oliveira, President

1. ROLL CALL

Alameda	absent	Placer	Jim Holmes
Alpine	Terry Woodrow	Plumas	absent
Amador	Louis Boitano	Riverside	John Tavaglione
Butte	Bill Connelly	Sacramento	Roger Dickinson
Calaveras	Merita Callaway	San Benito	Reb Monaco
Colusa	absent	San Bernardino	absent
Contra Costa	absent	San Diego	Greg Cox
Del Norte	David Finigan	San Francisco	Eric Mar
El Dorado	Norma Santiago	San Joaquin	Larry Ruhstaller
Fresno	Henry Perea	San Luis Obispo	Bruce Gibson
Glenn	John Viegas	San Mateo	absent
Humboldt	Mark Lovelace	Santa Barbara	Joni Gray
Imperial	Gary Wyatt	Santa Clara	absent
Inyo	Susan Cash	Santa Cruz	Mark Stone
Kern	Jon McQuiston	Shasta	Leonard Moty
Kings	Oliveira/Valle	Sierra	Lee Adams
Lake	Anthony Farrington	Siskiyou	Jim Cook
Lassen	Lloyd Keefer	Solano	Mike Reagan
Los Angeles	absent	Sonoma	Brown/Zane
Madera	absent	Stanislaus	Vito Chiesa
Marin	Susan Adams	Sutter	absent
Mariposa	Lyle Turpin	Tehama	Robert Williams
Mendocino	Carre Brown	Trinity	Judy Pflueger
Merced	Hubert "Hub" Walsh	Tulare	Steve Worthley
Modoc	Jeff Bullock	Tuolumne	Richard Pland
Mono	Duane "Hap" Hazard	Ventura	Kathy Long
Monterey	Fernando Armenta	Yolo	McGowan/Rexroad
Napa	absent	Yuba	absent
Nevada	Ted Owens	Advisor:	Nancy Watt
Orange	John Moorlach		

The presence of a quorum was noted.

2. APPROVAL OF MINUTES

The minutes of March 25, 2010 were corrected to reflect that "Mark" should be capitalized on page 7.

Motion and second to approve minutes of March 25, 2010. Motion carried unanimously.

3. REMARKS BY CANDIDATES FOR NACo SECOND VICE PRESIDENT

The three candidates running for the position of 2nd Vice President of the National Association of Counties (NACo) addressed the Board regarding their backgrounds and qualifications for the position. The candidates were: Burrell Ellis, Chief Executive Officer from DeKalb County, Georgia; Joe Giles, Council Member from Erie County, Pennsylvania; and Chris Rodgers, Commissioner from Douglas County, Nebraska.

4. GOVERNOR'S MAY REVISION OF THE 2010-11 STATE BUDGET

Ana Mantosantos, Director of the Department of Finance, outlined the Governor's current budget proposal which includes significant program cuts and eliminations. Chris Woods, Budget Director for Assembly Speaker Perez, presented the Speaker's state budget proposal which includes a multi-step borrowing/securitization and tax initiative. Craig Cornett, Budget Director for Senate President pro Tem Steinberg, discussed the Senate Democrats' proposal which contains some program reductions and a realignment of programs and revenues to the local level. It would also extend some tax measures.

The Legislature's Budget Conference Committee is expected to convene this week to begin discussions on the various state budget proposals and solutions to addressing the state budget crisis. Staff will report back on any progress.

5. NACo 2ND VICE PRESIDENT ENDORSEMENT

The Board discussed the merits of each of the three candidates running for NACo 2nd Vice President and debated whether or not to endorse a candidate during the Board meeting or wait until the California Caucus at the NACo conference in July. They also discussed the pros and cons of voting by unit rule.

Motion and second to adopt unit rule voting for 2010 NACo 2nd Vice President candidate. Motion carried unanimously.

Motion and second to support Commissioner Chris Rodgers for 2010 NACo 2nd Vice President. Motion carried.

Supervisors Gibson and Walsh abstained and Supervisor Dickinson requested that his 'no' vote be recorded.

6. PROPOSED CSAC BUDGET FOR FY 2010-11

Paul McIntosh presented the proposed CSAC Budget for FY 2010-11 as contained in the briefing materials and noted that, for the second year in a row, the budget does not contain a dues increase. The financial contribution from the Finance Corporate dropped 17% this year primarily dues to reduced demand for housing bonds and a decrease in interest earnings on cash. In addition, tenant vacancies are anticipated in the Ransohoff building. Because of these reductions, the budget includes eliminating two CSAC staff positions and consolidating some

functions. Additionally, CSAC will no longer publish a bi-monthly magazine.

The CSAC Executive Committee approved the proposed budget at its April 22 meeting with the caveat that no funds appropriated would be used to provide any adjustments to the salary of CSAC staff until the Executive committee further discussed the issue at its October retreat.

CSAC Treasurer, Susan Cash, recommended that the caveat be removed.

Motion and second to adopt the proposed CSAC Budget for FY 2010-11 as submitted with the removal of the caveat. Motion carried unanimously.

7. PROPOSED LITIGATION COORDINATION PROGRAM BUDGET FOR FY 2010-11

Jennifer Henning, Executive Director of the County Counsels' Association, presented the proposed Litigation Coordination Program Budget for FY 2010-11, as contained in the briefing materials. The budget includes a modest 2% fee increase in order to cover the costs associated with operating the program such as employee benefits and rent.

This program is an important service offered to CSAC members which allows counties to save litigation costs by coordinating in multi-county cases, and by sharing information and resources.

The CSAC Executive Committee approved the proposed budget at its April 22 meeting and recommended adoption by the Board of Directors.

Motion and second to approve the Litigation Program Budget as submitted. Motion carried unanimously.

8. LOCAL TAXPAYERS, PUBLIC SAFETY & TRANSPORTATION PROTECTION ACT OF 2010

The League of California Cities is sponsoring an initiative that will appear on the November 2010 ballot titled *Local Taxpayers, Public Safety, and Transportation Protection Act of 2010*. The initiative would more thoroughly secure certain revenue streams that partly or completely flow to local agencies, mostly related to redevelopment, transportation, and transit.

Chris McKenzie, Executive Director and Robin Wood, President of the League of California Cities, spoke in favor of the initiative.

CSAC has concerns with the initiative because of potential impacts on a broad array of county services if the initiative is passed by the voters. The CSAC officers directed four policy committees to consider the initiative and make recommendations to the Board of Directors. The Health & Human Services and Administration of Justice policy committees both recommended an "Oppose" position. Government Finance & Operations and Housing, Land Use & Transportation recommended a "Neutral" position.

Motion and second to OPPOSE the Local Taxpayers, Public Safety, and Transportation Protection Act of 2010.

Substitute Motion to take a NEUTRAL position on the initiative. Motion failed (19 in favor).

Motion and second to OPPOSE the initiative. Motion failed (25 in favor).

Because 30 affirmative votes are required to take a position on a ballot initiative, as outlined in CSAC's Policies & Procedures, no position was taken.

9. CSAC POLICY COMMITTEE REPORTS

Administration of Justice. Supervisor Callaway, Vice-chair of the Administration of Justice policy committee provided a report on the June 2 committee meeting. The committee took an "oppose" position on the Local Taxpayer, Public Safety & Transportation Protection Act.

One item regarding jail standards was to the Board of Directors for action. Specifically, the recommendation was as follows: Reiterate the need for the jail standards development process to appropriately consider the economic impact of regulatory changes; recommend that the standards development process consider movement in correctional and rehabilitation practices toward reentry preparation and community reintegration; and encourage representation on the next CSA jail standards review process from counties that are conditionally approved for jail construction projects under the provisions of AB 900 (Solorio, 2007).

Motion and second to adopt policy committee recommendation regarding jail standards.
Motion carried unanimously.

Agriculture & Natural Resources. Staff reported on the Agriculture & Natural Resources policy committee meeting held June 2. The committee received an update on efforts regarding the Williamson Act funding advocacy campaign and also heard a panel discussion titled "Local Water Challenges – Perspectives from Around the State." No action items were considered.

Government Finance & Operations. Supervisor Gibson, Chair of the Government Finance & Operations policy committee, provided a report on the June 2 meeting. The committee received reports on the State budget deficit, economic outlook and the mandate process. The policy committee also took a "neutral" position on the Local Taxpayer, Public Safety & Transportation Act.

One item was brought forward to the Board of Directors for consideration regarding Pension Reform. Specifically, the recommendations was to reaffirm the CSAC Guiding Principles for Pension Reform without specific reform proposals and to direct staff to return to the committee's next meeting with modified reform proposals for review.

Motion and second to adopt policy committee recommendation regarding pension reform.
Motion carried unanimously.

Health & Human Services. Staff reported on the Health & Human Services policy committee meeting held on June 3. The primary topic was a panel discussion on California's next Section 1115 Medicaid Waiver. The committee took an "oppose" position on the Local Taxpayer, Public Safety & Transportation Protection Act and also heard reports on Health Information Technology, Impacts of the May Revision on Health & Human Services, and Federal Health Reform.

Housing, Land Use & Transportation. Supervisor Carrillo, Vice-chair of the Housing, Land Use & Transportation policy committee, provided a report on the June 2 meeting. The committee received reports on Permanent Source for Affordable Housing legislative proposal, Indian Gaming, SB 375 & regional targets and various legislative bills currently in the Legislature. The committee took a "neutral" position on the Local Taxpayer, Public Safety &

Transportation Protection Act.

Supervisor McGowan outlined a memo that was distributed to the Board of Directors regarding Federal Indian Fee-to-Trust Reform. The acquisition of land in trust on behalf of tribes has substantially expanded and become increasingly controversial in recent years. From the perspective of state and local governments, the process now takes land out of local, county and state jurisdiction and deprives them of a tax base, while maintaining responsibility for increased service demands and costs associated with the developed land. The lack of opportunity for reform changed in early 2009, when the U.S. Supreme Court (*Carcieri v. Salazar*) cast significant doubt on the authority to acquire land in trust for tribes that were not recognized as of 1934, when the Indian Reorganization Act (IRA) was passed. Tribes have been attempting to push legislation to "fix" the statutory language in the IRA to expand the scope. CSAC has led the effort to organize a coalition of states to develop a legislative proposal and to educate Congressional supporters about this issue through a contract with the firm of Perkins Coie in Washington, D.C. Details of the legislative proposal were contained in the Board memo.

10. REGULATE, CONTROL AND TAX CANNABIS ACT OF 2010

The Regulate, Control and Tax Cannabis Act of 2010, which would amend the California Constitution and state statute to legalize marijuana, will go before the voters on the November 2010 ballot. At the request of the CSAC Medical Marijuana Working Group, staff prepared an analysis of the initiative, as contained in the briefing materials. Supervisor Lovelace, Co-chair of the CSAC Medical Marijuana Working Group, presented the analysis to the Board of Directors. It was noted that model ordinances and other useful information regarding this issue is available on the CSAC website.

11. STATE BUDGET/LEGISLATIVE REPORT

CSAC has established a Realignment Working Group which will be co-chaired by Supervisors Greg Cox and Helen Thomson. The working group will assist in identifying programs potentially appropriate for realignment as well as what, from the county perspective, would be acceptable revenue sources to support programmatic restructuring.

Details on potential impacts to counties of the Governor's May Revise were contained in the briefing materials. CSAC staff has been meeting with legislative staff members regarding the three state budget proposals.

12. INFORMATION ITEMS

Reports on the CSAC Institute for Excellence in County Government, Institute for Local Government (ILG), CSAC Finance Corporation, CSAC Corporate Associates and CSAC Litigation Coordination Program were contained in the briefing materials.

President Oliveira introduced Anne Stausboll, Chief Executive Officer of CalPERS.

Meeting adjourned.



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August 24, 2010

To: CSAC Board of Directors

From: Paul McIntosh, Executive Director
Jim Wiltshire, CSAC staff

Re: **Recommended Positions for November Ballot Measures**

Staff Recommendation: Staff recommends the CSAC Board of Directors adopt the Executive Committee or policy committee recommendations, as appropriate, as follows:

- Proposition 19 – Oppose
- Proposition 21 – Neutral
- Proposition 23 – Oppose
- Proposition 26 – Oppose

Background: In July, the Association's officers referred five ballot measures to three policy committees. In addition to the four listed above, they also referred Proposition 18, the water bond; however, that measure has since been moved to a future ballot. They referred the other four measures as follows:

<u>Measure</u>	<u>Summary</u>	<u>Referral</u>
Proposition 19	Legalizes possessing and privately consuming <1 ounce of marijuana, and growing on <25 ft ² of residence; also authorizes counties, cities, and state to tax it and to allow its sale.	Administration of Justice; Government Finance & Operations
Proposition 21	Establishes \$18 annual vehicle surcharge to support state parks and allows those vehicles free day-use of state parks.	Agriculture & Natural Resources
Proposition 23	Suspends implementation of AB 32 until unemployment in California is below 5.5% for four consecutive quarters.	Agriculture & Natural Resources
Proposition 26	Redefines regulatory fees as taxes for state and local purposes, thereby increasing vote requirements; also increases vote requirement for state tax changes that result in higher tax payments for any taxpayer, instead of taxpayers generally.	Government Finance & Operations

I. Executive Committee Process and Recommendations

There have been some questions expressed about the votes taken at the Executive Committee meeting regarding the EC's recommendations to the Board of Directors on measures scheduled for the November 2010 ballot. Staff compared notes regarding the Executive Committee's actions and concluded as follows:

Each proposition was taken in order as it would appear on the ballot, with Proposition 19 being the first under discussion.

Proposition 19. After some discussion, the vote was 8-7 to OPPOSE Proposition 19. Rich Gordon (due to the events explained below) subsequently removed his vote against the motion, so the final vote stands at 8-6 to **OPPOSE Proposition 19.**

Proposition 21. The vote on a position regarding Proposition 21 was tied at 8-8. The Executive Committee was unable to determine a position so the recommendation of the policy committee, which was to remain **NEUTRAL on Proposition 21**, will be presented to the Board of Directors.

Proposition 23. During discussion and debate on Proposition 23, it was determined that each appointed member representing the urban, suburban, and rural caucuses was in attendance and, therefore, that alternates attending the meeting were not eligible to vote. At this stage, previous votes and motions on this proposition were discarded and a motion to **OPPOSE Proposition 23** passed 8-6. There were only a total of 14 votes because President Tony Oliveira was not present. It was determined by reading the Policies and Procedures that alternates only replace the members of their own caucus, not an absent officer.

Proposition 26. With the voting guidelines clear, the vote was 9-5 to **OPPOSE Proposition 26.**

At the conclusion of the agenda item, CSAC First Vice President John Tavaglione, presiding officer of the meeting, determined the votes on Proposition 19 and 21 would not be revisited due to the following reasons: 1) certain members participating in the "earlier" vote via teleconference were no longer participating in the meeting and 2) that due to the time of day and remainder of the agenda to be considered, it would be most appropriate to forward the final decision on to the full Board of Directors at their September 9 meeting.

II. Proposition 19 Recommendations

A. Government Finance & Operations

The Government Finance & Operations Policy Committee met on August 5. After substantive discussion and presentations from both proponents and opponents, the committee voted unanimously to recommend a position of "oppose" to the CSAC Executive Committee. Though many committee members believed there would be clear benefits to legalizing marijuana, they believed it would be more appropriate under the following conditions:

- Appropriate state taxes and uses of those revenues.
- More enforceable limits than the 25 ft² allowed for growing in Proposition 19.
- Less difficult tax administration than contained in Proposition 19.
- More consistent county-by-county regulation.
- With the ultimate goal of legalizing marijuana at the state and federal level with consistent regulation.

- With a more rational approach to health and public safety concerns.
- With better criteria for testing whether people are under the influence at work.
- With a statewide framework to address transportation across jurisdictions.

B. Administration of Justice

The Administration of Justice Policy Committee met August 12 and, after hearing proponent and opponent perspectives and engaging in a thoughtful discussion, voted 7-2 to recommend a position of "oppose" on Proposition 19 to the Executive Committee. Given that the burden of regulation and implementation of the initiative would fall to local governments, the committee was concerned about the extensive difficulties law enforcement would face owing to likely disparate regulations among cities and counties. Additionally, the committee was concerned about the implications of legalizing marijuana in California in the face of contravening federal law. Given the challenging regulatory and enforcement aspects of Proposition 19, as well as a number of legal questions for counties as employers, the committee recommended an "oppose" position on Proposition 19.

III. Proposition 21 Recommendation

The Agriculture & Natural Resources Policy Committee met the morning of August 12. The Committee voted to take a "neutral" position on the initiative. While there was general support for the state parks system and acknowledgement by several committee members that state parks act as economic drivers in certain counties, there was concern that an \$18 surcharge on the VLF was too high a price for the average citizen.

IV. Proposition 23 Recommendation

The Agriculture & Natural Resources Policy Committee also considered Proposition 23 at that same meeting on August 12. The Committee voted to take "neutral" position on the initiative. Concerns were raised by several committee members that the Proposition seeks to put the price of energy and the interests of large corporations above the greater public health benefits of curbing pollution and reducing greenhouse gas emissions. Other committee members raised concerns about the costs of regulations on small business owners in California.

V. Proposition 26 Recommendation

At their meeting on August 5, the Government Finance & Operations Policy Committee also discussed Proposition 26, and voted to recommend a position of "oppose" to the CSAC Executive Committee. During the discussion, Supervisors expressed concerns about how the measure would handcuff counties further than Proposition 218 already has, and how voters would have to vote on many new items that they see as the job of their elected officials. One Supervisor made the point that, in light of the tea party movement, this measure would likely pass, and suggested that perhaps the committee recommend a position of "neutral." But other Supervisors found the retroactive nature of the measure worrisome, as well as the aspect of the measure dealing with the burden of proof. Lastly, Supervisors were concerned with the effect Proposition 26 would have on the state budget, since it would undo the recent gas tax swap and therefore create an extra \$1 billion of pressure on the General Fund.

Action Requested: Staff requests the Board of Directors adopt the positions recommended by the Executive Committee or, in the case of Proposition 21 where the Executive Committee could not agree on a recommendation, to adopt the position recommended by the policy committee.

Note that adoption of a position on a ballot proposition (support or oppose), requires at least fifty percent plus one of the member counties. There is only one vote per county on ballot propositions. Members may participate and vote by phone.

Staff Contact: Please contact the following staff for any additional information (all extensions refer to CSAC's main phone number: (916) 327-7500):

Administration of Justice:	Elizabeth Howard Espinosa – ehoward@counties.org / x537 Rosemary Lamb – rlamb@counties.org / x503
Agriculture & Natural Resources:	Karen Keene – kkeene@counties.org / x511 Cara Martinson – cmartinson@counties.org / x504
Government Finance & Operations:	Jean Kinney Hurst – jhurst@counties.org / x515 Geoffrey Neill – gneill@counties.org / x567



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August 2, 2010

To: CSAC Administration of Justice Policy Committee

From: Elizabeth Howard Espinosa and Rosemary Lamb
CSAC Administration of Justice Staff

Re: **Proposition 19: The Regulate, Control and Tax Cannabis Act of 2010 – ACTION ITEM**

Recommendation: Staff recommends the Administration of Justice Policy Committee advance an "oppose" position on Proposition 19 to the CSAC Executive Committee.

Background: The Regulate, Control and Tax Cannabis Act of 2010, which would amend the California Constitution and state statute to legalize marijuana, will go before the voters on the November 2010 ballot as Proposition 19.

The purpose of this memo is to provide a detailed description of the initiative, existing law, and possible effects on counties to facilitate discussion at the August 12, 2010, CSAC Administration of Justice (AOJ) Policy Committee meeting. The AOJ committee analysis and discussion will focus primarily on the public safety aspects of the initiative; CSAC's Government Finance and Operations Committee will examine the revenue, taxation, and administrative aspects at a meeting on August 5. The recommendation of both committees will go to the CSAC Executive Committee on August 19, which in turn will forward its recommendation to the CSAC Board of Directors. The Board will determine CSAC's formal position at its September 9 meeting. Members should recall that an informational presentation outlining the general provisions of Proposition 19 was made to the Board at its June meeting.

On August 12, the AOJ committee will hear presentations from both the proponents and opponents of this initiative. At the time of this writing, the initiative's proponents have yet to identify a speaker. The "no" campaign will be represented by Sacramento County District Attorney Jan Scully and Chief Deputy District Attorney Cindy Besemer. Further details on known supporters and opponents of Proposition 19 are provided later in this memo.

I. THE REGULATE, CONTROL AND TAX CANNABIS ACT OF 2010

The Regulate, Control and Tax Cannabis Act of 2010 (Act), Proposition 19, would legalize the personal consumption, cultivation, and sale of cannabis (marijuana) in California, and allow adults 21 and older to possess up to one ounce. The Act would authorize local governments — cities and counties — to adopt ordinances to regulate the possession, transportation, cultivation, processing, and sale of marijuana, and to impose fees and taxes on it.

Specifically, the Regulate, Control and Tax Cannabis Act of 2010 would do the following:

A. Legalization of Marijuana Activities

- The Act would allow persons 21 years of age and older to personally possess, process, share, and transport — but not sell — up to one ounce of marijuana,

solely for personal consumption. It would permit personal consumption in “non-public” places, defined as including a residence or a public establishment licensed for on-site marijuana consumption.

- The Act would allow marijuana cultivation on up to 25 square feet of a person's residence, and would permit the possession of harvested and living marijuana plants cultivated in such an area as well as equipment and other paraphernalia associated with cultivation and consumption.
- The Act specifies that smoking marijuana in the presence of minors or the consumption of marijuana by the operator of a motor vehicle would be prohibited. In addition, the Act states that it would not amend various existing statutes related to marijuana, such as laws that prohibit driving under the influence of drugs or that prohibit possessing marijuana on the grounds of elementary, middle, and high schools.

