



# Agenda

# LEGISLATION COMMITTEE

August 2, 2012  
11:00 a.m. to 12:30 p.m.  
651 Pine Street, Room 101, Martinez

Supervisor Mary N. Piepho, District III, Chair  
Supervisor Karen Mitchoff, District IV, Vice Chair

**Agenda Items:**

Items may be taken out of order based on the business of the day and preference of the Committee

1. **Introductions**
2. **Public comment** on any item under the jurisdiction of the Committee and not on this agenda. *(Speakers may be limited to three minutes.)*
3. **Record of Action for June 7, 2012 Meeting**
4. **2012 State Budget Update**– *Presenters: Lara DeLaney, Cathy Christian*
5. **November Ballot Initiatives**– *Presenter: Lara DeLaney*
  - A. **Prop. 31:** State Budget. State and Local Government. Initiative Constitutional Amendment and Statute. Initiative Constitutional Amendment.
  - B. **Prop. 34:** Death Penalty Repeal. Initiative Statute.
  - C. **Prop. 36:** Three Strikes Law. Sentencing for Repeat Felony Offenders. Initiative Statute.
6. **Federal Legislative Issues and Map 21**– *Presenters: Lara DeLaney and John Cunningham*
7. **RFP Process for Federal and State Lobbying Contracts**– *Presenter: Lara DeLaney*
8. **Adjourn** to the next regular meeting scheduled for Wednesday, September 12 at 11:00 a.m. (\*Note change).

☺ The Legislation Committee will provide reasonable accommodations for persons with disabilities planning to attend Legislation Committee meetings. Contact the staff person listed below at least 72 hours before the meeting.

📁 Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the County to a majority of members of the Legislation Committee less than 96 hours prior to that meeting are available for public inspection at 651 Pine Street, 10th floor, during normal business hours.

✉ Public comment may be submitted via electronic mail on agenda items at least one full work day prior to the published meeting time.

**For Additional Information Contact:**

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## Glossary of Acronyms, Abbreviations, and other Terms (in alphabetical order):

Contra Costa County has a policy of making limited use of acronyms, abbreviations, and industry-specific language in its Board of Supervisors meetings and written materials. Following is a list of commonly used language that may appear in oral presentations and written materials associated with Board meetings:

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<b>AB</b>	Assembly Bill	HIPAA	Health Insurance Portability and Accountability Act
ABAG	Association of Bay Area Governments	HIV	Human Immunodeficiency Syndrome
ACA	Assembly Constitutional Amendment	HOV	High Occupancy Vehicle
ADA	Americans with Disabilities Act of 1990	HR	Human Resources
AFSCME	American Federation of State County and Municipal Employees	HUD	United States Department of Housing and Urban Development
AICP	American Institute of Certified Planners	Inc.	Incorporated
AIDS	Acquired Immunodeficiency Syndrome	IOC	Internal Operations Committee
ALUC	Airport Land Use Commission	ISO	Industrial Safety Ordinance
AOD	Alcohol and Other Drugs	JPA	Joint (exercise of) Powers Authority or Agreement
ARRA	American Recovery and Reinvestment Act	Lamorinda	Lafayette-Moraga-Orinda Area
BAAQMD	Bay Area Air Quality Management District	LAFCo	Local Agency Formation Commission
BART	Bay Area Rapid Transit District	LLC	Limited Liability Company
BCDC	Bay Conservation & Development Commission	LLP	Limited Liability Partnership
BGO	Better Government Ordinance	Local 1	Public Employees Union Local 1
BOS	Board of Supervisors	LVN	Licensed Vocational Nurse
CALTRANS	California Department of Transportation	MAC	Municipal Advisory Council
CalWIN	California Works Information Network	MBE	Minority Business Enterprise
CalWORKS	California Work Opportunity and Responsibility to Kids	M.D.	Medical Doctor
CAER	Community Awareness Emergency Response	M.F.T.	Marriage and Family Therapist
CAO	County Administrative Officer or Office	MIS	Management Information System
CCHP	Contra Costa Health Plan	MOE	Maintenance of Effort
CCTA	Contra Costa Transportation Authority	MOU	Memorandum of Understanding
CDBG	Community Development Block Grant	MTC	Metropolitan Transportation Commission
CEQA	California Environmental Quality Act	NACo	National Association of Counties
CIO	Chief Information Officer	OB-GYN	Obstetrics and Gynecology
COLA	Cost of living adjustment	O.D.	Doctor of Optometry
ConFire	Contra Costa Consolidated Fire District	OES-EOC	Office of Emergency Services-Emergency Operations Center
CPA	Certified Public Accountant	OSHA	Occupational Safety and Health Administration
CPI	Consumer Price Index	Psy.D.	Doctor of Psychology
CSA	County Service Area	RDA	Redevelopment Agency
CSAC	California State Association of Counties	RFI	Request For Information
CTC	California Transportation Commission	RFP	Request For Proposal
dba	doing business as	RFQ	Request For Qualifications
EBMUD	East Bay Municipal Utility District	RN	Registered Nurse
EIR	Environmental Impact Report	SB	Senate Bill
EIS	Environmental Impact Statement	SBE	Small Business Enterprise
EMCC	Emergency Medical Care Committee	SWAT	Southwest Area Transportation Committee
EMS	Emergency Medical Services	TRANSPAC	Transportation Partnership & Cooperation (Central)
EPSDT	State Early Periodic Screening, Diagnosis and treatment Program (Mental Health)	TRANSPLAN	Transportation Planning Committee (East County)
et al.	et ali (and others)	TRE or TTE	Trustee
FAA	Federal Aviation Administration	TWIC	Transportation, Water and Infrastructure Committee
FEMA	Federal Emergency Management Agency	UCC	Urban Counties Caucus
F&HS	Family and Human Services Committee	VA	Department of Veterans Affairs
First 5	First Five Children and Families Commission (Proposition 10)	vs.	versus (against)
FTE	Full Time Equivalent	WAN	Wide Area Network
FY	Fiscal Year	WBE	Women Business Enterprise
GHAD	Geologic Hazard Abatement District	WCCTAC	West Contra Costa Transportation Advisory Committee
GIS	Geographic Information System		
HCD	(State Dept of) Housing & Community Development		
HHS	Department of Health and Human Services		

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## Schedule of Upcoming BOS Meetings

Aug. 14, 2012

Aug. 21, 2012

**Legislation Committee**  
**Supervisor Mary N. Piepho, Chair**  
**Supervisor Karen Mitchoff, Vice Chair**

**Record of Actions**

**June 7, 2012**  
**Room 101, 651 Pine Street, Martinez**

**1. Introductions**

The meeting was called to order by Vice Chair Mitchoff. Chair Piepho arrived shortly thereafter. Staff and the public introduced themselves. Cathy Christian, state advocate, was conferenced in by phone.