B. *Commercial Regulations and Controls*

- The Act would only authorize the sale of marijuana by a person who is licensed or permitted to do so.
- Under the Act, a local government could adopt ordinances or regulations regarding the cultivation, processing, distribution, transportation, sale, and possession of marijuana.
 - The Act would permit local authorities to authorize the possession and cultivation — including commercial production — of larger amounts of marijuana. However, retail sales would be limited to one ounce per transaction in licensed premises.
 - The Act would allow local governments to control the licensing of establishments for the sale of marijuana, including limits on zoning and land use, locations, size, hours of operation, occupancy, advertising, and signs and displays.
 - The Act would allow local governments to ban the sale of marijuana within their respective jurisdictions. However, the possession and consumption of up to one ounce would be permitted regardless.
- The Act would authorize the Legislature to amend the Act's provisions as long as they further the purposes of the Act. The Act lists examples, including: creating a statewide system of regulation for the commercial cultivation of marijuana, authorizing the production of hemp, and increasing quantitative limits.

C. *Taxes and Fees*

- The Act would allow local governments to impose general, special, excise, transfer, and transaction taxes, benefit assessments, and fees. The taxes and fees on marijuana-related activities may raise revenue or recoup direct or indirect costs associated with authorized activities, including permitting, licensing, and enforcement.
- The Act requires licensed marijuana establishments to pay all applicable federal, state, and local taxes, fees, fines, penalties, and other financial responsibilities imposed on similar businesses.
- The Act does not specifically permit the state to impose marijuana-specific taxes or fees, but the Legislature generally has the power to tax unless the Constitution specifies otherwise.

D. Criminal and Civil Penalties

- Under the Act, any licensed marijuana distributor that sells or gives marijuana to a person under the age of 21 could not own, operate, be employed by, or enter a licensed marijuana establishment for one year.
- Under the measure, persons age 21 or older who knowingly give marijuana to a person age 18-20 could be sent to county jail for up to six months and fined up to \$1000.
- The Act does not change existing criminal statute related to penalties for furnishing marijuana to persons under the age of 18.
- The Act authorizes local governments to impose additional penalties or civil fines on marijuana activities not in conflict with the goals of the Act.
- The Act states that no individual could be punished, fined, or discriminated against for engaging in any conduct permitted by the measure. The Act does specify that employers retain their existing rights to address consumption of marijuana by employees when it impairs performance.
- The Act states that no state or local law enforcement agency or official shall attempt or threaten to seize or destroy any marijuana that is lawfully cultivated, processed, or sold.

EXISTING STATE LAW

Existing law decriminalizes the use of marijuana for certain medical purposes. The following is a description of existing statute relating to the use of medical marijuana.

A. Proposition 215: The Compassionate Use Act of 1996

Proposition 215, the Compassionate Use Act of 1996, amended state law to allow persons to grow or possess marijuana for medical use upon the recommendation of a physician. Proposition 215 also allows caregivers to grow and possess marijuana for a person for whom the marijuana is recommended. It states that no physician shall be punished for having recommended marijuana for medical purposes. Additionally, Proposition 215 specifies that it is not intended to overrule any law that prohibits marijuana use for nonmedical purposes.

B. Senate Bill 420: The Medical Marijuana Program Act

Senate Bill 420 (Chapter 875, Statutes of 2003), established the Medical Marijuana Program Act (MMPA). The MMPA, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system.

According to the Office of the Attorney General, medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. SB 420 requires that all counties participate in the identification card program by:

- Providing applications upon request to individuals seeking to join the identification card program;
- Processing completed applications;
- Maintaining certain records;
- Following state implementation protocols; and

- Issuing DPH identification cards to approved applicants and designated primary caregivers.

Participation by patients and primary caregivers in the identification card program is voluntary. In addition to establishing the identification card program, the MMPA also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana.

Specifically, SB 420 states that qualified patients and primary caregivers who possess a state-issued identification card may possess eight ounces of dried marijuana and may maintain no more than six mature or 12 immature plants per qualified patient. In addition, the law allows counties and cities to adopt regulations that allow qualified patients or primary caregivers to possess medical marijuana in amounts that exceed the MMPA's possession guidelines.

III. EXISTING FEDERAL LAW

Federal law continues to treat marijuana as an illegal substance and considers the manufacture, distribution, and possession of marijuana as federal criminal offenses. The Controlled Substances Act of 1970 (CSA) established a federal regulatory system designed to combat drug abuse by making it unlawful to manufacture, distribute, dispense, and possess any controlled substance, including marijuana. The CSA reflects the federal government's view that marijuana is a controlled substance with no medical use.

In March 2009, the federal government announced that it would no longer prosecute medical marijuana patients and providers whose actions were consistent with state law, but would continue to enforce its prohibition on non-medical activities. It is unclear how the federal government will react if voters approve Proposition 19.

IV. EFFECTS

The Regulate, Control and Tax Cannabis Act is loosely drafted and in places not specific, leaving a great deal open for interpretation and legal review. The main questions surrounding the Act's implementation include:

- The Act seems to be in direct violation of federal law. To what extent would the federal government impede the Act's implementation?
- Would local governments be able to collect adequate fees and taxes to cover the costs associated with the Act's implementation?
- Would local governments be able to control personal marijuana cultivation in sensitive-use areas with land use and zoning authority?
- How would the creation of a statewide regulatory framework for a commercial marijuana industry affect any local regulations that had already taken effect?
- How would the legalization of marijuana impact public safety?

A. Regulation

The Act does not include a specific framework for implementation and regulation. Rather, it would place the regulatory authority on counties and cities. The Act authorizes the Legislature to amend the Act to further its purposes, including creating a statewide regulatory system for a commercial marijuana industry. However, in absence of statewide regulation, the Act delegates commercial regulatory authority to local governments along

with the ability to impose fees and taxes. It is unclear whether the state would assume the burden of regulation, or how their authority would interact with a local government's ability to regulate local commercial activity. This specific clause differs from the rest of the Act, which focuses on local regulation.

The Act authorizes counties and cities to adopt ordinances to control, license, and permit the sale of marijuana within their respective boundaries. The initiative also allows a local government to prohibit the sale of marijuana within its jurisdiction. However, personal consumption and cultivation would still be permissible.

This seems certain to result in differing local regulations across different jurisdictions. For example, some local agencies could authorize an increase in the possession limit to an amount greater than one ounce, or choose not to permit the sale of marijuana at all. Possession, sales, and distribution limits would almost certainly differ throughout the state, as would the fees and taxes on marijuana and its related activities. This has the potential to create an uneven system of regulation, but it does allow for local control and flexibility and would allow local governments to have greater control over the sale and distribution of marijuana within their respective jurisdictions.

B. Taxation and Costs

The preamble of the Act states that taxing marijuana will generate billions of dollars for the state and local governments. However, the amount of revenue that the Act would generate is difficult to predict. Most notably, it is unclear how the federal government would react if this initiative passes. For instance, would they challenge the ability of local agencies to collect taxes on activities that remain illegal under federal law? Due to these questions, any revenue directly associated with the legalization of marijuana would be uncertain.

The initiative would authorize local governments to impose a wide variety of fees and taxes on marijuana-related activities, including general, special, excise, transfer, and transaction taxes, benefit assessments, and fees. These charges would be subject to all laws currently in effect, including the voter requirements of Proposition 218. The Act specifies that the purpose of these fees and taxes would be to allow local governments to raise revenue or to offset any costs directly or indirectly associated with its regulation, including licensing and enforcement against unauthorized activities. This could create a new source of revenue for local governments that might realize additional revenues from both sales and property taxes generated by the commercial cultivation and sale of marijuana. It seems safe to assume that some portion of the increased sales tax revenue would not be redirected from other taxed spending, but rather from what is currently illegal activity. The loss of the county portion of revenues collected from fines established in current law for criminal offenders could marginally reduce the amount of revenue the taxes and fees generate.

The Act does not expressly authorize the state to impose taxes or fees specific to marijuana. However, longstanding case law indicates that the Legislature, unlike a county, has authority to impose taxes and regulate the collection thereof unless they have been expressly eliminated by the Constitution. The Legislative Analyst's Office analysis of the measure clearly assumes the state could, saying "the state could impose similar charges" to those authorized to local agencies.

C. Public Safety

The purpose of the AOJ policy committee discussion is to consider primarily the effects of the measure on public safety. There are two schools of thought about the measure's public safety impacts, both largely based on diverging philosophical views. One school holds that the legalization of marijuana, especially as contemplated by Proposition 19, will result in an increase in crime, an increase in addiction and its related malaises, and an all-around more difficult job for law enforcement officers. The other side believes that this measure will have effects similar to the end of the federal prohibition on alcohol last century, resulting in the decriminalizing of average citizens and a blow to organized crime. Members of both schools maintain that their strongly held beliefs are self-evident.

Numerous public safety affiliate groups have already come out in opposition to the measure including California District Attorneys' Association, the California State Sheriffs Association, the California Narcotic Officers Association and the California Police Chiefs' Association. Those registering support of the measure range from the California Public Defenders' Association, American Civil Liberties Union, and the Drug Policy Alliance to the California Tax Reform Association and Interfaith Drug Policy Initiative.

From the county public safety perspective, there are several issues that are in need of exploration. First, marijuana consumption is difficult to regulate in the same way as alcohol. While the author of the initiative states that the purpose of Proposition 19 is to regulate marijuana in a similar manner to alcohol, there is no mention of a legal limit for consumption for purposes of legally operating a vehicle without impairment. Currently, alcohol is regulated by blood alcohol levels, with a standard "legal limit" statewide (0.08 percent blood alcohol concentration). The lack of a legal standard of impairment for marijuana will create many legal and operational challenges for law enforcement when questioning drivers believed to be under the influence. Additionally, while the initiative does not allow for a driver to consume marijuana while driving, the initiative is silent on whether passengers in a vehicle may use marijuana; as a result, passengers may be permitted to consume marijuana while riding in a car with other adults. These discrepancies will ultimately find themselves being worked out in the court system, at the expense of the state and county.

While the initiative does stand to decrease illegal drug activity, those consumers under the age of 21 will continue to have no legal right to purchase or use marijuana, meaning the black market will not be completely eliminated. While a person is limited under the initiative to purchasing up to one ounce of marijuana in one transaction, the initiative does not prohibit sequential transactions, meaning a person could make multiple – even unlimited – consecutive purchases.

Further, the initiative states that cultivation on leased or rented property may be subject to approval from the owner of the property. By not making approval a requirement on rented land, it places undue burden on law enforcement to determine if cultivation is being undertaken legitimately and with the knowledge of the owner. Moreover, the initiative may make it a right for a renter to cultivate marijuana despite what a landlord wishes, because it is legal within the parameters of the initiative.

The initiative also authorizes local jurisdictions to pass ordinances regarding the transportation, retail sale, and controls on cultivation and consumption. The absence of a statewide regulatory framework will create a patchwork of regulation across the state, making enforcement more difficult, especially in areas where services are contracted out or where the state provides enforcement. Officers in these jurisdictions may be faced with having to keep track of numerous ordinances and laws rather than one that the entire

state is subject to. Further, because some counties may choose a strict approach to the licensing of establishments, those counties that are more lenient with their licensing requirements may have more law enforcement burdens because individuals from neighboring counties may enter their county to engage in activities relating to marijuana. Lastly, there may be uncompensated local law enforcement training requirements associated with this initiative.

It is unknown at this time whether the initiative will jeopardize any federal funds local law enforcement may receive to enforce laws. Given that federal law currently states that marijuana is an illegal substance, it is unclear if a potential outcome could be that the federal government will withhold federal funds to jurisdictions countering federal law or if it will seek to take a more active role in enforcing federal law in California, which could create a situation that will pit the initiative against the federal government and two sets of laws within the state.

The initiative may result in positive effects on some aspects of the local corrections system. For instance, since possession of a small amount of marijuana will no longer be a crime, it may reduce probation caseload numbers. The initiative may not have a significant positive effect on jail population levels even though it is decriminalizing marijuana use. Most offenders who are currently arrested and convicted on charges relating to marijuana consumption typically are not detained in the jail system because consumption of small amounts of marijuana is currently only misdemeanor. And, due to fairly widespread jail overcrowding in the state, these types of offenders frequently are not jailed. Therefore, counties will most likely not see a decrease in the type of offenders detained locally nor benefit from any material reduction in jail population. Those currently arrested and detained for intent to sell (meaning they have had larger amounts of marijuana on their person when arrested) would still be arrested for illegal activity if they possessed more than one ounce.

However, the initiative may reduce the extent of illegal cultivation by legitimizing operations and allowing law enforcement to monitor who is growing marijuana, as well as how much and where the operators are located. This aspect will allow for closer supervision of activities and brings these activities into the light of day.

D. Medical Marijuana and Cultivation

With respect to medical marijuana, the Act would not change current law. Legalization of marijuana has the potential to reduce the number of patients participating in the MMPA program and its associated costs. The Act would clarify some issues facing local governments related to regulating medical marijuana, and would also resolve the legal ambiguity surrounding Proposition 215.

For example, because Prop. 215 allowed the use of marijuana for some purposes but did not make it a legal substance, county officials are unable to perform simple regulatory tasks such as checking for the accuracy of the scales dispensaries use or certifying food preparation conditions. And the status of dispensaries and collectives is currently at issue in numerous lawsuits around the state, but could be simplified if marijuana was legalized. However, for other issues, such as the appropriate use of pesticides, the legal uncertainty would simply shift from the state to the federal level.

If legalized, the state and local governments would also have the ability to regulate the quality of marijuana consumed. Currently, authorities are not able to regulate the quality of

medical marijuana in the state because the law only decriminalized its use for certain medical purposes. Current statute does not treat marijuana as a legal substance and therefore the state and local governments do not have the ability to regulate the pesticides used in its cultivation or any additives used in its production.

The Act would also create a personal right to cultivate marijuana on private property in an area up to 25 square feet. It is unclear if local governments would be able to regulate this activity under its existing zoning and land use authority. This could result in marijuana cultivation next to sensitive-use areas, such as schools and playgrounds.

E. Proponents and Opponents

The Act's main proponent is Richard Lee, an Oakland- based medical marijuana dispensary owner. Other known proponents include the Drug Policy Alliance and the Marijuana Policy Project. The proponents' arguments focus on the Act's ability to regulate and control marijuana cultivation and use similar to alcohol. They also state that taxes and fees imposed on marijuana have the potential to generate billions in revenue for the state and local governments.

As identified above, the Act's known opponents include the California District Attorneys' Association, the California State Sheriffs Association, the California Narcotic Officers Association, the California Police Chiefs' Association, and numerous individual elected public safety officials. The League of California Cities has also taken a position of "oppose."

V. CONCLUSION

There are many factors to consider when analyzing this initiative and its effects on public safety. The measure will create many challenges for law enforcement because enforcement language is so vague. Given that the initiative leaves much to the discretion of individual localities, it is difficult to ascertain specific impacts to counties and results in an analysis that is largely speculative. While the initiative does allow for the state to create statutes and establish regulatory framework for the commercial aspects of marijuana, until the state chooses to undertake this activity, the burden will fall to local jurisdictions to create and enforce the provisions of the initiative. How any newly created local ordinances passed as a result of this initiative will interact with any future state regulation remains to be seen. Further, litigation is likely to ensue regarding ordinances passed by local jurisdictions as counties and cities seek to implement the initiative.

In sum, the potential benefits of the initiative — reduced probation caseloads and clarification in certain areas of the law intersecting with Proposition 215, among others — are far outweighed by an extraordinary challenging and confusing regulatory scheme that will present far too many uncertainties and challenges for local law enforcement.

Action Requested: The CSAC Administration of Justice committee staff recommend that the committee oppose Proposition 19 for all the reasons outlined above.

Staff Contact: Please contact Elizabeth Howard Espinosa (ehoward@counties.org or 916/650-8131) or Rosemary Lamb (rlamb@counties.org or 916/650-8116) for additional information.



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August 2, 2010

To: CSAC Government Finance & Operations Policy Committee

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

Re: **Proposition 19: The Regulate, Control and Tax Cannabis Act of 2010**

Staff Recommendation: Staff recommends the Government Finance and Operations Policy Committee recommend to the CSAC Executive Committee a position of "neutral" on Proposition 19.

Background: The Regulate, Control and Tax Cannabis Act of 2010, which would amend the California Constitution and state statute to legalize marijuana, will go before the voters on the November 2010 ballot.

Many individuals will already have strong opinions one way or the other about the idea of legalizing marijuana on its face. However, the purpose of this memo is to provide a detailed description of the initiative, existing law, and possible effects on counties to facilitate discussion at the August 5, 2010, CSAC Government Finance and Operations Policy Committee meeting. The recommendation of this Committee will then go to the Executive Committee, which in turn will forward its recommendation to the CSAC Board of Directors.

I. THE REGULATE, CONTROL AND TAX CANNABIS ACT OF 2010

The Regulate, Control and Tax Cannabis Act of 2010 (Act) would legalize the personal consumption, cultivation, and sale of cannabis (marijuana) in California, and allow adults 21 and older to possess up to one ounce. The Act would authorize local governments — cities and counties — to adopt ordinances to regulate the possession, transportation, cultivation, processing, and sale of marijuana, and to impose fees and taxes on it.

Specifically, the Regulate, Control and Tax Cannabis Act of 2010 would do the following:

A. Legalization of Marijuana Activities

- The Act would allow persons 21 years of age and older to personally possess, process, share, and transport — but not sell — up to one ounce of marijuana, solely for personal consumption. It would permit personal consumption in "non-public" places, defined as including a residence or a public establishment licensed for on-site marijuana consumption.
- The Act would allow marijuana cultivation on up to 25 square feet of a person's residence, and would permit the possession of harvested and living marijuana plants cultivated in such an area as well as equipment and other paraphernalia associated with cultivation and consumption.
- The Act specifies that smoking marijuana in the presence of minors or the consumption of marijuana by the operator of a motor vehicle would be prohibited. In addition, the Act states that it would not amend various existing statutes related to marijuana, such as laws that prohibit driving under the influence of drugs or that prohibit possessing marijuana on the grounds of elementary, middle, and high schools.

B. Commercial Regulations and Controls

- The Act would only authorize the sale of marijuana by a person who is licensed or permitted to do so.
- Under the Act, a local government could adopt ordinances or regulations regarding the cultivation, processing, distribution, transportation, sale, and possession of marijuana.
 - The Act would permit local authorities to authorize the possession and cultivation — including commercial production — of larger amounts of marijuana. However, retail sales would be limited to one ounce per transaction in licensed premises.
 - The Act would allow local governments to control the licensing of establishments for the sale of marijuana, including limits on zoning and land use, locations, size, hours of operation, occupancy, advertising, and signs and displays.
 - The Act would allow local governments to ban the sale of marijuana within their respective jurisdictions. However, the possession and consumption of up to one ounce would be permitted regardless.
- The Act would authorize the Legislature to amend the Act's provisions as long as they further the purposes of the Act. The Act lists examples, including: creating a statewide system of regulation for the commercial cultivation of marijuana, authorizing the production of hemp, and increasing quantitative limits.

C. Taxes and Fees

- The Act would allow local governments to impose general, special, excise, transfer, and transaction taxes, benefit assessments, and fees.. The taxes and fees on marijuana-related activities may raise revenue or recoup direct or indirect costs associated with authorized activities, including permitting, licensing, and enforcement.
- The Act requires licensed marijuana establishments to pay all applicable federal, state, and local taxes, fees, fines, penalties, and other financial responsibilities imposed on similar businesses.
- The Act does not specifically permit the state to impose marijuana-specific taxes or fees, but the Legislature generally has the power to tax unless the Constitution specifies otherwise.

D. Criminal and Civil Penalties

- Under the Act, any licensed marijuana distributor that sells or gives marijuana to a person under the age of 21 could not own, operate, be employed by, or enter a licensed marijuana establishment for one year.
- Under the measure, persons age 21 or older who knowingly give marijuana to a person age 18-20 could be sent to county jail for up to six months and fined up to \$1000.
- The Act does not change existing criminal statute related to penalties for furnishing marijuana to persons under the age of 18.
- The Act authorizes local governments to impose additional penalties or civil fines on marijuana activities not in conflict with the goals of the Act.
- The Act states that no individual could be punished, fined, or discriminated against for engaging in any conduct permitted by the measure. The Act does specify that employers retain their existing rights to address consumption of marijuana by employees when it impairs performance.
- The Act states that no state or local law enforcement agency or official shall attempt or threaten to seize or destroy any marijuana that is lawfully cultivated, processed, or sold.

II. EXISTING STATE LAW

Existing law decriminalizes the use of marijuana for certain medical purposes. The following is a description of existing statute relating to the use of medical marijuana.

A. *Proposition 215: The Compassionate Use Act of 1996*

Proposition 215, the Compassionate Use Act of 1996, amended state law to allow persons to grow or possess marijuana for medical use when recommended by a physician. Proposition 215 also allows caregivers to grow and possess marijuana for a person for whom the marijuana is recommended. It states that no physician shall be punished for having recommended marijuana for medical purposes. Additionally, Proposition 215 specifies that it is not intended to overrule any law that prohibits marijuana use for nonmedical purposes.

B. *Senate Bill 420: The Medical Marijuana Program Act*

Senate Bill 420 (Chapter 875 of 2003), established the Medical Marijuana Program Act (MMPA). The MMPA, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system.

According to the Office of the Attorney General, medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. SB 420 requires that all counties participate in the identification card program by:

- Providing applications upon request to individuals seeking to join the identification card program;
- Processing completed applications;
- Maintaining certain records;
- Following state implementation protocols; and
- Issuing DPH identification cards to approved applicants and designated primary caregivers.

Participation by patients and primary caregivers in the identification card program is voluntary. In addition to establishing the identification card program, the MMPA also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana.

Specifically, SB 420 states that qualified patients and primary caregivers who possess a state issued identification card may possess 8 ounces of dried marijuana and may maintain no more than six mature or twelve immature plants per qualified patient. In addition, the law allows counties and cities to adopt regulations that allow qualified patients or primary caregivers to possess medical marijuana in amounts that exceed the MMPA's possession guidelines.

III. EXISTING FEDERAL LAW

Federal law continues to treat marijuana as an illegal substance and considers the manufacture, distribution, and possession of marijuana as federal criminal offenses. The Controlled Substances Act of 1970 (CSA) established a federal regulatory system designed to combat drug abuse by making it unlawful to manufacture, distribute, dispense, and possess any controlled substance, including marijuana. The CSA reflects the federal government's view that marijuana is a controlled substance with no medical use.

In March 2009, the federal government announced that it would no longer prosecute medical marijuana patients and providers whose actions were consistent with state law, but would continue to enforce its prohibition on non-medical activities. It is unclear how the federal government will react if voters approve Proposition 19.

IV. EFFECTS

The Regulate, Control and Tax Cannabis Act is loosely drafted and in places not specific, leaving a great deal open for interpretation and legal review. The main questions surrounding the Act's implementation include:

- The Act seems to be in direct violation of federal law. To what extent would the federal government impede the Act's implementation?
- Would local governments be able to collect adequate fees and taxes to cover the costs associated with the Act's implementation?
- Would local governments be able to control personal marijuana cultivation in sensitive-use areas with land use and zoning authority?
- How would the creation of a statewide regulatory framework for a commercial marijuana industry affect any local regulations that had already taken effect?
- How would the legalization of marijuana impact public safety?

A. Regulation

The Act does not include a specific framework for implementation and regulation; rather, it would place the regulatory authority on counties and cities. The Act authorizes the Legislature to amend the Act to further its purposes, including creating a statewide regulatory system for a commercial marijuana industry. However, in absence of statewide regulation, the Act delegates commercial regulatory authority to local governments along with the ability to impose fees and taxes. It is unclear whether the state would assume the burden of regulation, or how their authority would interact with a local government's ability to regulate local commercial activity. This specific clause differs from the rest of the Act, which focuses on local regulation.

The Act authorizes counties and cities to adopt ordinances to control, license, and permit the sale of marijuana within their respective boundaries. The initiative also allows a local government to prohibit the sale of marijuana within its jurisdiction. However, personal consumption and cultivation would still be permissible.

This seems certain to result in differing local regulations across different jurisdictions. For example, some local agencies could authorize an increase in the possession limit to an amount greater than one ounce, or choose not to permit the sale of marijuana at all. Possession, sales, and distribution limits would almost certainly differ throughout the state, as would the fees and taxes on marijuana and its related activities. This has the potential to create an uneven system of regulation, but it does allow for local control and flexibility and would allow local governments to have greater control over the sale and distribution of marijuana within their respective jurisdictions.

B. Taxation and Costs

The preamble of the Act states that taxing marijuana will generate billions of dollars for the state and local governments. However, the amount of revenue that the Act would generate is difficult to predict. Most notably, it is unclear how the federal government would react if this initiative passes. For instance, would they challenge the ability of local agencies to collect taxes on activities that remain illegal under federal law? Due to these questions, any revenue directly associated with the legalization of marijuana would be uncertain.

The initiative would authorize local governments to impose a wide variety of fees and taxes on marijuana-related activities, including general, special, excise, transfer, and transaction taxes, benefit assessments, and fees. These charges would be subject to all laws currently in effect, including the voter requirements of Proposition 218. The Act specifies that the purpose of these fees and taxes would be to allow local governments to raise revenue or to offset any costs directly or indirectly associated with its regulation, including licensing and enforcement against unauthorized activities. This could create a new source of revenue for local governments that might realize additional revenues from both sales and property taxes generated by the commercial cultivation and sale of marijuana. It seems safe to assume that some portion of the increased sales tax revenue would not be redirected from other taxed spending, but rather from what is currently illegal activity. The loss of the county portion of revenues collected from fines established in current law for criminal offenders could marginally reduce the amount of revenue the taxes and fees generate.

The Act does not expressly authorize the State to impose taxes or fees specific to marijuana. However, longstanding case law indicates that the Legislature, unlike a county, has authority to impose taxes and regulate the collection thereof unless they have been expressly eliminated by the Constitution. The Legislative Analyst's Office analysis of the measure clearly assumes the state could impose taxes, saying "the state could impose similar charges" to those authorized to local agencies.

With respect to costs, the Act has the potential to decrease costs associated with marijuana offenders incarcerated in local jails and state prisons, as well as a potentially decrease court costs. The Legislative Analyst's Office points out that any county jail savings might be reduced by filling newly available beds with other criminals who are currently being released early due to lack of space; of course, this also suggests that counties would potentially be able to hold more criminals for their full sentences. Similarly, any cost savings from reductions in marijuana-related law enforcement activities — including prosecution — would likely be directed to other law enforcement and court activities. Alternatively, the Act presents potential cost increases associated with an increase in participation in publicly funded substance abuse treatment services.

The Legislative Analyst, after admitting the difficulty of making such an estimate for many the reasons above, estimates that "the state and local governments could eventually collect hundreds of millions of dollars annually in additional revenues." A different government analysis estimated \$1.4 billion were the state to impose a \$50 per ounce excise tax. The main revenue finding of a recent RAND analysis is that it is nearly impossible to estimate government revenues resulting from this type of legalization; their estimate, after making a series of assumptions, admits a probable range from \$0.65 billion to \$1.49 billion depending on which assumptions turn out to be true (the "improbable" range stretches from under \$0.5 billion to nearly \$2.25 billion). The RAND paper (titled "Altered State?") also analyzes other aspects of this type of legalization, and is available from their website, www.rand.org.

C. *Public Safety*

The purpose of this policy committee is to consider primarily the affects of the measure on county finances and operations, but any analysis that ignored the question of public safety would be notably incomplete. The CSAC Administration of Justice Policy Committee will consider Proposition 19 from the public safety perspective on Thursday, August 12.

There are two schools of thought about the measure's effects on public safety, both largely predictable. One school holds that the legalization of marijuana, especially as contemplated by Proposition 19, will result in an increase in crime, an increase in addiction and its related malaises, and an all-around more difficult job for law enforcement officers. The other believes that this measure will have effects similar to the end of the federal prohibition on alcohol last century, resulting in the decriminalizing average citizens and a blow to organized crime. Members of both schools maintain that their strongly held beliefs are self-evident.

D. *Medical Marijuana and Cultivation*

With respect to medical marijuana, the Act would not change current law. Legalization of marijuana has the potential to reduce the number patients participating in the MMPA program and its associated costs. The Act would clarify some issues facing local governments related to regulating medical marijuana, and would also resolve the legal ambiguity surrounding Proposition 215.

For example, because Prop. 215 allowed the use of marijuana for some purposes but did not make it a legal substance, county officials are unable to perform simple regulatory tasks such as checking for the accuracy of the scales dispensaries use or certifying food preparation conditions. And the status of dispensaries and collectives is currently at issue in numerous lawsuits around the state, but could be simplified if marijuana was legalized. However, for other issues, such as the appropriate use of pesticides, the legal uncertainty would simply shift from the state to the federal level.

If legalized, the state and local governments would also have the ability to regulate the quality of marijuana consumed. Currently, authorities are not able to regulate the quality of medical marijuana in the state because the law only decriminalized its use for certain medical purposes. Current statute does not treat marijuana as a legal substance and therefore the state and local governments do not have the ability to regulate the pesticides used in its cultivation or any additives used in its production.

The Act would also create a personal right to cultivate marijuana on private property in an area up to 25 square feet. It is unclear if local governments would be able to regulate this activity under its existing zoning and land use authority. This could result in marijuana cultivation next to sensitive-use areas, such as schools and playgrounds.

E. *Proponents and Opponents*

The Act's main proponent is Richard Lee, an Oakland-based medical marijuana dispensary owner. Other known proponents include the Drug Policy Alliance and the Marijuana Policy Project. The proponents' arguments focus on the Act's ability to regulate and control marijuana cultivation and use similar to alcohol. They also state that taxes and fees imposed on marijuana have the potential to generate billions in revenue for the state and local governments.

The Act's known opponents include the California Police Chiefs Association, California Narcotics Officers Association, and Mothers Against Drunk Driving. The arguments on the opponents' side focus on the potential for increased crime and substance abuse and the difficulty of enforcing "regulated" use and cultivation. The League of California Cities has also taken a position of "oppose."

The Committee will hear from proponents and opponents of Proposition 19 during the call on August 5.

V. *CONCLUSION*

Developing a regulatory framework to control the legal use and production of marijuana has the potential to consume a significant amount of time and resources. However, local agencies might potentially benefit from significant new tax revenues. The Act also presents several questions with respect to actual implementation. Many provisions in the Act would likely be challenged in court, adding to the costs of implementing it and the uncertainty of the outcome.

Needless to say, there would also be social costs and benefits associated with the legalization of marijuana, though what they would be can and will be the subject of considerable debate, though they go beyond the scope of this analysis.

Action Requested: Due to the possibility but uncertainty of significant new local revenue, and due to the possibility of local control over what is now an unregulated black market, but also the likelihood of that local control being limited by state regulation, staff requests the committee recommend a position of "neutral" to the CSAC Executive Committee.

Staff Contact: Please contact Jean Kinney Hurst (jhurst@counties.org or (916) 327-7500 x515) or Geoffrey Neill (gneill@counties.org or (916) 327-7500 x567) for additional information.

Proposition 19
Changes California Law to Legalize Marijuana and Allow It to Be
Regulated and Taxed. Initiative Statute.

BACKGROUND

Federal Law. Federal laws classify marijuana as an illegal substance and provide criminal penalties for various activities relating to its use. These laws are enforced by federal agencies that may act independently or in cooperation with state and local law enforcement agencies.

State Law and Proposition 215. Under current state law, the possession, cultivation, or distribution of marijuana generally is illegal in California. Penalties for marijuana-related activities vary depending on the offense. For example, possession of less than one ounce of marijuana is a misdemeanor punishable by a fine, while selling marijuana is a felony and may result in a prison sentence.

In November 1996, voters approved Proposition 215, which legalized the cultivation and possession of marijuana in California for medical purposes. The U.S. Supreme Court ruled in 2005, however, that federal authorities could continue to prosecute California patients and providers engaged in the cultivation and use of marijuana for medical purposes. Despite having this authority, the U.S. Department of Justice announced in March 2009 that the current administration would not prosecute marijuana patients and providers whose actions are consistent with state medical marijuana laws.

PROPOSAL

This measure changes state law to (1) legalize the possession and cultivation of limited amounts of marijuana for personal use by individuals age 21 or older, and (2) authorize various commercial marijuana-related activities under certain conditions. Despite these changes to state law, these marijuana-related activities would continue to be prohibited under federal law. These federal prohibitions could still be enforced by federal agencies. It is not known to what extent the federal government would continue to enforce them. Currently, no other state permits commercial marijuana-related activities for non-medical purposes.

State Legalization of Marijuana Possession and Cultivation for Personal Use

Under the measure, persons age 21 or older generally may (1) possess, process, share or transport up to one ounce of marijuana; (2) cultivate marijuana on private property in an area up to 25 square feet per private residence or parcel; (3) possess harvested and living marijuana plants cultivated in such an area; and (4) possess any items or equipment associated with the above activities. The possession and cultivation of marijuana must be solely for an individual's personal consumption and not for sale to others, and consumption of marijuana would only be permitted in a residence or other "non-public place." (One exception is that marijuana could be sold and consumed in licensed establishments, as discussed below.) The state and local governments could also authorize the possession and cultivation of larger amounts of marijuana.

State and local law enforcement agencies could not seize or destroy marijuana from persons in compliance with the measure. In addition, the measure states that no

individual could be punished, fined, or discriminated against for engaging in any conduct permitted by the measure. However, it does specify that employers would retain existing rights to address consumption of marijuana that impairs an employee's job performance.

This measure sets forth some limits on marijuana possession and cultivation for personal use. For example, the smoking of marijuana in the presence of minors is not permitted. In addition, the measure would not change existing laws that prohibit driving under the influence of drugs or that prohibit possessing marijuana on the grounds of elementary, middle, and high schools. Moreover, a person age 21 or older who knowingly gave marijuana to a person age 18 through 20 could be sent to county jail for up to six months and fined up to \$1,000 per offense. (The measure does not change existing criminal laws which impose penalties for adults who furnish marijuana to minors under the age of 18.)

Authorization of Commercial Marijuana Activities

The measure allows local governments to authorize, regulate, and tax various commercial marijuana-related activities. As discussed below, the state also could authorize, regulate, and tax such activities.

Regulation. The measure allows local governments to adopt ordinances and regulations regarding commercial marijuana-related activities—including marijuana cultivation, processing, distribution, transportation, and retail sales. For example, local governments could license establishments that could sell marijuana to persons 21 and

older. Local governments could regulate the location, size, hours of operation, and signs and displays of such establishments. Individuals could transport marijuana from a licensed marijuana establishment in one locality to a licensed establishment in another locality, regardless of whether any localities in between permitted the commercial production and sale of marijuana. However, the measure does not permit the transportation of marijuana between California and another state or country. An individual who was licensed to sell marijuana to others in a commercial establishment and who negligently provided marijuana to a person under 21 would be banned from owning, operating, being employed by, assisting, or entering a licensed marijuana establishment for one year. Local governments could also impose additional penalties or civil fines on certain marijuana-related activities, such as for violation of a local ordinance limiting the hours of operation of a licensed marijuana establishment.

Whether or not local governments engaged in this regulation, the state could, on a statewide basis, regulate the commercial production of marijuana. The state could also authorize the production of hemp, a type of marijuana plant that can be used to make products such as fabric and paper.

Taxation. The measure requires that licensed marijuana establishments pay all applicable federal, state, and local taxes and fees currently imposed on other similar businesses. In addition, the measure permits local governments to impose new general, excise, or transfer taxes, as well as benefit assessments and fees, on authorized marijuana-related activities. The purpose of such charges would be to raise revenue for

local governments and/or to offset any costs associated with marijuana regulation. In addition, the state could impose similar charges.

FISCAL EFFECTS

Many of the provisions in this measure permit, but do not require, the state and local governments to take certain actions related to the regulation and taxation of marijuana. Thus, it is uncertain to what extent the state and local governments would in fact undertake such actions. For example, it is unknown how many local governments would choose to license establishments that would grow or sell marijuana or impose an excise tax on such sales.

In addition, although the federal government announced in March 2009 that it would no longer prosecute medical marijuana patients and providers whose actions are consistent with Proposition 215, it has continued to enforce its prohibitions on non-medical marijuana-related activities. This means that the federal government could prosecute individuals for activities that would be permitted under this measure. To the extent that the federal government continued to enforce its prohibitions on marijuana, it would have the effect of impeding the activities permitted by this measure under state law.

Thus, the revenue and expenditure impacts of this measure are subject to significant uncertainty.

Impacts on State and Local Expenditures

Reduction in State and Local Correctional Costs. The measure could result in savings to the state and local governments by reducing the number of marijuana offenders incarcerated in state prisons and county jails, as well as the number placed under county probation or state parole supervision. These savings could reach several tens of millions of dollars annually. The county jail savings would be offset to the extent that jail beds no longer needed for marijuana offenders were used for other criminals who are now being released early because of a lack of jail space.

Reduction in Court and Law Enforcement Costs. The measure would result in a reduction in state and local costs for enforcement of marijuana-related offenses and the handling of related criminal cases in the court system. However, it is likely that the state and local governments would redirect their resources to other law enforcement and court activities.

Other Fiscal Effects on State and Local Programs. The measure could also have fiscal effects on various other state and local programs. For example, the measure could result in an increase in the consumption of marijuana, potentially resulting in an unknown increase in the number of individuals seeking publicly funded substance abuse treatment and other medical services. This measure could also have fiscal effects on state- and locally funded drug treatment programs for criminal offenders, such as drug courts. Moreover, the measure could potentially reduce both the costs and offsetting revenues of the state's Medical Marijuana Program, a patient registry that

identifies those individuals eligible under state law to legally purchase and consume marijuana for medical purposes.

Impacts on State and Local Revenues

The state and local governments could receive additional revenues from taxes, assessments, and fees from marijuana-related activities allowed under this measure. If the commercial production and sale of marijuana occurred in California, the state and local governments could receive revenues from a variety of sources in the ways described below.

- *Existing Taxes.* Businesses producing and selling marijuana would be subject to the same taxes as other businesses. For instance, the state and local governments would receive sales tax revenues from the sale of marijuana. Similarly, marijuana-related businesses with net income would pay income taxes to the state. To the extent that this business activity pulled in spending from persons in other states, the measure would result in a net increase in taxable economic activity in the state.
- *New Taxes and Fees on Marijuana.* As described above, local governments are allowed to impose taxes, fees, and assessments on marijuana-related activities. Similarly, the state could impose taxes and fees on these types of activities. (A portion of any new revenues from these sources would be offset by increased regulatory and enforcement costs related to the licensing and taxation of marijuana-related activities.)

As described earlier, both the enforcement decisions of the federal government and whether the state and local governments choose to regulate and tax marijuana would affect the impact of this measure. It is also unclear how the legalization of some marijuana-related activities would affect its overall level of usage and price, which in turn could affect the level of state or local revenues from these activities. Consequently, the magnitude of additional revenues is difficult to estimate. To the extent that a commercial marijuana industry developed in the state, however, we estimate that the state and local governments could eventually collect hundreds of millions of dollars annually in additional revenues.

Proposition 19
**Changes California Law to Legalize Marijuana and Allow It to Be
Regulated and Taxed. Initiative Statute.**

Yes/No Statement

A **YES** vote on this measure means: Individuals age 21 or older could, under state law, possess and cultivate limited amounts of marijuana for personal use. In addition, the state and local governments could authorize, regulate, and tax commercial marijuana-related activities under certain conditions. These activities would remain illegal under federal law.

A **NO** vote on this measure means: The possession and cultivation of marijuana for personal use and commercial marijuana-related activities would remain illegal under state law, unless allowed under the state's existing medical marijuana law.



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August 3, 2010

To: CSAC Executive Committee
From: Karen Keene, CSAC Senior Legislative Representative
Cara Martinson, CSAC Legislative Analyst

Re: Proposition 21: State Parks and Wildlife Conservation Trust Fund Act of 2010

Staff Recommendation: The CSAC Agriculture and Natural Resources Policy Committee is scheduled to discuss and recommend a position on Proposition 21 on Thursday, August 12. Because CSAC does not have existing policy that addresses the benefits associated with the state park system, or the funding thereof, CSAC staff recommends a "neutral" position on this ballot measure.

Background: Proposition 21, the State Parks and Wildlife Conservation Trust Fund Act of 2010 (Attachment 1), would establish an \$18 annual state vehicle license surcharge for non-commercial vehicles and grant free admission to all state parks for the surcharged vehicles. Funds from the surcharge would be placed in a trust fund dedicated specifically to state parks and wildlife conservation. The Proposition is sponsored by a coalition of conservation and state parks organizations.

Currently, California has 278 state parks. The California Department of Parks and Recreation operates 246, and local entities operate 32. Counties operate ten state park units (see attachment).

A study released in 2009 by California State University, Sacramento, indicates that state parks attract millions of tourists that spend approximately \$4.32 billion annually on park-related expenditures. The study also found that state parks visitors spend an average of \$57.63 in surrounding communities per visit. According to a 2002 University of California, Berkeley study, every dollar the state spends on state parks generates another \$2.35 for California's treasury.

According to the Legislative Analysts Office (LAO), "Over the last five years, state funding for the operation of state parks has been around \$300 million annually. Of this amount, about \$150 million has come from the General Fund, with the balance coming largely from park user fees (such as admission, camping, and other use fees) and state gasoline tax revenues. The development of new state parks and capital improvements to existing parks are largely funded from bond funds that have been approved in the past by voters."

According to the proponent's campaign website, chronic underfunding of the state park system has resulted in a backlog of \$1.3 billion dollars in needed maintenance and repairs. State parks have also become a common target in the on-going budget crisis. Last year, budget cuts forced 60 of California's 278 parks to close down, or partially close down. Budget cuts threatened large-scale park closures twice in the past two years; however, last minute budget reprieves kept them open. This year's May Revision to the 2010-11 budget includes \$140 million in General Fund to state parks.

Existing CSAC Policy: CSAC's County Platform includes one reference to parks – "Counties are encouraged to consider supporting the efforts of the California Association of Regional Park and Open Space Administrators to provide for the health, safety and quality of life for all Californians by protecting parkland and open space." CSAC has no existing

policy regarding the state park system. CSAC does have overarching policy that provides that appropriate levels of funding always accompany the provision of services on behalf of the State.

Initiative Summary: If approved by the voters, Proposition 21 would, starting January 1, 2011, establish an \$18 annual state vehicle license surcharge for noncommercial vehicles and grant free admission to all state parks for the surcharged vehicles. Funds from the surcharge would be placed in a trust fund dedicated specifically to state parks and wildlife conservation.

Specifically, the Proposition:

- Includes findings and declarations that describe how the state park system is essential to protecting the State's natural resources and wildlife, and for providing recreational and nature educational opportunities. The findings and declarations also note that persistent under funding of the state park system has resulted in a backlog of more than a billion dollars in needed repairs and improvements.
- Specifies that the intent of this measure is to protect the state's resources and wildlife by establishing a stable, reliable, and adequate funding source for the state park system and for wildlife conservation.
- Establishes the State Parks and Wildlife Conservation Trust Fund in the State Treasury, in which the surcharge funds would be deposited.
- Specifies the purposes that the money in the fund may be used, including grants to local agencies that operate units of the state park system to offset the loss of day use revenues as provided.
- Includes various provisions that would ensure fiscal accountability and oversight, including annual audits and safeguard language that attempts to protect the funds from appropriation, reversion, or transfer for any other purpose, such as loans to the General Fund, or any other fund. It also precludes the use of the funds for the repayment of interest, principal or other costs related to general obligation bonds.
- Specifies that all California vehicles subject to the surcharge would have free vehicle admission, parking, and day-use at all units of the state parks system, including state parks currently operated by local entities, as well as to other specified state lands and wildlife areas. Currently, the day use fees are in the range of \$5 to \$15 per day, depending on the park and the time of year. Under this ballot measure, state parks would still be able to charge fees for camping, tours, swimming pool use and other activities.
- Provides for the allocation of the surcharge funds as follows:
 - 85% -- Operation, Management, Planning and Development of State Parks
 - 7% -- Management and Operation of Department of Fish and Game Lands
 - 8% -- Other Wildlife Conservation Activities

- Requires the department to develop and administer a program of grants to public agencies to enhance urban river parkways that provide recreational benefits to underserved urban communities.
- Requires the department to provide grants to local agencies that operate state parks to assist in the operation and maintenance of those units, with first priority going to those local agencies that will lose the day-use revenue. Any remaining funds would be allocated on a pro-rated basis as specified.