**2. Public Comment:** None.

**3. Record of Action:** Vice Chair Mitchoff indicated the Record was satisfactory.

**4. State Budget Update:**

The County's state advocate, Cathy Christian, reported on the discussions surrounding the State budget, suggesting that a Budget would be approved by June 15, however it may largely be crafted by the "Big Three." Dr. Walker asked about the cut to the Hospital Fee and requested that the Committee make phone calls to advocate for a reduction in the cut proposed to county hospitals.

**5. 2012 State Legislation of Interest:**

After receiving the report from staff and our state lobbyist, the Committee made the following recommendations on the following bills:

- A. SB 1503: staff to continue to monitor, particularly the MOE in development.
- B. SB 1220: no action; bill died in committee
- C. AB 1712: since bill is consistent with prior Board support, send letter of support and express concern with financing
- D. ACA 18: send to Board with "support if amended" and send to Fire District Board
- E. AB 1442: support
- F. SB 1156: watch

The bills the Committee made recommendations on will be forwarded to the Board of Supervisors for action.

**6. Memo Outlining the Governor's Redesign Proposal for Children:**

Camilla Rand provided an overview of her report on the potential impacts of the Governor's proposals regarding redesign of childcare services. The Committee directed that the information be shared with the full Board.

7. **Federal Issues:**

The item was information only.

8. **Federal Legislation of Interest: S. 637 and H.R. 3125:**

The Committee recommended that the Board consider a position of support after additional information was obtained satisfying the Committee that savings from the bill would be passed on to consumers of earthquake insurance.

9. **Adjourned to July 25, 2012 (subsequently cancelled)**

**OFFICE OF THE COUNTY ADMINISTRATOR**  
**CONTRA COSTA COUNTY**

TO: Legislation Committee  
*Supervisor Mary N. Piepho, Chair*  
*Supervisor Karen Mitchoff, Vice Chair*

FROM: Lara DeLaney, Legislative Coordinator

DATE: July 30, 2012

SUBJECT: **Agenda Item #4: 2012 State Budget Update**

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**RECOMMENDATION**

ACCEPT the report on the State budget and provide direction, as necessary.

**REPORT**

On Wednesday, June 27, Governor Brown signed the 2012-13 budget into law, a package totaling 27 bills. The budget closes a \$15.7 billion deficit and includes a reserve of \$948 million. The budget, as enacted, is balanced into future fiscal years and is based on voter approval of the Governor's initiative on the November ballot, which contains five- and seven- year tax increases as well as constitutional guarantees of county funding for 2011 Realignment. In case the initiative fails, the budget includes nearly \$6 billion in trigger cuts that would fall mainly on schools, including K-14 and higher education. Even with the tax measures, the state's General Fund spending has declined by \$11.6 billion (-11.4 percent) over the past five years, and General Fund spending as a share of the state's economy is at its lowest level since the early 1970s.

The budget also implements significant permanent cuts. Among these are limiting CalWORKs recipients who do not meet federal work requirements to two years of benefits, eliminating Healthy Families and transferring those children to Medi-Cal, and extraordinary cuts to trial courts. Cal Grants will be restricted to institutions that meet minimum graduation requirements, essentially excluding most for-profit universities. Governor Brown used his blue pencil veto authority to reduce the number of child care slots by 14,000 and cut county administrative funding of CalFresh by \$23 million, and has negotiated five percent pay reductions for much of the state workforce. Lastly, the budget relies on nearly \$1.5 billion in General Fund benefit from the dissolution of redevelopment agencies, both from the dispersal of liquid assets.

Finally, the budget plan will reduce the state's budgetary borrowing from \$35 billion last year to less than \$9 billion by the end of 2015-16.

On July 10, 2012, the Public Policy Institute of California (PPIC) released a publication titled "Just the Facts: California's State Budget: The Enacted 2012-13 Budget."

Key points reported include:

- The 2012-13 budget was enacted on time.
- The budget appropriates \$143 billion, including \$91.3 billion from the General Fund.
- General Fund spending is 11% lower than 2007-08, which was the high point for the budget before the recession, but almost 10% higher than last year's budget.
- Revenues are expected to reach \$96 billion, up \$12.5 billion from 2011-12.
- The governor and legislature agreed to \$16.6 billion in cuts and other measures to close the state's budget gap.
- The solutions include about \$6 billion in new revenues, spending cuts of about \$5 billion, and \$5.6 billion of funds redirected from other sources.
- Virtually all of the new revenues are generated via an initiative the Governor qualified for the November ballot that raises taxes on upper incomes and sales by about \$8.5 billion (per Proposition 98, \$2.5 billion of this additional revenue will automatically go to schools and community colleges).
- If voters reject the Governor's initiative, there will be \$6.1 billion in "trigger" cuts, most of which would be absorbed by K-12 and higher education. The budget does not specify how the remaining \$2.4 billion would be absorbed.
- With only a small reserve, the budget could easily be thrown out of balance. The budget maintains a reserve estimated at \$950 million.
- The Legislative Analyst's Office has expressed concern that the budget's revenue assumptions may be overstated by \$550 million.
- The LAO also believes that the estimate of property tax revenues that will be redirected from now-closed redevelopment agencies to schools and community colleges may be \$900 million too high.
- If the Governor's tax initiative fails, a \$2.4 billion revenue gap will open up.
- The final budget reduces spending on health and human services programs by \$1.8 billion.
- The cuts include savings of \$612 million from moving individuals who receive services from both Medi-Cal and federal Medicare into a managed care program.
- \$13 million will be saved by moving children covered by the Healthy Families insurance program into Medi-Cal.
- \$470 million will be saved by reducing job training and child care services for recipients of California Work Opportunity and Responsibility to Kids (CalWORKs).