Fiscal Impact: According to the LAO, Proposition 21 would result in a ... "Annual increase to state revenues of \$500 million from the surcharge on vehicle registrations." The LAO further notes that "...not all of these monies would have to be used to expand programs and carry out new projects. A portion of these new revenues could be used instead to take the place of existing funds, such as monies from the General Fund..." Given these factors, the LAO indicates that after offsetting some existing funding sources, the net increase in funding for state parks and wildlife conservation programs would be approximately \$250 million annually.

Additionally, Proposition 21 has the potential to make the State General Fund whole relative to the State's costs associated with the operation and maintenance of State Parks. However, the measure does not appear to provide the same level of general fund relief to cities and counties that operate state park units. One exception is the provision that would authorize grants to local agencies that operate units of the State Park System to offset the loss of day use revenues as provided, and to state and local agencies that operate river parkways.

Support/Sponsors of Initiative: The Yes on 21 Campaign is sponsored by the Californians for State Parks and Wildlife. You can view the campaign website at www.yesforstateparks.com. It has a large list of supporters that include local governments, conservation, park, business and tourism organizations.

Opposition: Large-scale organized opposition has yet to surface. However, Cal-Tax and the Howard Jarvis Tax Payers Association are noted as opposed on the Official Voter Information Guide which can be viewed at www.sos.ca.gov/elections/vig-public-display/110210-general-election/. In addition, the information guide includes arguments against Proposition 21 as submitted by Peter Foy, Americans for Prosperity and Michelle Steele, Member, California Board of Equalization.

UNITS	OPERATED BY	
Bolsa Chica SB	City of Huntington	
Castaic Lake SRA	County of Los Angeles	
Cayucos SB	County of San Luis Obispo	
Corona del Mar SB	City of Newport Beach	
Dockweiler SB	County of Los Angeles	
Eastshore SP	East Bay Regional Park District	no day-use fees
El Presidio de Santa Barbara SHP	Santa Barbara Trust for Historic Preservation	nonprofit agency, not local gov't (no day-use fees; tour fees only)
Kenneth Hahn SRA	County of Los Angeles	
Kings Beach SRA	North Tahoe Recreation and Park District	
Lake Del Valle SRA	East Bay Regional Park District	
Leucadia SB	City of Encinitas	
Lighthouse Field SB	County of Santa Cruz	
Mandalay SB	County of Ventura	
Mendocino Woodlands SP	Mendocino Woodlands Camp Association	nonprofit agency, not local gov't (no day-use fees; camping fees only)
Moonlight SB	City of Encinitas	
Pacifica SB	City of Pacifica	
Placerita Canyon SP	County of Los Angeles	
Point Dume SB	County of Los Angeles	
Robert W. Crown Memorial SB	East Bay Regional Park District	
San Bruno Mountain SP	County of San Mateo	
Santa Monica SB	City of Santa Monica	
Skylandia State Park	Tahoe City Public Utilities District	
Stone Lake (Park Property)	County of Sacramento	
Wassama Roundhouse	Miwok Tribe	no day-use fees <i>park is essentially only open one weekend per year</i>
Watts Towers of Simon Rodia SHP	City of Los Angeles	no day-use fees
Will Rogers SB	City of Los Angeles	
Woodland Opera House SHP	City of Woodland	no day-use fees



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August 3, 2010

To: CSAC Executive Committee
From: Karen Keene, CSAC Senior Legislative Representative
Cara Martinson, CSAC Legislative Analyst

Re: Proposition 23: Measure to Suspend Assembly Bill 32

Staff Recommendation: The CSAC Agriculture and Natural Resources Policy Committee is scheduled to discuss and recommend a position on Proposition 23 on August 12, 2010. CSAC staff is recommending a "neutral" position on Proposition 23 based on existing policy and the minimal impact the measure would have on county government.

Background: In 2006, the Legislature passed and Governor Schwarzenegger signed into law Assembly Bill 32, the Global Warming Solutions Act of 2006 (AB 32). This law established the first- of- its- kind greenhouse gas (GHG) emissions reduction law. Specifically, AB 32 establishes a framework for GHG emissions reductions, appointing the California Air Resources Board (CARB) as the responsible agency for monitoring and reducing GHG emissions, and creates a multi-year program to reduce GHG emissions to 1990 levels by 2020.

The Climate Action Team, the state inter-agency coordinating body, and CARB developed a Scoping Plan, which is the implementing framework for how California is going to achieve the goals set forth in AB 32. The plan includes a mix of traditional regulatory measures and market-based measures, some authorized by separately enacted legislation.

Some measures in the Scoping Plan have already been adopted in the form of regulations. Other regulations are either currently under development or will be developed in the near future. AB 32 requires that all regulations for GHG emission reduction measures be adopted by January 1, 2011 and in effect by January 1, 2012.

According to CARB, the Scoping Plan calls for an "ambitious but achievable reduction in California's carbon footprint."

Existing CSAC Policy: In 2007, CSAC established a working group to develop policy on climate change. The group was comprised of county supervisors, planners, county counsels, and others. The CSAC Climate Change Working Group developed a comprehensive policy on climate change that the CSAC Board of Directors adopted in November 2007. Consequently, the CSAC Board of Directors established a CSAC Task Force on Climate Change to discuss issues related to the Scoping Plan, climate change and other related matters.

The CSAC Policy Statements and Principles on Climate Change is a 12- page document that specifically outlines CSAC's policy on GHG reduction measures by sector. In general, CSAC has policy to support the development of federal, state and local measures to reduce GHG emissions. CSAC policy also calls for a flexible and cost-effective approach to GHG reduction strategies. The following are examples of several CSAC Climate Change Policy statements:

- CSAC recognizes that climate change will have a harmful effect on our environment, public health and economy. Although there remains uncertainty on the pace,

distribution and magnitude of the effects of climate change, CSAC also recognizes the need for immediate actions to mitigate the sources of greenhouse gases.

- CSAC recognizes the need for sustained leadership and commitment at the federal, state, regional and local levels to develop strategies to combat the effects of climate change.
- CSAC recognizes the complexity involved with reducing greenhouse gases and the need for a variety of approaches and strategies to reduce GHG emissions.
- CSAC supports a flexible approach to addressing climate change, recognizing that a one size fits all approach is not appropriate for California's large number of diverse communities.
- CSAC supports cost-effective strategies to reduce GHG emissions and encourages the use of grants, loans and incentives to assist local governments in the implementation of GHG reduction programs.

Initiative Summary: Proposition 23 would suspend AB 32 (Division 25.6, section 28600 of the California Health and Safety Code) until the unemployment rate in California is 5.5% or less for four consecutive calendar quarters. The measure also states that no state agency shall propose or adopt any regulation implementing AB 32 until the unemployment rate criteria is met.

There are several strategies included in CARB's Scoping Plan that derive their statutory authority outside of AB 32. Consequently, Proposition 23, if approved by the voters, would *not* suspend all of the GHG reducing measures included in the Scoping Plan. The following chart illustrates the major initiatives included and excluded under Proposition 23.

Table One: Measures Included/ Excluded Under Proposition 23

Measures Included in AB 32 Scoping Plan	Suspended Under Proposition 23	NOT suspended under Proposition 23	Authorizing Statute
Cap/Trade Regulation	✓		
Low Carbon Fuel Standard	✓		
33% Renewable Portfolio Standard	✓		
AB 32 Administration Fee	✓		
Tail Pipe Standards		✓	AB 1493 (Pavley, Chapters 200, 2002)
Solar Roofs Program		✓	SB 1 (Murray, Chapters 132, 2006)
Regional Transportation GHG Targets		✓	SB 375 (Steinberg, Chapters 728, 2008)

Building/Appliance Energy Efficiency Standards		✓	2008 CBSC Green Building Codes
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Impact: According to the Legislative Analyst's Office (LAO), there will be both positive and negative impacts from a suspension of AB 32 on the economy. As mentioned above, the Proposition would only affect a portion of the regulations included under the Scoping Plan. The measures covered by the Proposition, including the RPS and the Cap and Trade regulation, would have the most direct impact on the energy sector in California.

Both sides of this debate articulate supporting economic theories. Those that seek to suspend AB 32 argue that the new regulations are costly to business and drives entrepreneurs to other states. Supporters of AB 32 argue that it serves as an economic catalyst; making California a leader in energy efficiency and that "green sector" jobs are growing faster than the decline of other jobs.

According to California's Employment Development Department, the unemployment rate in California is roughly 12%. It has only dropped below 5.5% for four consecutive quarters three times in the last 30 years. Thus, if Proposition 23 is approved by the voters, AB 32 would be suspended immediately and would likely remain suspended for quite some time.

With respect to AB 32 and local government, the Scoping Plan includes several measures that directly and indirectly affect how counties do business. However, the majority of measures that impact local government encourage rather than require local governments to address climate change.

For example, the Scoping Plan encourages local governments to track GHG emissions and adopt a reduction goal for their municipal operations. Other measures in the Scoping Plan that impact local government include the landfill methane gas capture regulation, the commercial recycling measure, and the measure to reduce GHG emissions from refrigerants used in air conditioners.

With respect to land use, the Scoping Plan relies on SB 375 as its means to achieve GHG reductions from this sector. As mentioned above, SB 375 is not included under Proposition 23 because it derives its statutory authority outside of AB 32.

Support/Sponsors of Initiative: The sponsors of Proposition 23 include Assembly Member Dan Logue, and the Valero Energy Corporation and Tesoro Corporation. The coalition includes a long list of supporters, including numerous taxpayer associations, chambers of commerce, and the California Republican Party. More information can be found at: <http://www.yeson23.com/>.

Opposition: The opposition campaign also includes a long coalition list, including numerous environmental organizations, labor and green/clean tech companies. The opposition also includes several business organizations, including Google and Ebay, Inc. More information can be found at: <http://www.stopdirtyenergyprop.com>.

August 2, 2010



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To: CSAC Government Finance & Operations Policy Committee

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

Re: **Proposition 26: The Stop Hidden Taxes Measure**

Staff Recommendation: Staff recommends the Government Finance and Operations Policy Committee recommend to the CSAC Executive Committee a position of "oppose" on the "Stop Hidden Taxes Measure."

Background: Proposition 26, which would amend the California Constitution to expand the definition of "taxes" to include some charges that are now classified as fees, will go before the voters on the November 2010 ballot. This memo will provide a description of the initiative, existing law, and possible effects on counties, to facilitate discussion at the August 5 2010 CSAC Government Finance and Operations Policy Committee meeting. This Committee's recommendation will then go to the CSAC Executive Committee, which in turn will forward its recommendation to the CSAC Board of Directors.

I. SUMMARY OF PROPOSITION 26

Proposition 26 would change the definition of "taxes" to include some charges that are now considered fees. In doing so, it would raise the hurdles to enacting them at both the state and local level. The Act would also change the Constitutional language that specifies when a revenue measure requires a two-thirds legislative vote to pass.

Specifically, the Act would make the following changes:

Upon further review, we are no longer convinced that Prop. 26 will affect the gas tax swap; analysis by County Counsels and others are ongoing.

A. *Legislative Vote Requirement for Revenue Measures*

The Legislature's interpretation of current law is that ~~they may pass~~ a revenue measure with a majority vote if the total effect of that ~~measure~~ is revenue-neutral. One recent example of such a measure is the gas tax swap approved by the Legislature this spring. Proposition 26 would change the language upon which that interpretation rests to require a two-thirds vote for "any change in state statute which results in any taxpayer paying a higher tax."

B. *Defining "Tax" for State Purposes*

The measure would define "tax" for state purposes as any "levy, charge, or exaction of any kind," with the following five exceptions:

- Charges for a specific *benefit or privilege* that the payer gets and others do not, and that does not exceed the State's reasonable cost of providing it.
- Charges for a specific *service or product* that the payer gets and others do not, and that does not exceed the State's reasonable cost of providing it.
- Charges for reasonable regulatory costs that include, and are limited to:
 - Issuing licenses and permits,
 - Performing investigations, inspections and audits,
 - Enforcing agricultural marketing orders, and
 - Administrative enforcement and adjudication.

- Charges for entering or using state property or for buying, renting, or leasing state property, with the exception of the Vehicle License Fee. It is unclear, but this section might be attempting to head off any future legislative efforts to put a surcharge on vehicle registration in exchange for free entrance to state parks. If that is the case and this initiative passes, such a surcharge enacted as part of the VLF would certainly require a two-thirds vote.
- Fines or penalties imposed as a result of breaking the law.

The Act also states that any taxes that the Legislature imposes between the beginning 2010 and the effective date of the Act in November 2010, and that do not comply with the requirements of the Act, are void twelve months after the Act takes effect unless they are reenacted in compliance.

Finally, under the Act's provisions, the State would bear the burden of proof "by a preponderance of the evidence" that a charge is not a tax, that charges cover only the government's reasonable costs, and that the allocation of the costs are proportionate to each payer's benefit from or burden on the government. This does not represent a change from current case law.

C. *Defining "Tax" for Local Purposes*

The measure defines taxes for local purposes in exactly the same manner as detailed above for state purposes, including the paragraph that places the burden of proof on the governmental agency, but with two additional exceptions:

- Charges imposed as a condition of property development.
- Assessments and property-related fees imposed in accordance with Article XIII D of the California Constitution (Proposition 218).

Also, the definition of "tax" for local purposes omits the VLF exception to the fourth exception listed in the "state" section above. It also omits the provision that any tax imposed by state law between the beginning of 2010 and the Act's effective date that is out of accordance with the Act is void after twelve months unless reenacted in accordance. One other minor difference is that the state may impose charges "incident to" issuing licenses and permits, and local agencies may impose those charges "for" issuing them.

Local agencies would bear the same burden of proof that the state would when defending their fees.

II. EXISTING STATE LAW

The hubbub over what is a tax and what is a fee stems largely from the California Supreme Court's unanimous 1997 decision — commonly known as the *Sinclair* decision after the paint company that lost the case — which validated fees charged to manufacturers of lead-based paints and leaded gasoline to cover the cost of remediating past health and environmental damage (medical costs of lead-poisoned children). Sinclair believed — and likely continues to believe — that the fees were actually taxes, since the State was not using the revenue from the fees to regulate the paint industry, and therefore needed to pass the Legislature with a two-thirds vote instead of the majority vote the fees received.

The Court found that the majority-vote fees were permitted because the revenue raised by the fees was not being used for general purposes, but only to deal with the effects of the regulated industry. It further found that "the police power is broad enough to include mandatory remedial measures to mitigate the past, present, or future adverse impact of the fee payer's operations, at least where, as here, the measure requires a causal connection or nexus between the product and its adverse effects." Among its other effects, this ruling significantly increased the use of the word "nexus" in and around the Capitol.

Proposition 26's declaration of purpose states that "fees couched as 'regulatory' but which exceed the reasonable costs of actual regulation or are simply imposed to raise revenue for a new program and are not part of any licensing or permitting program are actually taxes."

At the State level, under current law, fees generally require a majority vote of each house of the Legislature, whereas taxes require two-thirds approval. At the local level, governing boards can levy some types of fees without voter approval, whereas taxes require approval of either a majority or two-thirds of voters. Some local fees related to property require majority approval of property owners or two-thirds approval of voters.

The Legislative Analyst notes that most of the fees and charges that this measure would reclassify as taxes "address health, environmental, or other societal or economic concerns." One example is the hazardous materials fee imposed on businesses that use hazardous materials; it is primarily used to clean up toxic waste sites. Local examples that might be reclassified under this measure include business assessments and the fees that some cities impose on stores that sell alcohol.

III. EFFECTS

Upon further review, we are no longer convinced that Prop. 26 will affect the gas tax swap; analysis by County Counsels and others are ongoing.

Earlier this year, the Legislature by a majority vote eliminated the sales tax on gasoline and increased gasoline fees by the same amount. Were Proposition 26 to pass, the swap would be void after twelve months unless the Legislature reenacted the change with a two-thirds vote. The Legislature is currently considering similar proposals as one way to fund a restructuring of services between the state and counties; if they do in fact enact any with only a majority vote, those would face the same fate as the gas tax swap.

Except for those passed by the State earlier this year, Proposition 26 does not affect current fees unless they are later increased or extended.

It is possible that the "conflicting measures" paragraph of Proposition 26, which is standard in ballot initiatives but written in a peculiar way in this one, is aimed at defeating Proposition 25. That measure would reduce the vote requirement for the state budget to a majority, but leave the vote requirement for state taxes at its current two-thirds level. If both measures pass in November, but Proposition 26 receives a higher number of "yes" votes, the language included would attempt to preempt the other so that it would not take effect. If that occurred, the issue would no doubt be litigated.

Proposition 26 is similar in many ways to Proposition 37, which garnered 48% of the vote in 2000. CSAC opposed that measure.

The proponents of Proposition 26 prepared a detailed list of the types of charges at which they are targeting their initiative. This list was previously displayed on the campaign's website, but it has since been removed; it appears in the pages following this analysis.

IV. SUPPORT AND OPPOSITION

Allan Zaremberg, the president of the California Chamber of Commerce, was the person who submitted the measure to the Attorney General. Joining Mr. Zaremberg in signing the ballot argument in support are the presidents of the California Taxpayers Association and the Small Business Action Committee. Other known supporters include the Howard Jarvis Taxpayers Association, Americans for Tax Reform, and the Wine Institute. Most of the funding to date has come from the California Chamber of Commerce, with significant amounts also coming from Chevron, Aera Energy, Anheuser-Busch, MillerCoors, and the Wine Institute.

The ballot argument against the measure is signed by officials representing the California affiliates of the League of Women Voters, the American Lung Association, and the Sierra Club. Other known opponents include Health Access California, the California Tax Reform Association, California Professional Firefighters, and the Consumer Federation of California. A formal opposition camp still seems to be in its formative stage, but the little bit of funding to date has come from SEIU, CA Professional Firefighters, CA Federation of Teachers, CA School Employees Association, and the Marin Institute. The League of California Cities has taken an “oppose” position on the measure.

Action Requested: Proposition 26 would enact new restrictions on county revenue authority, therefore staff requests the committee recommend a position of “oppose” to the CSAC Executive Committee.

Staff Contact: Please contact Jean Kinney Hurst (jhurst@counties.org or (916) 327-7500 x515) or Geoffrey Neill (gneill@counties.org or (916) 327-7500 x567) for additional information.

Except for minor formatting changes, this list is as proponents presented it.

SPECIFIC INDUSTRY EXAMPLES

Restaurants

- *Fees on alcohol to litigate public nuisance associated with sale or consumption*
- *Fees on canned beverages to mitigate waste/recycling*
- *Fees on soda to mitigate obesity and other negative health effects*
- *Fees on unhealthy foods, fats, sugar to mitigate negative health effects*
- *Health inspection/monitoring fees*
- *Traffic impact fees*
- *Parking impact fees*
- *Air quality impact fees*
- *Water quality impact fees*
- *Fees on waste production*
- *Energy use surcharges and fees*
- *Fees on snack food*
- *Fees on food packaging for takeout orders*
- *Public safety cost mitigation fees*

Public Utilities

- *Trenching fees for diminution in durability or longevity of roads, traffic congestion mitigation, mitigate potential damage to existing infrastructure*
- *Alternative energy fees*
- *Fossil fuel consumption fees*
- *Eco-impairment fees for hydro-facilities*

Alcohol

- *Mitigation fees to address public nuisances associated with sale or consumption*
- *Mitigation fees to pay for health services provided by government (mental and physical) for alcoholics or those injured or otherwise affected by alcoholics*
- *Fees to fund public programs to prevent illegal consumption by minors or discourage abuse by adults through education, research into causes and possible cures for alcoholism*

Oil

- *Carbon consumption fees for pollution mitigation (injuries related to effects of pollution)*
- *Eco-Impairment fees (effects of drilling, storage, or consumption on habitat or parks and recreation areas)*
- *Carbon consumption fees to discourage consumption and encourage use of alternative fuel sources. Additionally, fuel consumption as a means for measuring "road damage fees"*
- *Oil severance fee to mitigate oil spill clean-up, and build larger response and enforcement capabilities*
- *Hazardous waste fees to support general hazardous waste/substances programs.*
- *An Air District might impose a refinery gate fee to mitigate harm from diesel exhaust emissions. A city or county might impose pipeline fee to enhance public safety to respond to pipeline accidents*
- *A state or local agency may impose gasoline fee at the pump for clean-up and mitigation of MTBE contamination at service stations or in lakes and groundwater.*
- *A local or regional agency might impose a gasoline fee at the pump for mass*

transit. (Note: fees could still be assessed if connected to a specific regulation, problem or liability identifiable to the fee payer.)

Tobacco

- *Mitigation fees: Fees for mitigating the adverse health effects of tobacco products (including evaluation, screening, and necessary follow-up services who are deemed potential victims of tobacco related injuries)*
- *Deterrence fees: Fees to discourage consumption (by increasing cost of product) and/or to educate the general public on the consequences of tobacco consumption. Fees to prevent illegal consumption by minors*

Telecommunications

- *Cellular: Fees to reduce the impacts of DWTs (Driving While Talking), burdens on the 911 system, potential future effects of close proximity radio frequency exposure*
- *Trenching fees for diminution in durability of roads, traffic congestion mitigation mitigate potential damage to existing infrastructure*

Technology Companies

- *Fees to mitigate the Digital Divide*
- *Ergonomic and repetitive motion injury mitigation*
- *Site location fees for traffic mitigation and growth impacts*
- *Youth and video game violence prevention fee*
- *Hardware disposal fees*
- *Toxic/Waste fees*

Agriculture

- *Chemical/gene/hormone and other "altered food" products fees (a perceived threat for "altered food" could result in fees being levied for research, screening, testing and treatment should adverse consequences materialize or simply as a means of discouraging their use out of perceived negative externalities)*
- *Spoiled/infected food mitigation fees*
- *Insecticide abatement fees*

Food (Retailers/Grocers/Malls)

- *Traffic impact fees (malls and Big Box retailers)*
- *Public safety impact fees (added security necessary because of increase concentration of people)*

Fast Food

- *Traffic impact fees (where traffic backs-up at the drive-through)*
- *Litter abatement fees*
- *Fees to fund education, outreach, screening and treatment for obesity (fast foods having high concentrations of fat) or similar programs to discover, measure and treat the adverse health consequences of high cholesterol or caffeine*

TAXES

Entertainment

- *Arenas/promoters/sports teams: Traffic impact fees. Public safety cost mitigation fees*
- *Television/movies: Location mitigation fees (relating to traffic impacts, clean-up, public safety and emergency services). Fees on television and movie programming to mitigate effects of violence on youth or similar anti-social*

consequences linked to programming

Non-Indian Gaming

- *Public safety mitigation fees (for expenses associated with a perceived increase in a criminal element associated with activity-including increase police presence, specialized investigation units)*
- *Fees to mitigate effects on compulsive gamblers or other associated addictive consequences including screening, education, and treatment*

Pharmaceuticals

- *Mitigation for subsequently discovered health risks potentially associated with a particular drug product*
- *Fees to fund drug education*
- *Fees related to health research*
- *Fees to fund health treatment*
- *Emergency care fees*
- *Fees covering the cost of the uninsured or underinsured*
- *Pharmaceutical cost fees to cover the poor and/or elderly*
- *Fees related to covering immunizations for children*

Railroads

*Generally protected by the federal "4-R Act" enacted by Congress to protect railroads from discriminatory local taxes. However, the 4-R Act applies to "taxes" and not fees or assessments. So long as the exaction does not contribute to the general fund of the government, it may not be considered a "tax" under the 4-R Act. See *Wheeling & Lake Erie Railway Co. v. Public Utility Commission, et. al.*, Nos. 96-3703, 3704 (1998)*

- *Consequently, fees to mitigate railroad-crossing accidents are potential*
- *Eco-impairment fees for effects of train traffic on ecosystems or potential effects of rail accidents*
- *Pollution abatement fees (whether for emissions or sound)*
- *Carbon consumption fees*

Airlines

- *Pollution abatement fees*
- *Noise abatement fees (also affected by any carbon consumption fees)*
- *Crash mitigation fees (reimbursing local governments for costs of search and rescue, recovery or salvage and investigation)*
- *Runway maintenance fees*
- *Ground traffic congestion/mitigation fees*

Truckers

- *Road damage fees to mitigate damage to streets and highways caused by heavy truck traffic/spills*
- *Fees to mitigate the adverse effects of long haul trucking and or fund programs to research evaluate and reduce potential of trucking accidents. Fees to mitigate health costs related to injuries of truck drivers or increased risk of traffic fatalities due to size of trucks used (SUV plus mitigation fee). Could be affected by carbon fuel consumption fees or pollution mitigation fees*

Auto Manufacturing

- *Carbon fuel consumption fees. Road damage fees based on size of vehicle*

- *Accident fees (for costs of responding to and treating victims) based on size/safety rating of vehicle.*
- *A deterrence fee based on fuel efficiency to fund mass transit*
- *Tire disposal fees to mitigate costs and hazards of tire disposal*
- *Off-road mitigation fee on 4-wheel drive and all-terrain vehicles to offset eco-damage of off-road automobile use*

Chemicals

- *Most closely related to Sinclair paint circumstance where a product is deemed hazardous, its use discontinued, and then after the fact businesses are pursued for mitigation fees*
- *Mitigation fees to offset adverse health effects of a chemical or chemical by-product*
- *Accident/hazard mitigation fees (educating public on proper usage, storage and disposal of household chemicals; offset health costs in responding to accidents relating to household chemical accidents)*

General Business

- *Fees on businesses to fund indoor air quality maintenance and investigation programs*
- *Hazardous waste fees to support general hazardous waste/substances programs*

Insurance

- *Fees on property casualty insurers for firefighting, earthquake and flood mitigation/preparation, uninsured drivers and auto case court costs, among many others*
- *Fees on health insurers for such things as premium assistance for lower income consumers and those who lack coverage, cover costs of certain medical procedures and tests and fees for consumer protection/intervention services against insurers.*

Proposition 26

Increases Legislative Vote Requirement to Two-Thirds for State Levies and Charges. Imposes Additional Requirement for Voters to Approve Local Levies and Charges with Limited Exceptions. Initiative Constitutional Amendment.

BACKGROUND

State and local governments impose a variety of taxes, fees, and charges on individuals and businesses. Taxes—such as income, sales, and property taxes—are typically used to pay for general public services such as education, prisons, health, and social services. Fees and charges, by comparison, typically pay for a particular service or program benefitting individuals or businesses. There are three broad categories of fees and charges:

- User fees—such as state park entrance fees and garbage fees, where the user pays for the cost of a specific service or program.
- Regulatory fees—such as fees on restaurants to pay for health inspections and fees on the purchase of beverage containers to support recycling programs. Regulatory fees pay for programs that place requirements on the activities of businesses or people to achieve particular public goals or help offset the public or environmental impact of certain activities.
- Property charges—such as charges imposed on property developers to improve roads leading to new subdivisions and assessments that pay for improvements and services that benefit the property owner.

State law has different approval requirements regarding taxes, fees, and property charges. As Figure 1 shows, state or local governments usually can create or increase a fee or charge with a majority vote of the governing body (the Legislature, city council, county board of supervisors, etcetera). In contrast, increasing tax revenues usually requires approval by two-thirds of each house of the state Legislature (for state proposals) or a vote of the people (for local proposals).

Figure 1 Approval Requirements: State and Local Taxes, Fees, and Charges		
	State	Local
Tax	Two-thirds of each house of the Legislature for measures increasing state revenues.	<ul style="list-style-type: none"> • Two-thirds of local voters if the local government specifies how the funds will be used. • Majority of local voters if the local government does not specify how the funds will be used.
Fee	Majority of each house of the Legislature.	Generally, a majority of the governing body.
Property Charges	Majority of each house of the Legislature.	Generally, a majority of the governing body. Some also require approval by a majority of property owners or two-thirds of local voters.

Disagreements Regarding Regulatory Fees. Over the years, there has been disagreement regarding the difference between regulatory fees and taxes, particularly when the money is raised to pay for a program of broad public benefit. In 1991, for example, the state began imposing a regulatory fee on businesses that made products containing lead. The state uses this money to screen children at risk for lead poisoning, follow up on their treatment, and identify sources of lead contamination responsible for the poisoning. In court, the Sinclair Paint Company argued that this regulatory fee was a tax because: (1) the program provides a broad public benefit, not a benefit to the

regulated business, and (2) the companies that pay the fee have no duties regarding the lead poisoning program other than payment of the fee.

In 1997, the California Supreme Court ruled that this charge on businesses was a regulatory fee, not a tax. The court said government may impose regulatory fees on companies that make contaminating products in order to help correct adverse health effects related to those products. Consequently, regulatory fees of this type can be created or increased by (1) a majority vote of each house of the Legislature or (2) a majority vote of a local governing body.

Proposal

This measure expands the definition of a tax and a tax increase so that more proposals would require approval by two-thirds of the Legislature or by local voters.

Figure 2 summarizes its main provisions.

Figure 2 Major Provisions of Proposition 26	
✓	Expands the Scope of What Is a State or Local Tax <ul style="list-style-type: none">• Classifies as taxes some fees and charges that government currently may impose with a majority vote.• As a result, more state revenue proposals would require approval by two-thirds of each house of the Legislature and more local revenue proposals would require local voter approval.
✓	Raises the Approval Requirement for Some State Revenue Proposals <ul style="list-style-type: none">• Requires a two-thirds vote of each house of the Legislature to approve laws that increase taxes on any taxpayer, even if the law's overall fiscal effect does not increase state revenues.
✓	Repeals Recently Passed, Conflicting State Laws <ul style="list-style-type: none">• Repeals recent state laws that conflict with this measure, unless they are approved again by two-thirds of each house of the Legislature. Repeal becomes effective in November 2011.

Definition of a State or Local Tax

Expands Definition. This measure broadens the definition of a state or local tax to include many payments currently considered to be fees or charges. As a result, the measure would have the effect of increasing the number of revenue proposals subject to the higher approval requirements summarized in Figure 1. Generally, the types of fees and charges that would become taxes under the measure are ones that government imposes to address health, environmental, or other societal or economic concerns. Figure 3 provides examples of some regulatory fees that could be considered taxes, in part or in whole, under the measure. This is because these fees pay for many services that benefit the public broadly, rather than providing services directly to the fee payer. The state currently uses these types of regulatory fees to pay for most of its environmental programs.

Figure 3 Regulatory Fees That Benefit the Public Broadly
<p>Oil Recycling Fee The state imposes a regulatory fee on oil manufacturers and uses the funds for:</p> <ul style="list-style-type: none">• Public information and education programs.• Payments to local used oil collection programs.• Payment of recycling incentives.• Research and demonstration projects.• Inspections and enforcement of used-oil recycling facilities. <p>Hazardous Materials Fee The state imposes a regulatory fee on businesses that treat, dispose of, or recycle hazardous waste and uses the funds for:</p> <ul style="list-style-type: none">• Clean up of toxic waste sites.• Promotion of pollution prevention.• Evaluation of waste source reduction plans.• Certification of new environmental technologies. <p>Fees on Alcohol Retailers Some cities impose a fee on alcohol retailers and use the funds for:</p> <ul style="list-style-type: none">• Code and law enforcement.• Merchant education to reduce public nuisance problems associated with alcohol (such as violations of alcohol laws, violence, loitering, drug dealing, public drinking, and graffiti).

Certain other fees and charges also could be considered to be taxes under the measure. For example, some business assessments could be considered to be taxes because government uses the assessment revenues to improve shopping districts (such as providing parking, street lighting, increased security, and marketing), rather than providing a direct and distinct service to the business owner.

Some Fees and Charges Are Not Affected. The change in the definition of taxes would not affect most user fees, property development charges, and property assessments. This is because these fees and charges generally comply with Proposition 26's requirements already, or are exempt from its provisions. In addition,

most other fees or charges in existence at the time of the November 2, 2010 election would not be affected unless:

- The state or local government later increases or extends the fees or charges.
(In this case, the state or local government would have to comply with the approval requirements of Proposition 26.)
- The fees or charges were created or increased by a state law—passed between January 1, 2010 and November 2, 2010—that conflicts with Proposition 26 (discussed further below).

Approval Requirement for State Tax Measures

Current Requirement. The State Constitution currently specifies that laws enacted “for the purpose of increasing revenues” must be approved by two-thirds of each house of the Legislature. Under current practice, a law that increases the amount of taxes charged to some taxpayers but offers an equal (or larger) reduction in taxes for other taxpayers has been viewed as not increasing revenues. As such, it can be approved by a majority vote of the Legislature.

New Approval Requirement. The measure specifies that state laws that result in *any* taxpayer paying a higher tax must be approved by two-thirds of each house of the Legislature.

State Laws in Conflict With Proposition 26

Repeal Requirement. Any state law adopted between January 1, 2010 and November 2, 2010 that conflicts with Proposition 26 would be repealed one year after the

proposition is approved. This repeal would not take place, however, if two-thirds of each house of the Legislature passed the law again.

Recent Fuel Tax Law Changes. In the spring of 2010, the state increased fuel taxes paid by gasoline suppliers, but decreased other fuel taxes paid by gasoline retailers. Overall, these changes do not raise more state tax revenues, but they give the state greater spending flexibility over their use.

Using this flexibility, the state shifted about \$1 billion of annual transportation bond costs from the state's General Fund to its fuel tax funds. (The General Fund is the state's main funding source for schools, universities, prisons, health, and social services programs.) This action decreases the amount of money available for transportation programs, but helps the state balance its General Fund budget. Because the Legislature approved this tax change with a majority vote in each house, this law would be repealed in November 2011—unless the Legislature approved the tax again with a two-thirds vote in each house.

Other Laws. At the time this analysis was prepared (early in the summer of 2010), the Legislature and Governor were considering many new laws and funding changes to address the state's major budget difficulties. In addition, parts of this measure would be subject to future interpretation by the courts. As a result, we cannot determine the full range of state laws that could be affected or repealed by the measure.

FISCAL EFFECTS

Approval Requirement Changes. By expanding the scope of what is considered a tax, the measure would make it more difficult for state and local governments to pass new laws that raise revenues. This change would affect many environmental, health, and other regulatory fees (similar to the ones in Figure 3), as well as some business assessments and other levies. New laws to create—or extend—these types of fees and charges would be subject to the higher approval requirements for taxes.

The fiscal effect of this change would depend on future actions by the Legislature, local governing boards, and local voters. If the increased voting requirements resulted in some proposals not being approved, government revenues would be lower than otherwise would have occurred. This, in turn, likely would result in comparable decreases in state spending.

Given the range of fees and charges that would be subject to the higher approval threshold for taxes, the fiscal effect of this change could be major. Over time, we estimate that it could reduce government revenues and spending statewide by up to billions of dollars annually compared with what otherwise would have occurred.

Repeal of Conflicting Laws. Repealing conflicting state laws could have a variety of fiscal effects. For example, repealing the recent fuel tax laws would increase state General Fund costs by about \$1 billion annually for about two decades and increase funds available for transportation programs by the same amount.

Because this measure could repeal laws passed *after* this analysis was prepared and some of the measure's provisions would be subject to future interpretation by the courts, we cannot estimate the full fiscal effect of this repeal provision. Given the nature of the proposals the state was considering in 2010, however, it is likely that repealing any adopted proposals would decrease state revenues (or in some cases increase state General Fund costs). Under this proposition, these fiscal effects could be avoided if the Legislature approves the laws again with a two-thirds vote of each house.

Proposition 26

**Increases Legislative Vote Requirement to Two-Thirds for State
Levies and Charges. Imposes Additional Requirement for Voters to
Approve Local Levies and Charges with Limited Exceptions.
Initiative Constitutional Amendment.**

Yes/No Statement

A YES vote on this measure means: The definition of taxes would be broadened to include many payments currently considered to be fees or charges. As a result, more state and local proposals to increase revenues would require approval by two-thirds of each house of the Legislature or by local voters.

A NO vote on this measure means: Current constitutional requirements regarding fees and taxes would not be changed.



August 24, 2010

To: CSAC Executive Committee

From: Paul McIntosh, CSAC Executive Director

Re: Consideration of CSAC Realignment Working Group Principles – **ACTION ITEM**

Recommendation. Approve revisions to the CSAC Realignment Principles consistent with the discussion and direction of the 2010 CSAC Restructuring Working Group.

Background. The 2010 CSAC Realignment Working Group, chaired by Supervisor Greg Cox (San Diego County) and Supervisor Helen Thomson (Yolo County) began meeting weekly in June to discuss developing a county response to the Senate Pro Tem's desire to include some form of "realignment" or "restructuring" in the eventual 2010-11 budget solution. CSAC's leadership made a commitment to the Pro Tem to engage in such discussions as a potential opportunity for stabilizing funding for important health and safety programs, creating efficiencies and flexibility in program delivery at the local level, and securing additional revenues to fund such activities.

Senate President pro Tem Steinberg released the Senate Democrats' Multi-Year Restructuring Proposal on June 21, and the Working Group's focus shifted to evaluation of the components. The proposal was ambitious in scope and scale, but we were challenged to respond in a way that demonstrates our commitment to a change in structure of California's government and services.

Technical subcommittees in the areas of public safety, human services, and revenues began meeting to discuss the specifics of the plan. The Cost Shift Committee of the County Counsels' Association served as our legal subcommittee and evaluated general legal questions that were common across subcommittee conversations. The findings from these subcommittees were then presented to the Working Group in an in-person meeting. Generally, the direction from the Working Group was to move forward with technical analysis, particularly as further information emerged on the public safety proposal, and focus on the protections and conditions under which a realignment or restructuring could work for counties.

In early August, when the Senate and Assembly Democrats released their joint "Jobs Budget," the restructuring package had been whittled down to only those components in the corrections area. At this time, the corrections restructuring – including, as the largest component, a proposal to realign responsibility for managing wobblers offenders to the local level – remains part of the Democrats' budget plan. However, given that the construct hinges on the extension of the temporary Vehicle License Fee increase (0.5 percent) – an action requiring two-

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thirds approval of the Legislature – the prospect of this proposal remains uncertain at this time.

At your September 9 meeting, we are requesting your action in the following area:

- **Consider and approve CSAC 2010 Realignment Principles.** CSAC's Realignment Principles were developed in 2003 and updated in 2005 to guide CSAC's advocacy efforts on new realignment or restructuring concepts. The Working Group took the opportunity to update the principles once again to reflect current conditions. Staff recommends that the Board of Directors approve the CSAC 2010 Realignment Principles.

Regardless of the outcome of the 2010-11 budget, the state and counties will continue to confront questions regarding how and whether to restructure the financing and administration of the vital public services. To that end, CSAC views the important work of the 2010 Restructuring Working Group as significant in helping shape our development of future reform concepts and strategies as well as our response to new ideas that may emerge in the months and years ahead. For your information and reference, we also are including additional work products produced by the 2010 Working Group:

- **Risk Assessment of Programs Proposed for Restructuring in 2010.** The Realignment Working Group, with the able assistance of technical subcommittees, developed the attached draft programmatic risk assessment to focus restructuring conversations on those programs that appear to be most feasible for restructuring/realignment.
- **Recommended protections for counties that would be necessary for any restructuring proposal.** The County Counsels' Association Cost Shift Committee assisted the Realignment Working Group by outlining measures that could provide protections for counties under a restructuring model. The attached draft attempts to communicate the conditions under which a restructuring model could most effectively work for counties.

Action Requested. Staff is requesting that the Board of Directors consider and approve CSAC 2010 Realignment Principles.

Staff Contact. Please contact Paul McIntosh at pmcintosh@counties.org or (916) 327-7500 ext. 506 or the CSAC legislative staff with your questions.



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2010 CSAC Realignment Principles

***WORKING DRAFT until approved by the CSAC Board of Directors**

Facing the most challenging fiscal environment in the California since the 1930s, counties are examining ways in which the state-local relationship can be restructured and improved to ensure safe and healthy communities. This effort, which will emphasize both fiscal adequacy and stability, does not seek to reopen the 1991 state-local Realignment framework. However, that framework will help illustrate and guide counties as we embark on a conversation about the risks and opportunities of any state-local realignment.

With the passage of Proposition 1A the state and counties entered into a new relationship whereby local property taxes, sales and use taxes, and Vehicle License Fees are constitutionally dedicated to local governments. Proposition 1A also provides that the Legislature must fund state-mandated programs; if not, the Legislature must suspend those state-mandated programs. Any effort to realign additional programs must occur in the context of these constitutional provisions.

Counties have agreed that any proposed realignment of programs should be subject to the following principles:

1. **Revenue Adequacy.** The revenues provided in the base year for each program must recognize existing levels of funding in relation to program need in light of recent reductions and the Human Services Funding Deficit. Revenues must also be at least as great as the expenditures for each program transferred and as great as expenditures would have been absent realignment. Revenues in the base year and future years must cover both direct and indirect costs. A county's share of costs for a realigned program or for services to a population that is a new county responsibility must not exceed the amount of realigned and federal revenue that it receives for the program or service. The state shall bear the financial responsibility for any costs in excess of realigned and federal revenues into the future. There must be a mechanism to protect against entitlement program costs consuming non-entitlement program funding.

The Human Services Funding Deficit is a result of the state funding its share of social services programs based on 2001 costs instead of the actual costs to counties to provide mandated services on behalf of the state. Realignment must recognize existing and potential future shortfalls in state responsibility that have resulted in an effective increase in the county share of program costs. In doing so, realignment must protect counties from de facto cost shifts from the state's failure to appropriately fund its share of programs.

2. **Revenue Source.** The designated revenue sources provided for program transfers must be levied statewide and allocated on the basis of programs and/or populations transferred; the designated revenue source(s) should not require a local vote. The state must not divert any federal revenue that it currently allocates to realigned programs.
3. **Transfer of Existing Realigned Programs to the State.** Any proposed swap of programs must be revenue neutral. If the state takes responsibility for a realigned program, the revenues transferred cannot be more than the counties received for that program or service in the last year for which the program was a county responsibility.
4. **Mandate Reimbursement.** Counties, the Administration, and the Legislature must work together to improve the process by which mandates are reviewed by the Legislature and its fiscal committees, claims made by local governments, and costs reimbursed by the State. Counties believe a more accurate and timely process is necessary for efficient provision of programs and services at the local level.
5. **Local Control and Flexibility.** For discretionary programs, counties must have the maximum flexibility to manage the realigned programs and to design services for new populations transferred to county responsibility within the revenue base made available, including flexibility to transfer funds between programs. For entitlement programs, counties must have maximum flexibility over the design of service delivery and administration, to the extent allowable under federal law. Again, there

must be a mechanism to protect against entitlement program costs consuming non-entitlement program funding.

6. **Federal Maintenance of Effort and Penalties.** Federal maintenance of effort requirements (the amount of funds the state puts up to receive federal funds, such as IV-E and TANF), as well as federal penalties and sanctions, must remain the responsibility of the state.

Senate Multi-Year Restructuring Proposal Programmatic Risk Assessment • July 28, 2010

The California State Association of Counties (CSAC) has undertaken a comprehensive review of the programs contemplated for restructuring under the Senate Democratic Multi-Year Restructuring Proposal. Following that analysis, we have grouped programs into three risk categories:

- *GREEN (low risk/high benefit) – a realignment in this area, if structured appropriately, appears to be doable;*
- *YELLOW (moderate risk/moderate benefit) – a realignment in this area would require additional negotiations, mitigation of risk, and/or clarification of unknowns; and*
- *RED (high risk/low benefit) – a realignment in this area does not seem feasible under any circumstances.*

We have attempted to describe briefly the risks and/or benefits that resulted in a specific program's assignment to a particular category. This classification is ongoing and subject to change as the restructuring proposal evolves. (The notation after each element cross-references the program to the appropriate component of the Multi-Year Government Restructuring Proposal, as outlined in the legend below.)