- The budget also includes a CalWORKs reform that will take effect in 2015: assistance for families that do not meet federal work requirements will be reduced from four to two years.

- Education programs are mostly protected from cuts – unless voters reject the Governor's tax initiative.

- The budget generally will allow schools to continue operations at the same levels as 2011-12 – assuming the tax initiative is approved by voters.

- New revenues to K-12 education are intended primarily to reduce the amount of late state payments to schools, support the growth in the student population, and pay for technical fixes needed to maintain ongoing programs.

- If the Governor's initiative fails, the budget authorizes schools to offset the trigger cuts by reducing the school year by up to 15 days.

- The legislature rejected the Governor's proposal for a weighted-pupil formula, which would have consolidated most K-12 funding streams into a single grant.

- The budget includes many of the Governor's higher education proposals, including major reductions to financial aid for students attending private or nonprofit colleges, implemented over the next two years.

For more information, go to: [http://www.ppic.org/main/publication\\_show.asp?i=358](http://www.ppic.org/main/publication_show.asp?i=358) .

### **While California struggles to pay its bills, state's 'special' funds flush with cash**

By Mike Rosenberg, Mercury News

Posted: 07/28/2012 06:47:41 PM PDT

July 29, 2012 6:58 PM GMT Updated: 07/29/2012 11:58:49 AM PDT

A review by this newspaper found that the state's 500-plus "special funds," like the ones at the center of this month's hidden-money parks scandal, have nearly tripled their spending since 2000 as highly scrutinized general fund spending has barely budged.

California now spends nearly \$40 billion on special fund programs, more than every state except New York and Texas spends on its entire general fund. The special fund money pays for an amazing array of services, from major priorities such as mental health, hospital construction and highway repairs to obscure things like bingo halls, acupuncture and midwifery.

Fees like the cost to enter a state park or the 5-cent recycling fee on a soda can -- not your taxes -- fuel the state's special funds. Yet more and more, the state is borrowing billions of dollars from these special accounts to balance the general budget used to fund such things as education and prisons.

"I think most people in their own budgeting would not do that -- if they had a car payment and a house payment they wouldn't borrow from one for the other," said state Sen. Jean Fuller, R-Bakersfield, a Senate budget committee member.

Usually out of the spotlight, special funds make up one-fourth of all state spending and are now receiving rare scrutiny and will be the focus of legislative hearings after finance officials found \$54 million in funds hidden in two state parks accounts. An analysis by this newspaper showed the state's books for all the special funds were off by \$2.3 billion, a discrepancy finance officials are now investigating.

The discoveries could result in political headaches for Gov. Jerry Brown as he tries to convince voters in November that the state needs tax increases to avoid massive cuts to schools and social programs.

"It just completely erodes any kind of trust or faith that the public should inherently be able to have in their governments," said Republican strategist Mark Standriff. "The public looks at this and says, 'Who's minding the store?'"

The state has drained nearly \$4 billion in special fund balances to pay its general fund bills, a \$1 billion jump over last year, even though the special fund fees are earmarked for other things and are supposed to be paid back.

The state chose to "borrow out of the left pocket to make up the shortfall in the right pocket," said state Sen. Joe Simitian, D-Palo Alto, also a member of the budget committee.

The special funds are supposed to be raided only when they have adequate reserves, but that's not always the case. For instance, in 2010 the fund that pays Californians for recycling their bottles and cans ran dry, forcing many supermarket recycling centers to close, after the state borrowed more than \$400 million from the account to balance the general budget.

Think of the California Beverage Container Recycling Fund as a giant piggy bank filled with all those nickel and dime deposits you pay on soda, beer and bottled water at the supermarket. In the fiscal year ending June 30, the fund had \$185 million in it, according to the state controller's office -- \$71 million, according to the Department of Finance.

The Legislature can't simply take the money whenever it wants and use it for things like prisons or K-12 education. By law, the fund is restricted to paying refunds to consumers who return their containers at recycling centers, as well as other programs that promote recycling.

But lawmakers can borrow from the piggy bank pretty much whenever they like.

Similarly, the State Parks and Recreation Fund -- one of the two funds with hidden stashes -- can only be used for things like park maintenance and paying rangers' salaries. The money in the fund comes from park entrance fees, camping fees and park concessions. In the last fiscal year, about \$90 million was collected.

Lawmakers concede that special funds have become more popular because voters do not trust politicians to spend their money wisely, feeling more comfortable with fees earmarked for specific uses.

"But it should not be the role of government to stockpile (special fund money) to balance the general fund budget," said Assemblyman Jerry Hill, D-San Mateo. "It seems we may have

abused the system by accumulating more funds than necessary to meet the needs of those departments, and if that's the case maybe we're charging too much money."

Some fees can be lowered and raised only by the Legislature; others can be changed by an order from the governor or a department head.

Since 2000, special fund spending has jumped 181 percent, from \$14 billion to \$39.4 billion. During the same time, the general fund has increased a mere 17 percent -- more slowly than inflation -- from \$78.1 billion to \$91.4 billion.

Another large piece of the state spending puzzle -- money borrowed by issuing bonds -- has more than doubled during that period, but at \$11.7 billion still pales in comparison to the size of the special funds.

One reason the funds have grown is the increasing reliance on local governments to pay for services that used to be the state's responsibility, like last year's transfer of inmates from state prisons to county jails. When the state shifts the burden for providing more services to local governments, it transfers general fund money into new special accounts that cities and counties tap into.

Deputy legislative analyst Jason Sisney said the general fund relies on tax revenues that can swing wildly during economic ups and downs, which helped lead to the severe budget crisis over the past several years. The special funds, however, are mostly stable.

As of the end of 2011, the state had borrowed \$3.6 billion leftover in various special funds to balance the general fund -- compared with \$2.6 billion at the end of 2010 -- adding to what Gov. Jerry Brown coined a "wall of debt." The number of loans has increased from less than 100 to nearly 150 in a year, and many of them don't have dates for repayment.

On the one hand, borrowing from special funds has been "very important for helping the state to continue to provide critical services," Sisney said. "But on the other hand, the loans are going to have to be paid back eventually."