GREEN: Low Risk/High Benefit	
Maintain 0.15% VLF dedication to public safety (PS1)	<ul style="list-style-type: none"> ▪ Preserves important local public safety funding source into the future (now set to expire 6/30/2011) ▪ Offers potential for revenue growth
Shift Offender Treatment Program (OTP) to Counties (PS2)	<ul style="list-style-type: none"> ▪ Offers funding opportunity where none now exists ▪ Identifies stream that could contribute to counties' overall block grant to support AOD treatment to best meet local offenders' needs
Shift Substance Abuse and Crime Prevention Act (Prop 36) funding to counties (PS2)	<ul style="list-style-type: none"> ▪ Offers funding opportunity where none now exists ▪ Identifies stream that could contribute to counties' overall block grant to support AOD treatment to best meet local offenders' needs
Shift drug court program to counties (PS2)	<ul style="list-style-type: none"> ▪ Contributes additional funding stream that could contribute to counties' overall block grant to support AOD treatment to best meet local offenders' needs
Realign Various Aging Programs (PASA)	<ul style="list-style-type: none"> ▪ Route to preserve some supportive services to a growing aged population ▪ Funding would be flexible to meet local needs ▪ Funding and administration (i.e. through the county or via the existing Area Agencies on Aging) structure remains unclear

YELLOW: Moderate Risk/Moderate Benefit	
Funded Wobbler Shift (PS1)	<ul style="list-style-type: none"> ▪ Funding stream could bolster local detention/ treatment/placement options ▪ Approach could incentivize collaboration among local justice system partners to consider new, evidence-based approaches to managing offenders ▪ Could open door for downstream population shifts of state offenders

LEGEND –

PS1: Public safety/corrections (Part I, Sub-account #1); **PS2:** Public safety/alcohol and drug programs (Part I, Sub-account #2); **WW:** Welfare-to-Work (Part II); **PASA:** Protective and Aging Services for Adults (Part III)

YELLOW: Moderate Risk/Moderate Benefit	
Funded Wobbler Shift (PS1), <i>continued</i>	<ul style="list-style-type: none"> ▪ Questions about near- and long-term sufficiency of revenue ▪ Inability of county to control sentencing decisions ▪ Potential to undercut adult probation investments through SB 678 (Leno and Benoit, 2009) ▪ Depending on statutory construct, program could be outside Proposition 1A protections
Parole Realignment Pilot (PS1)	<ul style="list-style-type: none"> ▪ Gives counties ability to self-nominate ▪ Would allow counties' to gauge local ability to supervise parolees in community and demonstrate potentially better outcomes ▪ Would afford counties opportunity to offer input – based on pilot experiences – into future discussions of parole realignment ▪ Creates expectation that parole realignment could be scaled statewide, depending on outcomes ▪ Unclear whether probation departments are in a position to take on this responsibility ▪ May be difficult for any one county to manage both parole responsibility and wobbler shift ▪ Unclear if revenues address full range of county services contemplated: district attorney/public defender role? ▪ Unclear how court costs/workload would be covered ▪ Unknown interaction with SB 678 (Leno and Benoit, 2009) ▪ Uncertain if pilot project is an appropriate component of realignment construct
Shift Youthful Offender Block Grant to VLF (PS1)	<ul style="list-style-type: none"> ▪ Preserves important local public safety funding source into the future ▪ Offers potential for revenue growth not available under existing statutory construct ▪ Makes YOBG – otherwise unchanged within state General Fund since 2007 – subject to VLF fluctuations and competition with other programs
Realign Adult Protective Services Program (PASA)	<ul style="list-style-type: none"> ▪ Existing APS funding is vulnerable to cuts and/or elimination ▪ Potential for significant program growth due to aging population and rising awareness of elder abuse ▪ Consider a caseload-driven share of cost model rather than realign the entire program to counties at current funding levels?
Increase county share of CalWORKs grants from 2.5 to 25 percent (WW)	<ul style="list-style-type: none"> ▪ CalWORKs grant levels remain low in real dollars, but caseload may be driven by outside economic and legislative forces ▪ Straightforward change, easy for both the state and counties to implement ▪ Must be cognizant of future bumps and caseload increases and build in protections against large fluctuations

RED: High Risk/Low Benefit	
Shift Drug Medi-Cal to counties (PS2)	<ul style="list-style-type: none"> ▪ Significant exposure to caseload increases due to federal health care reform and federal parity legislation

LEGEND –

PS1: Public safety/corrections (Part I, Sub-account #1); **PS2:** Public safety/alcohol and drug programs (Part I, Sub-account #2); **WW:** Welfare-to-Work (Part II); **PASA:** Protective and Aging Services for Adults (Part III)

D. Risk/Low Benefit	
Shift Drug Medi-Cal to counties (PS2), <i>continued</i>	<ul style="list-style-type: none"> Assumption of significant new risk (where there now is none) at county level
Increase county share of CalWORKs services and administration to 25 percent (WW)	<ul style="list-style-type: none"> Potential for growth in employment services uptake and costs are large Funding is currently vulnerable to cuts and/or elimination Counties remain liable for federal penalties regardless of realignment Eligibility requirements are currently not consistent Flexibility at the county level for allocating funding must be preserved Strong bipartisan interest in getting people back to work
Increase county share of welfare automation to 25 percent (WW)	<ul style="list-style-type: none"> Challenge to create a share of cost mechanism that reflects technological needs Expenses are extremely variable across counties Solid consortia-based system already in place
Shift CalWORKs child care (stages I & II) costs to counties (WW)	<ul style="list-style-type: none"> Huge, costly, complicated and unwieldy program(s) with vociferous interest groups Short time frame insufficient for a program of this magnitude Streamlining stages I and II could create administrative efficiencies, but will also pit counties against the education community

LEGEND –

PS1: Public safety/corrections (Part I, Sub-account #1); **PS2:** Public safety/alcohol and drug programs (Part I, Sub-account #2); **WW:** Welfare-to-Work (Part II); **PASA:** Protective and Aging Services for Adults (Part III)

**Recommended Protections for Counties
Under a State-County Restructuring Proposal
July 28, 2010**

California counties have taken steps to identify “lessons learned” from the 1991 Realignment and discussed various concepts for needed protections for counties when contemplating any transfer of program responsibility with a dedicated revenue source, as outlined in the Senate Democrats’ 2010 Restructuring Proposal.

While we greatly appreciate the willingness of Senate President pro Tempore Darrell Steinberg and his colleagues for engaging us in this important discussion, we are mindful that state government is on the verge of a change in leadership. Because a new governor may not be as vested in the successful outcomes envisioned by the proposed restructuring, counties are especially concerned about being vulnerable to future legislative or administrative proposals that change the rules of the game before we even get started.

This memo is intended to outline protections that would provide counties with greater confidence that any agreement made in the context of the 2010-11 budget is reflective of a long-term commitment to ensure the viability of realigned programs, as well as the fiscal stability of counties to enable efficient and effective provision of services.

While we recognize the difficulty in discussing protections for counties, given the fiscal and structural environment we all find ourselves in, it is critical to recognize the joint nature of these efforts and the significant risks that counties would assume under such a restructuring.

LESSON: Revenues are not always adequate to meet program needs or requirements, i.e. new revenue failing to meet projected amounts or future changes by the Legislature, federal government, or courts on service provision.

RECOMMENDED PROTECTION MEASURE

In order to guarantee that counties are held harmless for future changes to realigned programs or revenue shortfalls or redirections, a constitutional amendment should impose an administrative duty on the State Controller to allocate funds to counties once a final court decision concludes that an unfunded mandate exists. This change would provide a practical and constitutionally-protected method of enforcing Proposition 1A protections.

Recognizing that a constitutional amendment may not be feasible, statute could be included to provide additional remedies that are not currently available, including:

- Provide statutory declaration that the program shift is a mandate as defined in Proposition 1A.
- Authorize a continuous appropriation in statute of revenues to fund the mandate.

- Afford counties a direct judicial remedy if funding is insufficient to support the mandate (eliminate requirement to go through Commission on State Mandates process).
- Relieve counties from the mandate or shift programs back to the state if the continuous appropriation is amended or repealed by future legislatures or determined by a court to be insufficient.
- Require counties to perform the services only “to the extent of available revenues” and require the state to meet the balance of the fiscal obligation.
- Require that the state be a necessary and indispensable party in any third party lawsuit challenging a county’s performance of a mandate, since a shortfall in necessary funding will be a significant part of any failure to perform, and the state is ultimately responsible for properly funding the program.

LESSON: The likely legal challenges to revenue and/or program components of a restructuring proposal give pause to counties’ willingness to assume new program responsibilities.

RECOMMENDED PROTECTION MEASURE

Counties do not wish to be obligated to perform services while a legal challenge remains unresolved. To that end, we suggest:

- The legislature create jurisdiction in the courts to hear a validation action testing the legality of the realignment proposal. The obligation of the counties to assume responsibility for the new mandates could be contingent on the outcome of a validation action.
- A contingency be included that shifts programs only to the extent identified funding sources are not enjoined/invalidated by a court.
- Language be included that vests original jurisdiction in the California Supreme Court for all issues related to realignment. This provision would significantly shorten the time in which a final decision is rendered on the validity of any challenged component of the proposal.
- The realignment proposal include what would essentially be a temporary restraining order, which would maintain the status quo pending the outcome of any legal challenges.

LESSON: The impacts of an economic downturn on revenue and caseload for government services are opposite – in a difficult economy, revenues cannot meet base realignment needs, much less caseload growth, as evidenced by the current realignment shortfall of nearly \$1 billion.

RECOMMENDED PROTECTION MEASURE

The Legislature could establish a realignment reserve account that captures revenues during good economic times, after appropriately funding base revenues and any caseload growth. The reserve would be allocated to counties in economic downturns, when revenues do not keep pace with service requirements or caseload growth. The legislature would be precluded from using these funds for any purpose other than funding realigned programs.

This proposed list of protections is not intended to be exhaustive, but rather reflects our initial thoughts as to the conditions under which a realignment of program responsibility and revenues could occur. We remain open to additional discussions and ideas about options to achieve appropriate protections for counties in any restructuring effort.



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August 24, 2010

To: CSAC Executive Committee

From: Mike McGowan, Supervisor, Yolo County & CSAC Second Vice President
DeAnn Baker, CSAC Senior Legislative Representative
Kiana Buss, CSAC Legislative Analyst

Re: **Advocacy Strategy for Congressional Conversations on *Carcieri***

Introduction

At the CSAC Executive Committee meeting on Thursday, August 19th, Supervisor McGowan provided an update regarding CSAC's efforts related to the *Carcieri* decision and more broadly, comprehensive fee-land into trust reform. A number of you indicated that you would like to reach out to your Congressional representatives to assist CSAC in opposing recent attempts to pass the *Carcieri* "quick fix" via the appropriations process. The following is a recap of the update Supervisor McGowan provided as well as requested next steps. Talking points may be found in Attachment Two to assist you in these efforts.

Status Report

- The *Carcieri* "quick fix" has been attached to the House Appropriations spending bill by the Interior Subcommittee with the full Appropriations Committee expected to vote on the measure when Congress returns from summer recess on September 13th.
- A "quick fix" amendment is also going to be proposed by Senator Dorgan in the Senate Appropriations Interior Subcommittee when Congress is back in session.
- CSAC and our other state partners are working with NACo to try to strip the *Carcieri* "quick fix" amendment from the spending bill – on both procedural and policy grounds.
- **We need to outreach to the California members who sit on the House Appropriations Committee to achieve this goal.**
- **THE CSAC MESSAGE IS TO OPPOSE THE *CARCIERI* "QUICK FIX" ATTACHED TO APPROPRIATIONS SPENDING BILLS FOR PROCEDURAL REASONS TO ALLOW A COMPREHENSIVE FEE-LAND INTO TRUST REFORM DISCUSSION TO ENSUE.**
- We are also seeking ways to gain support from Speaker Pelosi to oppose the "quick fix" as a rider to the Appropriations spending bill.
- Lastly, CSAC and our state partners are pursuing a strategy in the Senate, in particular with Senator Feinstein, to avoid attaching the "quick fix" to Senate Appropriations

spending bill. While Senator Feinstein appears to stand with us we need further support for her efforts.

Requested Next Steps

- If your House Representative sits on the House Appropriations Committee (list of California members - - Attachment One), call them with the message that the *Carcieri* “quick fix” amendment must be removed from the Appropriations spending bill.
- If your House Representative does not sit on the Appropriations Committee, call them with the message that they should encourage their colleagues on the Appropriations Committee to strip the amendment from the spending bill.
- If the amendment remains in the spending bill, we need our delegation members to oppose it on the House Floor.
- Regardless of whether your House representative sits on the Appropriations Committee or not, everyone should reach out to Senator Feinstein and thank her for her support and urge her to remain committed to stopping an amendment in the Senate Interior Subcommittee.
- Please follow up with CSAC staff to report the outcome of your efforts. It is critical for the coalition to know which members have been approached about the issue as well as their reaction to your request. DeAnn Baker can be reached at (916) 650-8104 (dbaker@counties.org) or Kiana Buss at (916) 650-8185 (kbuss@counties.org).

Attachments

In addition to the contact list for House Appropriation Committee members and talking points, we have attached a copy of letters CSAC has sent to both Senator Feinstein and the California House Delegation on removing the *Carcieri* “quick fix” from the spending measures, an editorial urging Senator Boxer and Pelosi to oppose policy amendments to spending bills, and a letter from Supervisor Diane Dillon, Napa County, to Speaker Pelosi urging her to oppose the “quick fix” as a part of spending measures.

ATTACHMENTS

Attachment One.....California House Delegation Appropriations
Committee Contact List

Attachment TwoTalking Points

Attachment Three.....CSAC Letters to Senator Feinstein & California
House Delegation Re: Removing Carcieri “Quick
Fix” from Appropriations

Attachment FourSacramento Bee Editorial

Attachment Five.....Supervisor Diane Dillon’s Letter to Speaker Pelosi

Appropriations Committee - California House Delegation
Contact List

Barbara Lee (D-9)

District Phone: (510) 763-0370

WDC Phone: (202) 225-2661

Mike Honda (D-15)

District Phone: (408) 558-8085

WDC Phone: (202) 225-2631

Sam Farr (D-17)

District Phone: Salinas (831) 424-2229; Santa Cruz (831) 429-1976

WDC Phone: (202) 225-2861

Adam Schiff (D-29)

District Phone: (626) 304-2727

WDC Phone: (202) 225-4176

Lucille Roybal-Allard (D-34)

District Phone: (213) 628-9230

WDC Phone: (202) 225-1766

Jerry Lewis (R-41)

District Phone: (909) 862-6030

WDC Phone: (202) 225-5861

Ken Calvert (R-44)

District Phone: Riverside (951) 784-4300; Las Flores (949) 888-8498

WDC Phone: (202) 225-1986



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CARCIERI TALKING POINTS - - August 24, 2010

Message to Members of the Appropriations Committee and CA Delegation:

- CSAC opposes using the appropriations process to subvert and avoid a full and meaningful policy debate around how to best address the *Carcieri* decision.
- The House Interior Appropriations Subcommittee adopted an amendment to its fiscal year 2011 spending measure that would provide the Secretary of Interior with authority to take fee-land into trust for Indian tribes regardless of whether they were under federal jurisdiction at the time of the passage of the Indian Reorganization Act of 1934.
- The amendment, which would overturn the Supreme Court's *Carcieri v. Salazar* decision, fails to address the legitimate and long-standing concerns of States and local governments regarding the systemic flaws in the current fee-land into trust process.
- Again, inclusion of the language as a policy rider to an appropriations bill would not allow for a full and open debate on the broader policy implications arising from the *Carcieri* decision.
- **CSAC REQUESTS THAT THE AMENDMENT BE STRIPPED FROM THE HOUSE APPROPRIATIONS SPENDING MEASURE AND THAT THE ISSUE BE GIVEN FULL CONSIDERATION VIA THE POLICY COMMITTEE PROCESS.**
- The *Carcieri* decision has provided a rare window of opportunity for Congress to address concerns related to the fee-land into trust process and California's counties urge that the full implications of the decision and all potential resolutions should be identified for consideration before legislative action is taken.

Further Background

- The recent Supreme Court Decision in *Carcieri v. Salazar* recognized BIA has exceeded authority in process where tribes take fee-land into trust for tribal commercial and other purposes.
- Lack of sufficient congressional direction has led the Government Accounting Office as well as CSAC to criticize both process and substance of fee-land into trust regulations.
- We need a new paradigm that recognizes that local government is a legitimate stakeholder in these decisions and that both tribes and counties benefit when their mutual interests are accommodated.
- It is the local community and government that Tribes will be working with to help insure commercial development projects are a success and receive the services they need.
- CSAC/NACo support a process that includes adequate notice to respond to proposals, clear guidelines and standards for fairly considering fee-land into trust applications, and clear standards requiring off-reservation project impacts to be mitigated and favorably recognizes tribes that are able to work with counties to negotiate mitigation agreements.



August 16, 2010

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Dear Members of the California Congressional Delegation:

As you may know, the Interior Appropriations Subcommittee adopted an amendment to its fiscal year 2011 spending measure that would provide the Secretary of Interior with authority to take land into trust for Indian tribes regardless of whether they were under federal jurisdiction at the time of the passage of the Indian Reorganization Act of 1934. On behalf of the California State Association of Counties (CSAC), I am writing to you in opposition to this provision.

The amendment, which would overturn the Supreme Court's *Carcieri v. Salazar* decision, fails to address the legitimate and long-standing concerns of States and local governments regarding the systemic flaws in the current fee-to-trust process. Additionally, inclusion of the language as a policy rider to an appropriations bill would not allow for a full and open debate on the broader policy implications arising from the *Carcieri* decision.

In the wake of the Supreme Court's recent action, CSAC believes that Congress has a rare opportunity to thoughtfully reexamine the fee-to-trust process to ensure that program deficiencies – as well as the needs of tribes and local governments – are addressed. While the amendment would level the playing field for tribes seeking to have land taken into trust, it would not address the type of reforms that we believe are long overdue.

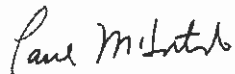
The current fee-to-trust process has a number of programmatic defects, including a lack of clearly defined standards for trust land acquisitions. In addition, there are insufficient notification requirements, meaning local governments are often forced to resort to Freedom of Information Act requests to determine if petitions for Indian land determinations have been filed in their jurisdictions. Accordingly, legislative and regulatory changes need to be made to ensure that affected governments receive timely notice of fee-to-trust applications for tribal development projects and have adequate opportunity to provide meaningful input. CSAC also believes that intergovernmental agreements should be required between tribes and local governments to require mitigation for adverse impacts of development projects, including environmental and economic impacts from the transfer of the land into trust.

As an alternative to advancing a *Carcieri* quick "fix," we urge Congress to adopt the enclosed Study Amendment, which would direct the Department of Interior to examine the effects of the *Carcieri v. Salazar* decision. The results of the study would provide Department officials and Members of Congress with a better understanding of whether or not a legislative fix is appropriate. Moreover, while the study is being performed,

stakeholders would be provided with sufficient opportunity to work with lawmakers to develop comprehensive legislation aimed at providing meaningful trust land reform.

Thank you for your consideration of this request. Should you have any questions regarding our position or need any additional information, please contact Joe Krahn, CSAC Federal Representative, Waterman and Associates at (202) 898-1444, or DeAnn Baker, CSAC Legislative Representative, at (916) 327-7500 ext. 509.

Sincerely,

A handwritten signature in black ink that reads "Paul McIntosh". The signature is written in a cursive, slightly slanted style.

Paul McIntosh
Executive Director
California State Association of Counties

Enclosure



July 30, 2010

1100 K Street
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The Honorable Dianne Feinstein
Chairwoman
Subcommittee on Interior, Environment, and Related Agencies
Committee on Appropriations
Washington, DC 20510

Dear Chairwoman Feinstein:

It is my understanding that Senator Byron Dorgan (D-ND) may be offering an amendment to the Fiscal Year 2011 Interior Appropriations bill that would provide the Secretary of Interior with authority to take land into trust for Indian tribes regardless of whether they were under federal jurisdiction at the time of the passage of the Indian Reorganization Act of 1934. On behalf of the California State Association of Counties (CSAC), I am writing to urge you to oppose this effort.

The Dorgan amendment, which would overturn the Supreme Court's *Carcieri v. Salazar* decision, fails to address the legitimate and long-standing concerns of States and local governments regarding the systemic flaws in the current fee-to-trust process. Additionally, the amendment, which would be considered as a policy rider to an appropriations bill, would not allow for a full and open debate on the broader policy implications arising from the *Carcieri* decision.

In the wake of the Supreme Court's recent action, CSAC believes that Congress has a rare opportunity to thoughtfully reexamine the fee-to-trust process to ensure that program deficiencies – as well as the needs of tribes and local governments – are addressed. While the Dorgan amendment would level the playing field for tribes seeking to have land taken into trust, it would not address the type of reforms that we believe are long overdue.

As you know, the current fee-to-trust process has a number of programmatic defects, including a lack of clearly defined standards for trust land acquisitions. In addition, there are insufficient notification requirements, meaning local governments are often forced to resort to Freedom of Information Act requests to determine if petitions for Indian land determinations have been filed in their jurisdictions. Accordingly, legislative and regulatory changes need to be made to ensure that affected governments receive timely notice of fee-to-trust applications for tribal development projects and have adequate opportunity to provide meaningful input. CSAC also believes that intergovernmental agreements should be required between tribes and local governments to require mitigation for adverse impacts of development projects, including environmental and economic impacts from the transfer of the land into trust.

As an alternative to advancing the Dorgan amendment, we urge Congress to adopt the enclosed Study Amendment, which would direct the Department of Interior to examine the effects of the *Carcieri v. Salazar* decision. The results of the study would provide Department officials and Members of Congress with a better understanding of whether or not a legislative fix is appropriate. Moreover, while the study is being performed, stakeholders would be provided with sufficient opportunity to work with lawmakers to develop comprehensive legislation aimed at providing meaningful trust land reform.

Thank you for your continued support of California's counties and for your consideration of this request. Should you have any questions regarding our position or need any additional information, please contact Joe Krahn, CSAC Federal Representative, Waterman and Associates at (202) 898-1444, or DeAnn Baker, CSAC Legislative Representative at (916) 327-7500 ext. 509.

Sincerely,

A handwritten signature in black ink that reads "Mike McGowan". The signature is written in a cursive, flowing style.

Mike McGowan
Second Vice-President, California State Association of Counties
Supervisor, Yolo County, California
Vice-Chair, National Association of Counties' County & Tribal Government Relationships Subcommittee

Enclosure

THE SACRAMENTO BEE SACRAMENTO, CALIF.

Editorial: Feinstein and Pelosi must nix power play

Published Monday, Aug. 16, 2010

Congress has a sordid history of quietly slipping riders into appropriations bills that have serious implications, and it appears to be on the verge of a doozy that would have direct implications for California.

At the behest of Indian tribes and their lobbyists, some members of Congress are seeking a "fix" to a 2009 U.S. Supreme Court decision that cast doubt on the federal government's authority to permit some bands of Indians to create new reservation land.

In Rhode Island Gov. Donald Carcieri v. Interior Secretary Kenneth Salazar, the court held that the Interior Department can take land into trust on behalf of tribes only if those tribes were under federal jurisdiction as of 1934 when Congress passed the Indian Reorganization Act.

California is home to 109 tribes, far more than any other state. Some were organized after 1934. Newly reconstituted bands are seeking formal recognition from the U.S. Interior Department. Once recognized, tribes will seek reservation land where none currently exists. In California, that means new casinos.

California voters have spoken repeatedly that tribes have a right to own casinos. California is well on its way to becoming the biggest gambling state in the union.

That makes it even more vital that Congress, working with tribes and state and local officials, hold open hearings on the issue – and not pass a rider that by its nature is hidden from public view.

The California State Association of Counties has raised serious questions. We agree with the counties: There must be clearly defined public standards for deciding where land can be acquired.

The federal government needs to provide basic information about pending decisions and seriously consider the public's legitimate concerns. Importantly, the Interior Department should not be able to hide behind immunity against lawsuits when it makes bad decisions.

California is well-represented on Capitol Hill. Speaker Nancy Pelosi needs to block the rider pending in the Interior appropriations bill. Sen. Dianne Feinstein and Sen. Barbara Boxer need to intervene, too, and stand up for full public vetting of the issue.

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Diane Dillon
Chair

August 23, 2010

Hand Delivered

Speaker Nancy Pelosi
United States House of Representatives
235 Cannon House Office Building
Washington, D.C. 20515-0508

Dear Speaker Pelosi,

I enjoyed seeing you on Sunday at Mike Thompson's event and appreciated the opportunity to briefly discuss county government opposition to the *Carcieri* policy issue being moved through the appropriations process. As I mentioned, the "*Carcieri* fix" was recently attached as a rider to the House Interior Department Appropriations bill by Congressman Cole. I understand a similar attempt to attach this important policy matter as an amendment to the Senate Interior funding bill will be made after the recess by Senator Dorgan. *The appropriations process should not be subverted by attaching this critical policy matter to a funding bill to avoid scrutiny and full policy discussion.*

The California Association of Counties ("CSAC"), the National Association of Counties ("NACo") and our local Northern California Tribal Matters Consortium (Sonoma, Napa, and Solano Counties) all are on record as strongly opposing the "quick fix" to overturn the Supreme Court's decision, which "fix" would leave the fee to trust process fundamentally broken. The message carried to Congress by the NACo resolution opposing the *Carcieri* "quick fix" – unanimously adopted by representatives of counties coast to coast – is that the current trust system is broken and should not be extended but fundamentally reformed, and that reform must meaningfully address impact to local governments and communities. Local governments are interested in working with tribes to address their concerns (although the BIA has refused to provide information regarding how many tribes are actually adversely affected by the *Carcieri* decision) while also ensuring that basic reforms such as appropriate notice and clear standards are made to the trust process. We believe such changes will ultimately benefit both tribes and local government. *These improvements and important discussions will never take place if the matter is simply embedded as a sentence in the appropriations bill.*

Brad Wagenknecht
District 1

Mark Luce
District 2

Diane Dillon
District 3

Bill Dodd
District 4

Keith Caldwell
District 5

Speaker Nancy Pelosi
August 23, 2010
Page 2

The "*Carcieri* quick fix" does not repair the broken fee to trust system, which is one reason it has not moved forward as a policy matter. The problem should not be ignored by improperly attaching this important issue to an appropriations bill. The counties stand ready to work in good faith on this issue and I would be happy to discuss the matter further with you or your staff.

Thank you again for your interest on this important issue and for maintaining an appropriate appropriations process.

Very truly yours,

A handwritten signature in cursive script, reading "Diane Dillon".

Diane Dillon
Chair of the Napa County Board of Supervisors

cc: Members of the California Delegation, United States House of Representatives
The Honorable Dianne Feinstein, United States Senate

CSAC Institute Quarterly Report for the CSAC Board

24 August 2010-08-24

Spring and summer have been busy for the CSAC Institute with ten courses offered in May through August and 306 participants. Among the most popular was the two-day "Realignment 101" offered following the CSAC Legislative Conference. 76 county elected and appointed officials attended that class alone. It was rated very highly in the evaluations following the class. Participants rated the relevancy of course content at 5.7 (on a 6-point scale), course instructors 5.4, and overall value of the course 5.4.

Average attendance for the August courses jumped from the typical 22 to 30 participants. There continues to be a mix of elected officials and senior executives. We were pleased to see a number of supervisor-elects participating in courses in July and August.

Other popular courses offered during the summer included Financing California Counties with Diane Cummins (held for the fourth time and still the course fills), Retirement and Other Post Employment Benefits, and Understanding County Social Services. All were timely classes.

This summer the Institute was fully accredited by the California Bar to provide MCLE credits required for attorneys to maintain their licenses. The approval is for three years. Already the Institute has offered five courses with MCLE credits, which are of value to county counsel, but also to other elected and appointed officials who are licensed by the Bar.

A number of Institute participants are expected to complete their credential requirements by the Annual Meeting in November. We hope to present another six to twelve credentials this fall.

The Institute staff is working on enhancing the quality and content of the New Supervisor's Institute this fall; several Credentialed Supervisors have agreed to serve on the faculty. Work is also progressing on the new Institute Fellows which will be launched in January, 2011 as a continuing education opportunity for credentialed supervisors and executives. The Winter/Spring schedule of nearly 20 courses will be released at the Annual Meeting in Riverside.

Upcoming Institute Courses

September

- 16 (Th) Building and Maintaining a Team Culture
- 17 (F) Legislative Policy and the Legislative Process
- 24 (F) The Art and Practice of Organizational Leadership

October

- 1 (F) Shaping the Landscape: Land Use, Transportation and Environmental Stewardship
- 14 (Th) Coping with Ambiguity: Leadership for Challenging Times
- 29 (F) Process Improvement

November

At the CSAC Annual Meeting in Riverside

- 15 (M-T) New Supervisors Institute
- 18 (Th) Interpersonal Effectiveness
- 19 (F) Thinking Strategically in Trying Times: New Ways to Think and Work through Enduring Problems

December

- 9 (Th) County Finances: It's A Whole New World



INSTITUTE FOR LOCAL GOVERNMENT

Update on Activities

September 2010

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Dan Harrison, Alternate

Jerry Patterson
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Nevada County

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California Resources Agency

Gordon Paul Smith
Former Director of State Finance
State of California

The Institute's Board of Directors and staff are very grateful for CSAC's continuing support for the Institute's efforts in service to local officials. The Institute is also mindful of the need to show tangible results for that support.

Thus, for the Institute's quarterly updates to the CSAC Board, our goal is to tie our reports to the following performance indicators of: 1) resources published and disseminated, 2) workshops and conference sessions produced, 3) website usage, 4) specific contributions to CSAC activities, and 5) fundraising. We also have a goal of promoting local control by communicating to the state the various good things local agencies are accomplishing in the Institute's program areas.

Resources Released Since Last Board Meeting

- **Health and the Built Environment.** *Understanding the Basics of Land Use and Planning: Guide to Planning Healthy Neighborhoods* (www.ca-ilg.org/HNguide) has been published and posted. A copy of the publication is being mailed to each county planning director and to each agency's planning commission chairperson. Development of the guide was supported by the grant from The California Endowment. Copies will be available at the board meeting.
- **Children's Health Insurance for Working Families.** A printed version of the Insure Kids Online Resource Center will be available in early September. It is designed for local officials (and others) who may not want to explore the Online Resource Center, but are nevertheless interested in how their agency might connect families with affordable health insurance for their children. The publication, "*Helping Families Find Affordable Children's Health Insurance: A Local Official's Guide*", will drive readers to the ILG website for additional resources.
- **Public Engagement.** *A Local Official's Guide to Public Engagement in Budgeting* has been published and disseminated to county administrators and finance directors. The *Working Effectively with Clergy and Congregations* guide is in final production at the printer and should be available at the board meeting.



Promoting Good Government at the Local Level

- **Ethics.** The Institute's guide to understanding the limitations on public agency activities on ballot measure activities was posted to the website and publicized in CSAC's weekly e-bulletin. www.ca-ilg.org/ballotmeasurelegalissues

Workshops and Conference Sessions

- The Institute organized the June 17th CSAC Institute course on public engagement. Five county officials and three consultants served as faculty for the session, as did Institute staff.

The entire session was well-received. On scale of one to six (with one being low and six being high), the overall session received positive feedback from the county officials in attendance:



a

- Class organization	5.3
- Relevancy of course content	5.2
- Overall value of course	5.1

- **Planning Webinar.** On July 7th, the Institute offered a webinar on "Making Sure Your Community Has a Voice in Your Region's Plan for Growth". This was part of the Institute's contract with UC Davis/CalTrans. The webinar attracted 75 participants and included a strong cross-section of both city and county staff from throughout the state, including a number of county planning and community development directors, as well as participants from several rural counties. The webinar has been posted on the land use program web pages (<http://www.ca-ilg.org/CommunityVoiceInRegionalPlanningWebinar>). The average rating for the usefulness of the webinar from the surveys returned by participants was 3.05 on a 5-point scale. Interestingly, the higher ratings were given by staff from smaller cities and counties with less experience in regional visioning who found the information useful. Based on participant feedback, we are considering ways to speed up the pace, quality of the graphic presentation and interactivity of the webinar platform.
- **Commercial Recycling Webinar.** On June 30, the Institute offered the first in a series of three webinars to help cities and counties expand recycling by the business community. The first webinar, "Adopting a Commercial Recycling Ordinance - How to Get Started", was well attended and presented as part of the Institute's contract with CalRecycle (the former California Integrated Waste Management Board). The second webinar, focusing on education activities to increase commercial recycling, is scheduled for October 6.

- **AB 32 and SB 375 Webinar.** On September 8, the Institute hosted a webinar to on how AB 32 and SB 375 impact cities and counties, as well as the role that local officials play in the implementation of both laws. The Institute also is releasing two new guides on this topic in September.

Website Content and Usage

- **County Website Usage in Last Quarter.** The Institute had 13,570 visits and 52,446 page views this past quarter. Visitors from California counties come from the following counties in order of top visits: San Francisco, Sacramento, Los Angeles, Santa Clara, San Diego, Alameda, Fresno, and Santa Barbara. Google continues to be the top traffic source and CSAC is still in the top ten with 150 referrals to ILG's website this past quarter.
- **Greening Fleets.** The "Greening Fleets" webpage (www.ca-ilg.org/greeningfleets) is up on the Institute's website. The site includes stories about counties and cities that are using fuel efficient and alternative fuel vehicles, information about technical and financial resources for local officials evaluating options, a discussion of key issues raised by local officials, and information about purchasing fuel efficient and alternative fuel vehicles through the Department of General Services bulk purchasing program. The project is funded by AAA Northern California, Nevada and Utah.
- **Beacon Award.** The Beacon Award page (www.ca-ilg.org/BeaconAward) on the website has been revamped to support the official roll-out of the Beacon Award at the end of July. It includes a description of the Beacon Award, Frequently Asked Questions, an application to participate, a sample agency resolution, and Guidelines for Participation and Recognition.



Local Leadership Toward
Solving Climate Change

Other Contributions to CSAC Activities

- Institute staff made a successful presentation on public engagement at the CSAC Administration of Justice policy committee on June 2nd. There are also discussions underway to identify ways to provide additional public engagement resources to local officials confronting corrections and reentry-related controversies

Fundraising

The Institute recently received three grants.

- \$75,000 grant was received from the Rosenberg Foundation to do work with county staff to explore the application of public engagement to issues relating to corrections and prisoner re-entry.
- \$10,000 grant from the Four Freedoms Fund to support two local planning efforts to develop multi-sector partnerships to support immigrant integration.
- \$20,000 grant from the Silicon Valley Foundation to do work with local agencies in San Mateo County and Santa Clara counties relating to immigrant communities.

With financial and in-kind support from the law firm of Best, Best and Krieger, the Institute will prepare a short guide to help local officials understand the newly revised CEQA guidelines relating to consideration of greenhouse gas emissions. The goal is to have the guide completed by the end of 2010 or early 2011.

INSTITUTE PROJECT STAFF CONTACT INFORMATION WE WELCOME YOUR THOUGHTS

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Terry Amsler, Director, Public Engagement • 916.658.8263 • tamsler@ca-ilg.org

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Steve Sanders, Director, Land Use and Healthy Neighborhoods • 916.658.8245 • ssanders@ca-ilg.org

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Office Address: 1400 K Street, Suite 205, Sacramento, CA 95814



CALIFORNIA STATE ASSOCIATION OF COUNTIES FINANCE CORPORATION

August 24, 2010

To: CSAC Board of Directors

From: Tom Sweet, Executive Director, CSAC Finance Corporation

RE: Finance Corporation Program Update
INFORMATION ITEM

The following are highlights of the numerous programs that the CSAC Finance Corporation offers to your counties:

CalTRUST

- CalTRUST currently has over 90 participants and current assets exceed \$1 Billion.
- The CalTRUST website, www.caltrust.org, has been updated and relaunched with a fresh look.
- A meeting was held at the NACo Annual Conference with representatives of about a dozen other states who are interested in replicating what we have done in California with the CalTRUST program.
- The CalTRUST Board of Trustees will be meeting in La Jolla on September 15, 2010.

California Communities

- The 2010 Tax and Revenue Anticipation Notes (TRANs) and Cash Flow Financing program has successfully completed TRANs placements for 9 local agencies, totaling approximately \$103 million. Participating counties included Butte, Glenn, Mendocino, and Yolo. An additional TRANs financing of \$40 million for Monterey County has also closed successfully.
- The Statewide Community Infrastructure Program (SCIP) just completed its first transaction of 2010 with \$6,180,000 in revenue bonds for projects within Placer, Sacramento, Solano, Stanislaus, and Yolo counties.
- The CaliforniaFIRST AB 811 financing program continues to be on hold as Freddie/Fannie have protested the priority lien status of the CaliforniaFIRST assessments.

U.S. Communities

- U.S. Communities Q2 2010 numbers are now available. California County sales were up over the previous quarter by approximately 32% and total California sales were up by over 24% over the previous quarter.

Nationwide Retirement Solutions

- Marie Pe, Chief Deputy Tax Collector, San Diego County, was appointed as Vice Chair of the NACo Deferred Compensation Advisory Committee. Maria also serves on the CSAC Deferred Compensation Advisory Committee.

General Information

- The CSAC Finance Corporation Board of Directors will be meeting in La Jolla on September 16-17, 2010. A copy of the Board agenda is attached.
- 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.

If you have any questions regarding these or any other CSAC Finance Corporation programs please do not hesitate to contact us via phone, 916.327.7500 x556, or via email, tsweet@counties.org; Laura Labanieh at 916.327.7500 x536 or llabanieh@counties.org.



CALIFORNIA STATE ASSOCIATION OF COUNTIES FINANCE CORPORATION

NOTICE OF REGULAR MEETING AND AGENDA

NOTICE

Notice is hereby given that a regular meeting of the Board of Directors of the CSAC Finance Corporation will be held on September 16-17, 2010 at 8:00 a.m., at La Valencia Hotel, 1132 Prospect Street, La Jolla, CA 92037.

Public Comment – In accordance with Government Code Section 54954.3, any member of the public may address the Board concerning any matter on the agenda before the Board acts on it and on any other matter during the public comment period at the conclusion of the agenda.

AGENDA

Thursday, September 16
8:00 a.m.

PROCEDURAL ITEMS

1. Roll Call
 - _____ Tom Ford, *President*
 - _____ Greg Cox, *Vice President*
 - _____ Les Brown, *Treasurer*
 - _____ Henry Gardner
 - _____ Joni Gray
 - _____ Michael D. Johnson
 - _____ Paul McIntosh
 - _____ Pat O'Connell
 - _____ Mark Saladino
 - _____ Larry Spikes

 - _____ Tom Sweet, *Executive Director*
 - _____ Richard E. Winnie, *Legal Counsel*

2. Welcome and Introductions
Tom Ford, President

..... Tab 1

ACTION ITEMS

3. Approval of the Minutes of the Annual Board Meeting of April 15-16, 2010
Tom Ford, President

..... Tab 2

INFORMATION ITEMS

4. Executive Director Remarks
Tom Sweet

a. Board Retreat

5. CalTRUST Update
Chuck Lomeli

a. CalTRUST Program Update *Chuck Lomeli & Representatives from Wells Capital Management*

b. Special Presentation by Nottingham Investment Administration *Jason Edwards, Nottingham Investment Administration*

..... Tab

6. California Communities / U.S. Communities Update
James Hamill, Cathy Bando & Bryan Shurney
..... Tab
7. NACo FSC Update
Nancy Parrish
..... Tab
8. NRS Update
Rob Bilo
..... Tab

PUBLIC COMMENT

Any member of the public may address the Board concerning any matter not on the Agenda within the Board's jurisdiction.

RECESS UNTIL SEPTEMBER 17, 2010

Friday, September 17

8:00 a.m.

Roll Call

_____ Tom Ford, *President*
 _____ Greg Cox, *Vice President*
 _____ Les Brown, *Treasurer*
 _____ Henry Gardner
 _____ Joni Gray
 _____ Michael D. Johnson
 _____ Paul McIntosh
 _____ Pat O'Connell
 _____ Mark Saladino
 _____ Larry Spikes

 _____ Tom Sweet, *Executive Director*
 _____ Richard E. Winnie, *Legal Counsel*

ACTION ITEMS

9. Appoint Secretary to the CSAC Finance Corporation Board of Directors
Tom Ford
10. CSAC Finance Corporation Financial Update
 - a. Budget Update for FY 2009-10
Les Brown and Kelli Osborne
 - b. Accept Audited Financial Statements for FY 2009-10
Pat O'Connell and Kelli Osborne
..... Tab
11. Information Only: Update of 2010-11 Annual Plan Goals and Objectives
Laura Labanieh
..... Tab
12. Information Only: Location and Dates for Future Meetings
Laura Labanieh
 - 2011 Annual Meeting - April 28-29 @ La Playa Hotel, Carmel, CA
 - 2011 Fall Meeting - September 15-16 @ La Valencia Hotel, La Jolla, CA
 - 2012 Annual Meeting – April 26-27 @ InterContinental Hotel, Monterey, CA

13. Resolution thanking Tom Ford for his service to the Board
Greg Cox

14. Other Business
All

PUBLIC COMMENT

Any member of the public may address the Board concerning any matter not on the Agenda within the Board's jurisdiction.

ADJOURN

A person with a qualifying disability under the Americans with Disabilities Act of 1990 may request the Agency provide a disability-related modification or accommodation in order to participate in any public meeting of the Agency. Such assistance includes appropriate alternative formats for the agendas and agenda packets used for any public meetings of the Agency. Requests for such assistance and for agendas and agenda packets shall be made in person, by telephone, facsimile, or written correspondence to the Agency office, at least 48 hours before a public Agency meeting.



County Counsels' Association of California

BOARD OF DIRECTORS

MEMORANDUM

Officers
President
Marshall Rudolph
Mono County

Vice-President
Patrick K. Faulkner
Marin County

Secretary-Treasurer
Richard E. Winnie
Alameda County

Immediate Past President
Vacant

Historian (Nonvoting)
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Sonoma County

Directors
Jeanine B. Nadel
Mendocino County
2008-2010

Michael L. Rood
Imperial County
2008-2010

James N. Fincher
Merced County
2009-2011

Warren R. Jensen
San Luis Obispo
2009-2011

EXECUTIVE DIRECTOR
Jennifer B. Henning

**To: Supervisor Tony Oliveira, President, and
Members of the CSAC Board of Directors**

From: Jennifer Henning, Litigation Coordinator

Date: September 9, 2010

Re: Litigation Coordination Program Update

This memorandum will provide you with information on the Litigation Coordination Program's activities since your last meeting in June. If you have questions about any of these cases, please do not hesitate to contact me.

I. New Amicus Case Activity Since June, 2010

City of Alhambra v. County of Los Angeles

186 Cal.App.4th 537 (2d Dist. July 7, 2010)(B218347), *petition for review pending* (filed Aug. 16, 2010)(S185457)

Your Board is familiar with this dispute between cities and counties over the property tax administration fee (PTAF). As you know, a number of cities filed an action against LA County challenging the method used by the county (the County Auditors Association's SB 1096 Guidelines) to calculate the PTAF charged to cities. The trial court found in favor of the county, but the Second District reversed, concluding that the statute is clear on its face and concerns only marginal costs. As such, the County's method of calculating its fee was declared unlawful. The County is seeking Supreme Court review, and CSAC will file a letter in support.

Altman v. City of Agoura Hills

Unpublished Decision of the Second Appellate District, 2010
Cal.App.Unpub.LEXIS 5402 (2d Dist. July 9, 2010)(B220008), *petition for rehearing denied* (July 26, 2010)

This case involves a challenge to the city's environmental impact report (EIR) for a specific plan project. The trial court found three areas of the EIR inadequate, and set aside approval of the EIR and specific plan until the EIR was corrected. But the court found that the remaining portions of the EIR were adequate. The city revised the defective parts of the EIR, circulated the revisions for public comment, and ultimately certified the revised EIR and re-adopted the specific plan. Petitioner then challenged several of the unrevised parts of the EIR. The trial court found that this second challenge was time-barred because it was

not brought within the statute of limitations for challenging the original EIR. The Second District affirmed in an unpublished opinion, concluding that the notice of determination as to the revised EIR did not trigger a new limitations period except as to the revised sections of the document. CSAC requested that the decision be published, but the request was denied.