## UCC Summary of Final Budget June 28, 2012

### Overview

The Legislature voted on the main Budget bill on June 15, 2012, and the rest of the trailer bills on June 27, 2012. The Governor has signed the main Budget bill and all of the trailer bills which included \$154 million in line-item vetoes. The vetoes include additional cuts to IHSS, Food Stamps and Child Care. (For the full list of the bills, **see attached chart**)

The major cuts and program changes were adopted with some revisions in a compromise deal made by the Leadership and the Governor. This includes the DJJ fee, cuts to health and human services programs, and the realignment structure.

New proposals include the elimination of Healthy Families Program, time limits in CalWORKs, cuts to child care, and removal of the 3-year sunset on the HUTA take.

### Realignment (SB 1009, SB 1013, SB 1014, SB 1020, SB 1023)

This budget includes the fiscal superstructure with some changes made by the Legislature, clean-up to AB 109 and the HHS realignment programs, and the AB 109 county-by-county allocations.

#### **Fiscal Superstructure (SB 1020)**

This bill provides the fiscal superstructure for the 2011 Realignment which is very similar to the proposal by the Governor in the May Revise. This language still provides for two main accounts: Support Services Account for health and human services programs, and the Law Enforcement Services Account for the public safety programs. There is a new subaccount created for public safety innovation and for County Women and Children's Residential Treatment Services (only in some counties), but otherwise the account structure is the same as the January Governor's Budget chart.

This bill establishes all of the main accounts and subaccounts and establishes the Local Revenue Account to receive the 2011 Realignment revenues (**see attached chart**)

Here are some of the specific proposals included in SB 1020:

- **County Funding.** This bill provides that prior to a county electing to use any of its own funds to pay for an increased cost, duty, or level of service above that required by the 2011 Realignment Legislation, or that is optional under 2011 Realignment Legislation, the county must first exhaust the funding available to it from the Local Revenue Fund (i.e. 2011 Realignment funding).
- **Controller.** This bill requires the Controller to post monthly on its website the amount received by the Local Revenue Fund and the amounts allocated to each account, subaccount and special account in the Local Revenue Fund. In addition, the Controller is required to annually post the amounts allocated to each account, subaccount and special account, as well as the amount each county received and provide detailed information as to the source of that funding.

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- Growth Distribution. The growth will be distributed first to each subaccount until their base is fulfilled then the growth is distributed with 65% to the Support Services Subaccount (HHS) and 35% to the Law Enforcement Services Subaccount. This bill also specifies the growth allocation within each of the Subaccounts.
- Local Innovation Subaccount. This bill would create the Local Innovation Subaccount to fund local needs. The board of supervisors of a county shall have the authority to spend moneys in this subaccount as it would any funds in the Juvenile Justice Subaccount, the District Attorney and Public Defender Subaccount, the Community Corrections Subaccount, or the Trial Court Security Subaccount. This account would begin in 2015 and would receive 10% of the growth funds to provide flexibility in the public safety side of Realignment.
- Protections. This bill includes a number of the provisions from the Governor's Initiative regarding protections for counties. There are few new provisions including clarifications on mandates and share of costs for HHS programs. This bill also provides for a sunset of some of these provisions if the constitutional amendment passes and provides that no new programs can be shifted to counties after January 1, 2012, except for EPSDT and mental health managed care which begin in 2012.
- Reduction in Services. This bill provides that any decision of a county to eliminate or significantly reduce the levels or types of optional or discretionary behavioral health, adult protective services, or child welfare services that a county is or has previously funded by 2011 Realignment may only occur at a duly noticed meeting of the Board of Supervisors in an open session action item. "Significant reduction" is defined as a 10 percent reduction in funding in any one year or a cumulative 25 percent reduction over the previous three years.
- Reserves. Allows a county board of supervisors to establish a 5% reserve from the Protective Services Subaccount and/or the Behavioral Health Subaccount.
- Residential Treatment. Requires the counties of Alameda, Los Angeles, Marin, San Diego, San Francisco, and San Joaquin to create within the Behavioral Health Subaccount a County Women and Children's Residential Treatment Services Special Account. This was added after the May Revise to address concerns about this program being eliminated. This bill also provides for the specific allocations to the counties for this program.
- Transferability. Provides that any county may only annually reallocate money between subaccounts in the Support Services Account, provided that the reallocation may not exceed 10 percent of the amount deposited in the immediately preceding fiscal year in the subaccount in the Support Services Account with the lowest balance. Also provides that a county at a regularly scheduled public hearing of its governing body, must document that any decision to make any change in its allocation was based on the most cost effective use of available resources to maximize client outcomes. Any county that reallocates funds must forward a copy of the documentation to the Controller.

## UCC Summary of Final Budget June 28, 2012

### **AB 109 Allocations (SB 1020)**

This bill also provides for the AB 109 county-by-county allocations (as developed by the CAOs) for the 2012-13 and 2013-14 fiscal years. Here are the urban county allocations:

<b>County</b>	<b>Percentage</b>
Alameda	3.47%
Contra Costa	2.29%
Los Angeles	31.77%
Orange	6.68%
Riverside	5.12%
Sacramento	3.33%
San Bernardino	6.63%
San Diego	7.02%
San Francisco	2.03%
San Mateo	1.60%
Santa Clara	4.00%
Ventura	1.79%

SB 1020 also provides that for the 2012-13 and 2013-14 the Community Corrections Growth Special Account shall be allocated by the Controller pursuant to a schedule provided by DOF. The schedule must reflect priorities that promote the effective implementation of the 2011 Public Safety Realignment as follows:

- A guaranteed minimum allocation for each county.
- The establishment of appropriate small county minimum allocations.
- Adjustments for county average daily population (ADP) variations from projected ADP impact.
- Other factors affecting the implementation of the 2011 Public Safety Realignment program, as determined by the Department of Finance.

When developing the schedule, DOF shall consider a county's commitment to continuing, expanding or initiating community corrections practices, programs, and strategies that manage felony offender populations most cost effectively through the use of evidence-based practices designed to achieve improved public safety including the use of offender risk and needs assessment tools, criminogenic-based interventions, substance abuse and mental health treatment, and additional treatment and sanctions other than traditional jail incarceration alone or routine probation supervision, as well as community based programs.

## **UCC Summary of Final Budget June 28, 2012**

### **Alcohol and Drug Realignment (SB 1014)**

This bill implements the realignment of funds for realignment of these services to counties. This includes allowing two or more counties to jointly establish county alcohol and drug programs and removes state authorization for county to county contracts for service.

This bill provides the following changes:

- Allows the director of the Department of Alcohol and Drug Programs (DADP) to reduce federal funding to a county that has reduced expenditures in a way that would result in a decrease in the federal funds.
- Transfers the administrative and programmatic functions of DADP to departments within the Health and Human Services Agency beginning on July 1, 2013.
- Eliminates provisions which require a county plan requirement and replaces it with a requirement for counties to contract for federal funding from the state to provide alcohol and other drug prevention, treatment, and recovery services.
- Provides that when a county decides not to enter into a contract to provide alcohol and drug abuse services or programs the department shall determine the need for the services or programs and provide the services or programs directly through contract.
- Removes the population cap for two or more counties to jointly establish county alcohol and other drug programs and removes state authorization for county to county contracts for service.

### **CWS Realignment (SB 1013)**

This bill includes several technical clean-up provisions for Child Welfare Services Realignment and also some policy changes for some of the programs to be consistent with the 2011 Public Safety Realignment.

### **State Oversight**

This bill provides that counties shall continue to be responsible for and accountable to the department for child welfare program performance measures, including all of the following:

- The outcome and systemic factor measures contained in the federal Department of Health and Human Services Child and Family Services Review Procedures Manual, Appendix B, Index of Outcomes and Systemic Factors, and Associated Items and Data.
- Information and other requirements necessary for the California Child and Family Services Review System.
- Monthly caseworker visits with a child in care.
- Timeliness to begin an investigation of allegations of child abuse or neglect.

This bill provides that DSS shall monitor, on an ongoing basis, county performance on the measures specified above. At least once every five years, the department shall conduct a comprehensive review of county performance on these measures.

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The process guides also shall include, but not be limited to, both of the following:

- County evaluation of demographics for the children and families served and effectiveness of the system improvement activities for these populations.
- A description of the process by which the department and counties shall develop mutually agreed upon performance targets for improvements.

This bill also requires a county to submit an update to the department, no less than annually, on its progress in achieving improvements from the county's baseline for the applicable measure. DSS may require a county that has not met its performance targets to submit and implement a corrective action plan, as determined by the director.

### AB 12 Changes

- Extends eligibility to age 21, starting January 1, 2014.
- Allows counties to draw down federal matching funds to continue services to non-minor dependents who reach age 19 in 2012 in order to bridge these youth to age 20.
- Retains the current state cap on county costs towards AB 12, and specifies that the cap will be removed if there is a certification by the Department of Finance in fiscal year 2015-16 of sufficient realignment revenues to serve this population.
- Makes changes to the Transitional Housing Placement-Plus (THP-Plus). Replaces the county-approval process for THP-Plus to a state licensure process, and requires DSS to establish a certification process by July 1, 2012, to be used by licensed providers to screen local placement settings. Makes the THP-Plus an available licensed placement effective October 1, 2012. Removes the requirement that counties submit plans to DSS for THP-Plus. Continues local THP-Plus programs as optional county programs.

### Penalty Sharing for Counties

Provides a greater share of the Child and Family Services Review Process (CFSR) penalties to those counties whose performance contributed to the state receiving the penalty and who did not spend a minimum amount of funding on Child Welfare Services. The increased penalty sharing would not apply in fiscal years in which 2011 realignment revenues are not adequate to fully fund the 2011 realignment base.

### Mental Health Realignment (SB 1009)

This bill makes several changes to implement the mental health portion of 2011 Public Safety Realignment:

- This bill requires DHCS to contract with Mental Health Plans which may include individual counties, counties acting jointly, or an organization determined by the DHCS to meet mental health plan standards. If a county decides not to contract with the DHCS, or is unable to meet standards set by the DHCS, the county must inform DHCS. Provides that if a county does not

## UCC Summary of Final Budget June 28, 2012

contract with the State for specialty mental health services, then the DHCS shall work with the DOF and State Controller to sequester funds from any county that is unable or unwilling to contract as specified.

- This bill requires DHCS to consult with CMHDA twice a year to get data and methodology to forecast future fiscal trends in the provision of Medi-Cal Specialty Mental Health services, including EPSDT.
- This bill provides that it is the intent of the Legislature to establish a standard set of guidelines that governs the provisions of Medi-Cal Specialty Mental Health Services at the local level, consistent with federal law and consistent with guidelines established by the DHCS.
- This bill provides that it is the intent of the Legislature to develop a performance outcome system for the EPSDT program to improve outcomes at the individual and systems levels and to help make fiscal decisions regarding the purchase of services.

### **Public Safety Realignment Changes (SB 1023)**

There are several technical clean-up issues addressed in this bill. Here are some of the major changes:

- Provides that the administration of the jail where a jail exceeds its population cap may begin releasing inmates up to 30 days before their scheduled release date (existing law is 5 days).
- Provides that receiving local agencies can require offenders released from jail onto PRCS to report to local authorities within two days of their release date.
- Clarifies that for any concurrent term of imprisonment in the state prison for one crime, the term for all crimes shall be served in state prison.

### **Sentencing Changes**

This bill makes changes to statute to clarify that felony crimes are punishable in state prison including sex offenses, escape from custody, escape from a mental hospital, and evasion of police.

Also makes changes to the crimes punishable in county jail including possession of an explosive substance; and manufacturing, importing, selling, providing or possessing various knives and guns; and check fraud.

### **Board of Parole Hearings**

This bill makes some changes to the Board of Parole Hearing Revocation Process including:

- Requires that court proceedings to revoke, modify, or terminate mandatory supervision be conducted under current procedural requirements for probation revocations.
- Beginning on July 1, 2013, the courts are given sole authority to issue warrants for paroles.
- Allows the courts to employ hearing officers to conduct parole revocation proceedings.

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### Revenues

This package of bills assumes the passage of the Governor's initiative at the November election. The Governor's initiative would temporarily increase the personal income tax on the state's wealthiest taxpayers for seven years and would temporarily increase the sales tax by one-quarter percent for four years. This would generate \$8.5 billion.