Barragan v. County of Los Angeles

184 Cal.App.4th 1373 (2d Dist. May 25, 2010)(B217398), *petition for review denied* (Aug. 11, 2010)(S184178)

This case involves the issue of when a person can be excused from filing a tort claim against the county within the statutory time period. Relevant law permits the time to be extended where a claimant is incapacitated. Until this case, however, case law had established that disability would not excuse failure to comply with the limitations period under the theory that an injured party, even if not able to personally file a claim, can still authorize another party to pursue a claim on his or her behalf. But the Second Appellate District has now decided that such case law did not create an absolute rule. Instead, the court found that a claimant can be excused from the limitations period with evidence of a physical and/or mental disability that so limited the claimant's function that a reasonable person under similar circumstances would not have sought out counsel to pursue a claim. CSAC supported the counties petition for review, but review was denied.

Coito v. Superior Court (State of California)

Previously published at: 182 Cal.App.4th 758 (5th Dist. Mar. 4, 2010)(F057690), *petition for review granted* (June 9, 2010)(S181712)

In this case, the Fifth District concluded that when an attorney or the attorney's investigator takes a witness statement during the course of an investigation, the resulting document or recording is not entitled to the protection of the California work-product privilege. A dissenting opinion found witness statements should not be discoverable, and urged the Supreme Court to take up the issue. The California Supreme Court has now done so. CSAC will file a brief urging the Court to reverse.

County of Sonoma v. Superior Court (Marvin's Gardens Cooperative, Inc.)

Pending in the First District Court of Appeal (filed June 9, 2010)(A128734)

The Sonoma County Superior Court has invalidated Sonoma County's marijuana dispensary ordinance on equal protection grounds, and issued a permanent injunction against its enforcement. The ordinance permitted medical marijuana dispensaries to operate within the unincorporated areas of the county if located within certain zoning areas (not near schools, parks, etc.) and with a use permit, which requires such elements as operation specifications and security. The county issued a stop order against Marvin's Gardens, which was operating without a use permit. On appeal, the trial court concluded in relevant part: (1) Marvin's Gardens was not precluded by the 90-day statute of limitations from raising a facial challenge against the ordinance because it would be unfair to owners who first experience the impact of the ordinance after the 90-day period; and (2) the county failed to show it had a rational or legitimate interest in enacting the ordinance. The

appellate court issued a temporary stay of the trial court's injunction, and the case is pending on appeal. CSAC has filed a brief in support of the county.

Dillingham-Ray-Wilson v. City of Los Angeles

182 Cal.App.4th 1396 (2d Dist. Mar. 18, 2010)(B192900), *petition for review denied* (June 30, 2010)(S182187)

In this public contract dispute, the city argued it was only required to pay damages that could be proved under Public Contracts Code section 7107 and *Amelco Electric v. City of Thousand Oaks* (2002) 27 Cal.4th 228, but that engineering estimates were not sufficient to estimate costs. The Second District disagreed, holding that plaintiffs could employ a "total cost recovery" method of proving damages if the contract did not require plaintiffs to document its costs and if plaintiffs could satisfy the criteria for establishing a prima facie case for using such a method. As a result, plaintiffs may be able to rely on engineering estimates to prove their damages even though they failed to document their actual costs and may be able to recover more than the original agreed-upon contract amount pursuant to competitive bidding statutes. CSAC supported the city's petition for review, but review was denied.

Harris v. City of Santa Monica

Previously published at: 181 Cal.App.4th 1094 (2d Dist. Feb. 4, 2010)(B199571), *petition for review granted* (Apr. 22, 2010)(S181004)

A city bus driver was terminated during her probationary period based on several incidents of misconduct, but also shortly after she disclosed to her employer that she was pregnant. She sued the city for pregnancy discrimination. At trial, the city sought jury instructions on the mixed-motive affirmative defense. The trial court refused, and instead instructed the jury that the city was liable for discrimination if plaintiff's pregnancy was a motivating factor for the discharge even if other factors may have also contributed to the decision. The jury returned a verdict for plaintiff. The Second District reversed, finding that the court's failure to instruct the jury on the mixed-motive affirmative defense deprived the city of a legitimate defense. The Supreme Court has granted review. CSAC will file a brief in support of the city.

Howard v. County of San Diego

184 Cal.App.4th 1422 (4th Dist. Div. 1 Apr. 29, 2010)(D055419), *request to depublish denied* (Aug. 11, 2010)(S184016)

The county issued a permit for plaintiff's proposed barn with the standard condition that nothing be constructed within 60 feet of a road footprint located on the property. Plaintiffs decided not to seek a General Plan Amendment to have the road footprint removed from the property, and instead brought this inverse condemnation action. The trial court dismissed the lawsuit, but the Fourth District reversed, concluding there was an open question as to whether "the County's decision was 'final' and whether any further attempt by plaintiffs to exhaust their administrative remedies would be futile. We further conclude that if what plaintiffs seek to accomplish regarding development of their property can only be remedied through a general plan amendment, they have adequately exhausted

their administrative remedies because a general plan amendment is a legislative, not administrative, process.” CSAC joined the county’s request to depublish the case, but the request was denied.

In re Jairo V.

Order of the First Appellate District (July 8, 2010)(A128425)

A 17 year old is a dependent of the juvenile court. He has been AWOL from his foster home since November 2008. He was arrested in April 2010 on a drug offense. Upon discovery that he is in the country illegally, Immigration and Customs Enforcement (ICE) took him into custody and placed an immigration hold on him. The San Francisco Human Services Agency then filed a motion with the juvenile court asking it to dismiss the dependency case because the minor no longer met the statutory requirements for dependency. The court has yet to rule on that motion, but in the meantime it ordered the Agency to take custody of the minor from ICE in order to forestall the immigration proceedings. CSAC supported the Agency’s request for an emergency writ from the Court of Appeal, which was granted.

In re W.B.

Previously published at: 182 Cal.App.4th 126 (4th Dist. Div. 2 Jan. 25, 2010)(E047368), *petition for review granted* (May 12, 2010)(S181638)

The minor in this case is the subject of several non-status criminal delinquency petitions (Welf. & Instit. Code, § 602). Ultimately, the court issued an order removing him from his mother’s custody and placing him in a foster home. The minor appealed, arguing the court failed to comply with the notice provisions of the Indian Child Welfare Act (ICWA). The appellate court disagreed, concluding that ICWA specifically excludes delinquency proceedings from the application of the Act. In so ruling, the court rejected minor’s argument that state law that provides a higher standard of protection that should be interpreted to expand ICWA protections. The California Supreme Court has granted review. CSAC will file a brief urging the Court to affirm.

Save the Plastic Bag Coalition v. City of Manhattan Beach

Previously published at: 181 Cal.App.4th 521 (2d Dist. Jan. 27, 2010)(B215788), *petition for review granted* (Apr. 22, 2010)(S180720)

The Second District has concluded that adoption of an ordinance prohibiting the distribution of plastic bags to customers at the point of sale requires an environmental impact report under CEQA (rather than a negative declaration) in order to determine the impacts of the increased use of paper bags that will be caused by the ordinance. In so ruling, the court emphasized “that the fair argument test sets a low threshold for preparation of an environmental impact report and reflects a preference for resolving doubts in favor of environmental review.” The Supreme Court has granted review. CSAC has filed a brief in support of the city.

Sheppard v. North Orange County Regional Occupational Program

Pending in the Fourth Appellate District, Division Three (filed Apr. 29, 2010)(G041956)

This is an action for unpaid wages brought against the North Orange County Regional Occupational Program (NCROP), which is a vocational training JPA comprised of several school districts. Plaintiff, an instructor for the NCROP, alleged he was not paid for his preparation time in violation of the Industrial Welfare Commission's (IWC) Wage Order 4-2001. That wage order purports to apply to public entities, but the authorizing statute (Labor Code section 1173) does not make express reference to public employers. The trial court ruled in favor of NCROP, finding the wage order does not apply to public entities. After the case was fully briefed, the court requested that the Attorney General submit an amicus brief addressing whether the IWC can extend wage requirements to public entities, and if so, whether aggrieved employees have a private right of action to enforce the wage orders. CSAC will file a brief in response to the court's inquiry.

Sunnyvale West Neighborhood Assoc. v. City of Sunnyvale

Pending in the Sixth Appellate District (filed Jan. 5, 2010)(H035135)

The city, as part of its long-term land use and transportation planning, has been studying an extension of a street over freeways to mitigate traffic congestion. The city prepared an extensive EIR over several years for the project. Because the project is for the purpose of addressing future traffic impacts and is not itself a traffic generator, the city followed the Valley Transportation Authority guidelines for traffic studies and used a year 2020 baseline for analysis of traffic impacts, based on the projection that the project would not be engineered and completed until close to 2020. In a CEQA challenge, the trial court invalidated the EIR on the grounds that the city should have used the current conditions baseline instead of the 2020 baseline, even though doing so would have underestimated the actual traffic impacts of the project. CSAC has filed a brief in support of the city on appeal.

Tomlinson v. County of Alameda

185 Cal.App.4th 1029 (1st Dist. June 18, 2010)(A125471), *petition for rehearing granted* (July 19, 2010)

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 District first determined that section 21177's 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 court went on to conclude that the in-fill development exemption did not apply to this project because it was not "within city limits," as is required. The court rejected the county's argument that the phrase "within city limits" must be construed in a manner that promotes in-fill development within urbanized areas. The court granted rehearing to reconsider its decision in light of another recently-decided opinion that came to the opposite conclusion on the issue. CSAC sought to file an amicus brief in support of the county, but the request was denied.

Wills v. Orange County Superior Court

Pending in the Fourth Appellate District, Division Three (filed May 18, 2010)(G043054)

This case addresses whether people with behavioral disabilities can be disciplined for misconduct that is related to their underlying disability. Plaintiff, a former court clerk, has bipolar disorder. During certain manic episodes of her disorder, she made threats of violence to fellow employees. She was terminated for violating the policy on workplace violence. The trial court ruled in favor of the Orange County Superior Court, concluding the court was not on notice of plaintiff's disability, plaintiff did not request any accommodation, and that she was terminated for legitimate, non-discriminatory reasons. Plaintiff has appealed. CSAC will file a brief in support of the courts.

II. Amicus Cases Decided Since March, 2010

In addition to the new amicus cases already decided, which are discussed above, the following amicus cases have been decided since the Board's last meeting:

City of Ontario v. Quon

--- U.S. ---, 130 S.Ct. 2619 (June 17, 2010)(08-1332)

Outcome: Positive

The city reviewed a city police officer's text messages made on his city-issued pager after he repeatedly went over his word limit. The employee had read and agreed to a city policy, which while not specific to text message pagers, did specify that computers and e-mail were not to be used for personal business and were subject to monitoring. The police department also had an informal policy that the text messages would not be audited if the employee paid for any overages. The Ninth Circuit found that the city's action of reading plaintiff's text messages violated his Fourth Amendment rights. The court also found that even if the messages were public records subject to disclosure under the Public Records Act, the Act does not diminish an employee's reasonable expectation of privacy. The U.S. Supreme Court reversed, finding that the search was valid because a government search investigating violations of workplace rules is reasonable. The Court did not decide whether the officer had a reasonable expectation of privacy in his text messages, concluding that the issue need not be decided since the search had a legitimate work-related purpose, and the scope of the search was not excessive. CSAC filed an amicus brief in support of the city.

City of San Jose v. Operating Engineers Local Union No. 3

49 Cal.4th 597 (July 1, 2010)(S162647)

Outcome: Negative

The City of San Jose filed a petition for writ of supersedeas after a trial court ruling that PERB has exclusive jurisdiction over work stoppages threatened by "essential" employees whose absence could result in health and safety problems for the community. The Sixth District affirmed, holding that PERB has exclusive jurisdiction when a strike

involving statutory unfair labor practice claims is threatened by public employees whose services are essential to municipal health and safety. The California Supreme Court affirmed, finding “that PERB has initial jurisdiction over a claim by a public entity that a strike by some or all of its employees is illegal. In addition, we conclude that a public entity must exhaust its administrative remedies before PERB before seeking judicial relief unless one of the recognized exceptions to the exhaustion of administrative remedies requirement is established.” The Court did, however, reject the union’s argument that the doctrine of exhaustion of administrative remedies always applies in actions pertaining to public employee strikes that give rise to claims of unfair labor practices under the MMBA, leaving open the possibility that a factual situation could arise that would excuse exhaustion of administrative remedies. CSAC filed a brief in support of the city.

County of Santa Clara v. Atlantic Richfield

50 Cal.4th 35 (July 26, 2010)(S163681)

Outcome: Positive

This case addresses the issue of whether, under *People ex rel. Clancy v. Superior Court* (1985) 39 Cal.3d 740, public entities can use outside counsel who will be paid a contingent fee to prosecute a nuisance abatement action, which in this case is an action involving harms from lead paint. After the trial court found that *Clancy* precluded such a contingent fee arrangement, the county plaintiffs (Santa Clara, Santa Cruz, Alameda, Solano, San Francisco, San Mateo, Monterey and Los Angeles) filed a writ petition, and the Sixth District granted the writ, concluding that *Clancy* does not bar the public entities’ contingent fee agreements with their private counsel. The Supreme Court affirmed. The Court concluded that “to the extent our decision in *Clancy* suggested that public-nuisance prosecutions always invoke the same constitutional and institutional interests present in a criminal case, our analysis was unnecessarily broad and failed to take into account the wide spectrum of cases that fall within the public-nuisance rubric. In the present case, both the types of remedies sought and the types of interests implicated differ significantly from those involved in *Clancy* and, accordingly, invocation of the strict rules requiring the automatic disqualification of criminal prosecutors is unwarranted.” Nevertheless, the Court held that there must be adequate arrangements in place to ensure that critical government authority is not delegated to a private attorney who might be motivated to use the government’s power for private financial gain. Specifically, contingency fee arrangements must provide: “(1) that the public-entity attorneys will retain complete control over the course and conduct of the case; (2) that government attorneys retain a veto power over any decisions made by outside counsel; and (3) that a government attorney with supervisory authority must be personally involved in overseeing the litigation.” Because some of the contingency fee agreements used in this case lacked one or more of these elements, the Court remanded, but made clear the entities could move forward with the case using contingency counsel after revising their retention agreements to comply with the decision. CSAC filed an amicus brief in support of the counties.

Fogarty-Hardwick v. County of Orange

Unpublished Opinion of the Fourth Appellate District, Division 3, 2010
Cal.App.Unpub.LEXIS 4436 (4th Dist. Div. 3 June 14, 2010)(G039045), *petition for review pending* (filed July 26, 2010)(S184795)

Outcome: Negative

Plaintiff and her husband divorced and were involved in child custody proceedings in family court. After an allegation of sexual abuse of one of the children, the county's Department of Social Services filed a petition. The family court proceedings were stayed while the juvenile court acted on the petition. The children were initially placed with their mother, then in a group home and a foster home. The parties ultimately reached an agreement awarding custody to the father, and the juvenile court terminated jurisdiction in favor of informal monitoring. The family court then resumed its activities and also awarded the father custody with weekend visitation for mother. Mother then filed this action in Superior Court alleging the county violated her civil rights by deceiving the juvenile court. A jury found in mother's favor and awarded her nearly \$5 million. The court later awarded over \$1.6 million in attorney fees. The Fourth District affirmed. As to the county's argument regarding relitigation of issues already decided, the court found that because custody orders are, by their nature, sui generis. "the County's attempt to give collateral estoppel effect to the dispositional order in a dependency case ignores the special nature of such proceedings, which may include successive 'final' orders which are not really intended to be final in the manner of an order issued in other cases." The court also found there was no compelling reason to conclude that, in the absence of the social worker's misconduct, the family court's custody orders would have been the same. Finally, the court concluded the county waived its defense of absolute immunity, and that the qualified immunity defense is not available. CSAC filed an amicus brief in support of the county.

Greene v. Marin County Flood Control and Water Conservation District

49 Cal.4th 277 (June 7, 2010)(S172199)

Outcome: Positive

A county flood control and water conservation district held a Prop. 218 election on whether to impose a new storm drainage fee. In the district's election, voters' names and addresses were printed on the ballots and voters were directed to sign their ballots. The fee was approved. However, a voter contested the election, claiming the election procedures violated the voting secrecy requirement of article II, section 7 of the California Constitution. The superior court denied the election contest. The First District reversed, holding that in approving article XIII D, section 6, subdivision (c) of the California Constitution, the voters intended the fee elections to be secret. The court set aside the district's election results because voters' names were printed on the ballots and ballots had to be signed, yet voters were provided no assurances that their votes would be kept secret. The California Supreme Court reversed, concluding that "article XIII D, section 6, while incorporating various measures to preserve secrecy, does not incorporate wholesale the ballot secrecy requirements of article II, section 7. and does not require the kind of

assurances the Court of Appeal opinion contemplated.” CSAC filed a brief in support of the district.

Lobo v. Tamco

182 Cal.App.4th 297 (4th Dist. Div. 2 Feb. 24, 2010)(E047593), *petition for review denied* (June 16, 2010)(S181493)

Outcome: Negative

This is a wrongful death action filed by the widow of a San Bernardino County Deputy Sheriff who was killed by an employee of the defendant when their vehicles collided. Though the action alleged the employee was acting in the course and scope of his employment at the time of the accident, the employer moved for summary judgment since the employee driver was not acting within the course and scope of employment, but was driving his personal vehicle on his way home at the end of the work day. The trial court granted summary judgment, but the Fourth District reversed. It applied an exception to the “coming and going” rule for incidental use of a personal vehicle to conduct employer business. Here, the evidence showed that the employee had used his personal vehicle to conduct business 10 or less times during his 16 year employment. The court found this was sufficient incidental use to apply the exception to the “coming and going” rule. CSAC filed letters in support of review or depublication, but both were denied.

Los Angeles Unified School District v. Great American Insurance

49 Cal.4th 739 (July 12, 2010)(S165113)

Outcome: Negative

The school district contract with Hayward Construction Company to take over a school construction project after its first contractor defaulted. The contract included a stipulation that the maximum amount payable by the district would not exceed \$4.5 million and included a list of specific tasks to be completed. Disputes soon arose between Hayward and the district over work not included on the list, and Hayward advised the district that unforeseen conditions made it necessary to exceed the \$4.5 million maximum in the contract. The district advanced additional costs to Hayward but specified it was reserving the right to seek appropriate repayment. Eventually, the district requested that Hayward and its surety, defendant Great American Insurance Company, repay \$1.1 million of the advancement. When they refused, the district initiated this action and Hayward cross-complained for breach of contract. The trial court granted summary judgment to the district, and Hayward appealed arguing he should have been allowed to introduce evidence of misrepresentation. The Second District agreed with Hayward, and the Supreme Court affirmed. The Court concluded that a contractor need not prove an affirmative fraudulent intent to conceal. Instead, a public entity may be required to provide extra compensation if it knew, but failed to disclose, material facts that would affect the contractor's bid or performance. CSAC filed a brief in support of the district.

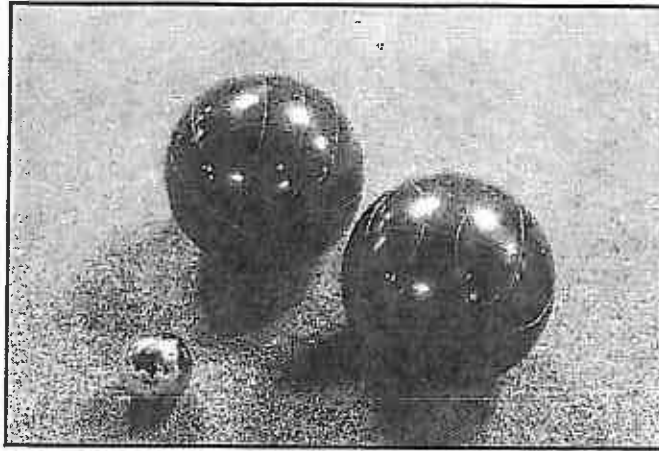
Mead v. City of Cotati

Memorandum Decision of the Ninth Circuit, 2010 U.S.App.Unpub.LEXIS 15201 (9th Cir. July 22, 2010)(09-15005)

Outcome: Positive

Plaintiff sought to develop four duplexes on 0.9 acres. He challenged as unconstitutional takings two conditions imposed by the city: (1) the city's affordable housing requirement (on-site or off-site affordable housing or land, or a fee in-lieu); and (2) one acre of land dedicated for every tiger salamander breeding ground acre developed (per California Fish and Game interim mitigation guidelines). The district court dismissed. The court rejected the city's argument that because plaintiff had not appealed the conditions to the city council, he could not bring this action in district court. However, the court ultimately dismissed the action, concluding the case was not ripe because "a taking is not unconstitutional unless it is uncompensated, and [plaintiff] has not yet sought compensation." The court concluded this rule applies even though plaintiff was only seeking declaratory and injunctive relief. The Ninth Circuit affirmed in a memorandum opinion, concluding that "[a] generally applicable development fee is not an adjudicative land-use exaction subject to the 'essential nexus' and 'rough proportionality' tests of *Nollan* and *Dolan*. Instead, the proper framework for analyzing whether such a fee constitutes a taking is the fact specific inquiry developed by the Supreme Court in *Penn Central*." (Citations omitted.) CSAC filed an amicus brief in support of the city.

SAVE THE DATE!



The 8th Annual CSAC Board of Directors & Corporate Associates Bocce Ball Tournament

Please join us for a fun evening of bocce ball and authentic Italian fare!
(Prior bocce ball experience is *NOT* required.)

WHEN

Wednesday, September 8, 2010
5:00 p.m. – 8:00 p.m.

WHERE

CSAC Conference Center
1020 11th Street, Second Floor
Sacramento, CA 95814
(Located between Pyramid Alehouse & Smith Gallery)

RSVP

Please RSVP by Wednesday, September 1st, to
Lindsay Pangburn, lpangburn@counties.org or (916) 650-8107

The CSAC Board of Directors will meet the following day, September 9, at 10:00 a.m.