### Trigger Cuts (AB 1464)

This plan also includes trigger cuts should the proposed ballot measure not be passed by the voter in November 2012 for a total savings of \$5.4 billion:

- \$5.3 billion to Proposition 98
- \$250 million to University of California
- \$250 million to California State University
- \$50 million to developmental services
- \$5.6 million to Local Water Safety Patrol
- \$20 million to new Policy Grant Program
- \$10 million to Department of Forestry and Fire Protection
- \$6.6 million to flood control
- \$2.5 million to Fish and Game
- \$1.5 million to Park Lifeguards
- \$1 million to Fish and Game wardens
- \$1 million to the Department of Justice

## Program Cuts and Changes

### Health and Human Services

#### CalFresh (AB 1497)

While the budget bills did not make any significant changes to this program, the Governor vetoed \$54 million in the County Administration and Automation Projects program for administration of CalFresh program (also known as food stamps). The Governor stated that this reduction is necessary to provide for a prudent General Fund reserve.

#### CalWORKs (SB 1041)

This bill includes a compromise reached between the Governor and the Democratic leaders which reduces CalWORKs funding by \$459 million. This bill does not include the major cuts to grants that were previously proposed by the Legislature.

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### Time Limits on CalWORKS

This bill creates a new 24-month time limit beginning in January 2013. Unless exempted from participation, applicants and recipients would receive 24 months of welfare-to-work services and activities under current state rules, and would then be required to meet federal participation requirements to access the remainder of the months toward their 48-month lifetime time limit.

This bill provides that this 24-month time limit is a prospective change, and that months of assistance prior to January 1, 2013 shall not be counted toward the 24-month time limit. Also provides that for those months that a recipient has been sanctioned or excused from participation for good cause, qualifies for an exemption, or is a custodial parent who is under 20 years of age and who has not earned a high school diploma or its equivalent, do not count toward the 24-month time limit.

In addition, months during which the recipient is participating in job search or assessment, is in the process of appraisal, or is participating in the development of a welfare-to-work plan, do not count toward the 24-month time limit.

At the end of the 24-month time limit, recipients must meet the federal work requirements unless they are eligible for an exemption of meet one of the following for an extension:

- The recipient is likely to obtain employment within six months.
- The recipient has encountered unique labor market barriers that temporarily prevent employment.
- The recipient has achieved satisfactory progress in an education or treatment program.
- The recipient needs additional time to complete a welfare-to-work activity due to a diagnosed learning or disability.
- The recipient has submitted an application to receive SSI disability benefits and has a hearing date set.

This bill also provides that counties may extend assistance for no more than 20 percent of recipients upon expiration of the 24-month time limit. This bill also requires DSS to consult with stakeholders and to develop and issue instructions on the process for implementing these extensions and calculating this 20 percent limitation.

### Exemptions

This bill extends the current temporary exemptions provided in relation to the reduction in the county single allocation from July 1, 2012 until January 1, 2013, when these exemptions will sunset. These exemptions are provided to a parent or other relative who has primary responsibility for personally providing care to one child who is from 12-23 months of age, or 2 or more children who are under 6 years of age.

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### **Child Care (AB 1497)**

This bill includes an across-the-board reduction of \$80 million which reduces the number of available child care slots. In addition, this bill suspends the cost of living adjustments in both 2013-14 and 2014-15. The Governor vetoed \$20 million from voucher-based child care programs, except for those serving current and former CalWORKs families. The Governor stated in his veto message that while he would have preferred to restructure rates and reform the program, this across-the-board reduction in child care slots is necessary to bring ongoing expenditures in line with existing resources.

### **Healthy Families – Shift to Medi-Cal (AB 1494)**

This bill would eliminate the Healthy Families Program and shift the entire population to Medi-Cal. This change would be enacted in three phases with 415,000 children shifted to Medi-Cal on January 1, 2013.

Phase 1 (415,000 children). Individuals enrolled in a Healthy Families Program health plan that is a Medi-Cal managed care health plan shall be enrolled in the same plan no earlier than January 1, 2013.

Phase 2 (249,000 children). Individuals enrolled in a Healthy Families Program managed care health plan that is a subcontractor of a Medi-Cal managed health care plan, shall be enrolled into a Medi-Cal managed health care plan that includes the individuals' current plan that shall begin no earlier than April 1, 2013.

Phase 3 (173,000 children). Individuals enrolled in a Healthy Families Program plan that is not a Medi-Cal managed care plan and does not contract or subcontract with a Medi-Cal managed care plan shall be enrolled in a Medi-Cal managed care plan in that county. The transition of individuals shall begin no earlier than August 1, 2013.

Phase 4 (43,000 children). Individuals residing in a county that is not a Medi-Cal managed care county shall be provided services under the Medi-Cal fee-for-service delivery system. The transition of individuals described in this subparagraph shall begin no earlier than September 1, 2013.

This bill provides that implementation plans shall be developed to ensure state and county systems readiness, health plan network adequacy, and continuity of care with the goal of ensuring there is no disruption of service and there is continued access to coverage for all transitioning individuals. The implementation plans shall include, but not be limited to, information on health and dental plan network adequacy, continuity of care, eligibility and enrollment requirements, consumer protections, and family notifications.

In addition, the state must provide written notice to individuals enrolled in the Healthy Families Program of their transition to the Medi-Cal program at least 60 days prior to the transition of individuals in Phase 1, and at least 90 days prior to transition of individuals in Phases 2 and 3. Notices that are developed shall ensure individuals are informed regarding the transition, including, but not limited to, how individuals' systems of care may change, when the changes will occur, and whom they can contact for assistance when choosing a Medi-Cal managed care plan, if applicable, including a toll-free telephone number, with problems they may encounter.

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Other key provisions of this proposal include the following:

- DHCS shall not enroll targeted low-income children in the Medi-Cal program until all necessary federal approvals and waivers have been obtained, and no sooner than January 1, 2013.
- Eligibility determinations and annual redeterminations shall be performed by county eligibility workers.
- Counties are required to report on the number of applications processed on a monthly basis, a breakout of the applications based on income using the federal percentage of poverty levels, the final disposition of each application, including information on the approved Medi-Cal programs, and the average number of days it took to make the final eligibility determination for applications submitted directly to the county and from the single point of entry (SPE).
- Provides that performance standards shall be applied to counties regarding eligibility determinations.
- Requires the California Health and Human Services Agency, in consultation with stakeholders, to provide the fiscal and policy committees of the Legislature with a strategic plan for the transition of the Healthy Families Program no later than October 1, 2012. This strategic plan must address eligibility processing, enrollment, communication, and linkage with health plan providers, payments of applicable premiums, standards for informing and enrollment materials, network adequacy, performance measures and metrics, fiscal solvency, and related factors that ensure timely access to quality health and dental care for children and adolescents transitioning to Medi-Cal.

### **IHSS (SB 1041)**

This bill would extend the 3.6 percent reduction in IHSS hours that is scheduled to sunset on July 1, 2012, for one year. The other changes proposed by the Governor, including a higher across-the-board reduction in hours was rejected by the Legislature.

The Governor reduced IHSS administration by \$4.7 million in his line-item vetoes and noted that it was necessary to provide for a prudent General Fund reserve.

### **IHSS MOE and Collective Bargaining (SB 1036)**

#### **MOE**

Beginning on July 1, 2012, the county share of costs for IHSS would be removed and instead each county would be under a Maintenance of Effort (MOE). The provisions of the MOE are as follows:

- Base Year. Base expenditures would be based on each county's IHSS expenditures in 2011-12. The base year is defined at the amount actually expended by each county on IHSS services and administration, except that for administration the base shall include no more or no less than the

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full match for the county's allocation from the state. Also provides that administration expenditures shall include both county administration and public authority administration.

- Adjustments. The following adjustments are provided for under this bill:
  - For a county that made 14 months of health benefit payments for IHSS providers in the 2011-12 year, the Department of Finance shall adjust that county's base calculation.
  - The base for each county shall be no less than each county's 2011-12 expenditures for the Personal Care Services Program and IHSS used in the caseload growth calculation under Section 17605.
  - On July 1, 2014, the County IHSS MOE base shall be adjusted by an inflation factor of 3.5 percent.
  - On July 1, 2015, and annually thereafter, the County IHSS MOE from the previous year shall be adjusted by an inflation factor of 3.5 percent.
  - The County IHSS MOE shall be adjusted for the annualized cost of locally negotiated, mediated, or imposed increases in provider wages or health benefits. If the DSS approves the rates for a locally negotiated increase in provider wages or health benefits, the state shall pay 65 percent and each county shall pay 35 percent of the nonfederal share of the cost increase. The county share of these costs would be included in the MOE in addition to the amount established in the base year. If DSS does not approve the agreement then the county is required to pay the entire nonfederal share of the cost increase. Provides that it is presumed that some rates are approved including a net increase of up to 10 percent or a cumulative total of 20 percent of the combined total of changes in wages and health benefits.
- In fiscal years when 1991 realignment revenues decline (year-over-year negative growth), the inflation factor shall be zero.
- Poison Pills. Provides that if the demonstration project and the responsibilities of the Statewide Authority become inoperative these provisions will become inoperative on the first day of the following state fiscal year.

### Collective Bargaining

This bill creates the California In-Home Supportive Services Authority (Statewide Authority) consisting of five members to serve as the employer of record of individual providers in each county as of the county implementation date. IHSS recipients shall retain the right to hire, fire, and supervise the work of the individual providers providing services to them.

The timeline for the start of the Statewide Authority is linked to the Coordinated Care Initiative and when a county is completed with enrollment.

Key provisions include:

- Provides that on the county implementation date (which varies depending on the CCI) separate bargaining units shall be created consistent with the bargaining units that have been recognized by predecessor agencies.

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- This bill shall not be a cause for the employer or any predecessor agency to modify or eliminate any existing memorandum of understanding, or to modify existing wages, benefits, or other terms and conditions of employment.
- On the county implementation date, the Statewide Authority assumes the predecessor agency's rights and obligations under any MOU or agreement between the predecessor agency and a recognized employee organization that is in effect on the county implementation date. Absent mutual consent to reopen, the terms of any transferred MOU or agreement shall continue until the MOU or agreement has expired. If no agreement exists, the Statewide Authority must assume the obligation to meet and confer in good faith with the recognized employee organization.
- Provides that this bill does not relieve any predecessor agency of its obligation to meet and confer in good faith under the Meyers-Milias-Brown Act until the county implementation date.
- Provides that any alteration or modification to either current or expired MOU that were in effect on July 1, 2012 and any new MOU reached after July 1, 2012 must be submitted for review to the Department of Social Services. These reviews will continue until the Statewide Authority is operational. If DSS objects for a bona fide business-related reason, they must provide written notice to the recognized employee organization of each objection and the reason for the objection. If requested DSS or the Statewide Authority shall meet and confer regarding the objection and try to reach agreement prior to the county implementation date. If an agreement is not reached, the objectionable language is deemed inoperable.
- Provides that the scope of representation includes matters related to wages and benefits but excludes the following: functions performed by a county including eligibility, enrollment, criminal background checks, quality assurance and other assistance. Also excluded is the right to hire, fire and supervise the individual provider which is reserved to the IHSS recipient.

### Training

This bill provides that no later than January 1, 2014, DSS in collaboration with stakeholders shall develop a training curriculum for IHSS providers that must address issues of consistency, accountability, and increased quality of care for IHSS recipients. However, participation in the training is voluntary and nothing in this bill requires that training be funded by the state.

### **Medi-Cal – Coordinated Care Provisions**

#### Demonstration Sites and Criteria

This budget includes the Coordinated Care Initiative proposed by the Governor in his January Budget. This would establish the CCI in eight counties beginning in March, 2013 (there are currently four pilot counties established). The legislature does not allow the state to expand beyond the eight counties or the integration of long term care services until it is authorized by the Legislature.

At the director's sole discretion, in consultation with stakeholders, the department may determine and implement a phased-in enrollment approach that may include Medi-Cal beneficiary enrollment into

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managed care health plans immediately upon implementation of this section in a specific county, over a 12-month period, or other phased approach.

### Eligibility and Enrollment

This bill provides that the DHCS shall enroll dual eligible beneficiaries into a demonstration site unless the beneficiary makes an affirmative choice to opt out of enrollment or is already enrolled on or before January 1, 2013.

During the six-month mandatory enrollment in a demonstration site, a beneficiary may continue receiving services from an out-of-network Medicare provider for primary and specialty care services only if all of the following criteria are met:

- The dual eligible beneficiary demonstrates an existing relationship with the provider prior to enrollment in a demonstration site.
- The provider is willing to accept payment from the demonstration site based on the current Medicare fee schedule.
- The demonstration site would not otherwise exclude the provider from its provider network due to documented quality of care concerns.

The following beneficiaries are excluded from enrollment if they meet any of the following:

- The beneficiary has a prior diagnosis of end-stage renal disease.
- The beneficiary has other health coverage.
- The beneficiary is enrolled in a home-and-community-based waiver that is a Medi-Cal benefit except for persons enrolled in Community-Based Adult Services or Multipurpose Senior Program Services.
- The beneficiary is receiving services through a regional center or state development center.
- The beneficiary resides in a geographic area or Zip Code not included in managed care, as determined by the department and CMS.
- The beneficiary resides in one of the Veterans' Homes of California.
- Beneficiaries who have been diagnosed with HIV/AIDS may opt out of the demonstration project at the beginning of any month.

The department shall develop an enrollment process to be used in counties participating in the demonstration to do the following:

- Provide a choice of Medi-Cal managed care plans to a dual eligible beneficiary who has opted for Medicare fee-for-service, and establish an algorithm to assign beneficiaries who do not make a choice, except in a county that provides Medi-Cal services under a county organized health system.
- Ensure that only beneficiaries required to make a choice or affirmatively opt out are sent enrollment materials.

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- Establish enrollment timelines, developed in consultation with health plans and stakeholders, and approved by CMS, for each demonstration site. The timeline may provide for combining or phasing in enrollment for Medicare and Medi-Cal benefits.

### Outreach and Notice

Before the department contracts with managed care health plans or Medi-Cal providers to furnish Medi-Cal benefits and services DHCS shall ensure timely and appropriate communications with beneficiaries as follows:

- At least 90 days prior to enrollment, inform dual eligible beneficiaries through a notice written at not more than a 6<sup>th</sup>-grade reading level that includes, at a minimum, how the Medi-Cal system of care will change, when the changes will occur, and who they can contact for assistance with choosing a managed care health plan or with problems they encounter.
- Develop and implement an outreach and education program for beneficiaries to inform them of their enrollment options and rights, including specific steps to work with consumer and beneficiary community groups.
- Develop, in consultation with consumers, beneficiaries, and other stakeholders, an overall communications plan that includes all aspects of developing beneficiary notices.
- Ensure that managed care health plans and their provider networks are able to provide communication and services to dual eligible beneficiaries in alternative formats that are culturally, linguistically, and physically appropriate through means, including, but not limited to, assistive listening systems, sign language interpreters, captioning, written communication, plain language, and written translations.
- Ensure that managed care health plans have prepared materials to inform beneficiaries of procedures for obtaining Medi-Cal benefits, including grievance and appeals procedures that are offered by the plan or are available through the Medi-Cal program.
- Ensure that managed care health plans have policies and procedures in effect to address the effective transition of beneficiaries from Medicare Part D plans not participating in the demonstration project. These policies shall include, but not be limited to, the transition of care requirements for Medicare Part D benefits including a determination of which beneficiaries require information about their transition supply, and, within the first 90 days of coverage under a new plan, provide for a temporary fill when the beneficiary requests a refill of a nonformulary drug.
- Contingent upon available private or public funds other than moneys from the General Fund, contract with community-based, nonprofit consumer, or health insurance assistance organizations with expertise and experience in assisting dual eligible beneficiaries in understanding their health care coverage options.
- Develop, with stakeholder input, informing and enrollment materials and an enrollment process in the demonstration site counties.

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### LTSS Integration

This bill also establishes the Long Term Services and Supports program (LTSS) as part of managed care. Specifically, this bill provides that by March 1, 2013, all Medi-Cal long-term services and supports (LTSS) shall be services that are covered under managed care health plan contracts, shall be available only through managed care health plan contracts, and shall be available only through managed care health plans to beneficiaries residing in counties participating in the demonstration project.

In order to receive any LTSS through Medi-Cal, Medi-Cal beneficiaries shall mandatorily enroll in a managed care health plan for the provision of Medi-Cal benefits. Counties where LTSS are not covered through managed care health plans shall not be subject to this requirement.

Counties will continue to perform functions necessary for the administration of the IHSS program, including conducting assessments and determining authorized hours for recipients. County agency assessments shall be shared with care coordination teams, when applicable. The county agency thereafter may receive and consider additional input from the care coordination team.

Managed care health plans may authorize personal care services and related domestic services in addition to the hours authorized at no share of cost to the county.

### Oversight and Reporting

Beginning with the May Revision to the 2013-14 Governor's Budget, and annually thereafter, the department shall report to the Legislature on the enrollment status, quality measures, and state costs of this proposal.

This bill requires DHCS to develop quality and fiscal measures for health plans to reflect the short and long-term results of the implementation of this bill. The department shall also develop quality thresholds and milestones for these measures.

DHCS must provide an annual report to the Legislature describing the degree to which Medi-Cal managed care health plans in counties participating in the demonstration project have fulfilled the quality requirements, as set forth in the health plan contracts.

Together with the State Department of Social Services, the California Department of Aging, and the Department of Managed Health Care, in consultation with stakeholders, develop a programmatic transition plan, and submit that plan to the Legislature within 90 days of the effective date of this section. The plan shall include, but is not limited to, the following components:

- A description of how access and quality of service shall be maintained during and immediately after implementation of these provisions, in order to prevent unnecessary disruption of services to beneficiaries.
- Explanations of the operational steps, timelines, and key milestones.

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- The process for addressing consumer complaints, including the roles and responsibilities of the departments and health plans and how those roles and responsibilities shall be coordinated. The process shall outline required response times and the method for tracking the disposition of complaint cases. The process shall include the use of an ombudsman, liaison, and 24-hour hotline dedicated to assisting Medi-Cal beneficiaries navigate among the departments and health plans to help ensure timely resolution of complaints.
- A description of how stakeholders were included in the various phases of the planning process to formulate the transition plan, and how their feedback shall be taken into consideration after transition activities begin.

### **Medi-Cal – Hospital Changes (AB 1467)**

This bill adopts the Governor’s May Revision proposal to reduce supplemental payments to private hospitals, eliminate public hospital grants, and eliminate increases to managed care plans for supplemental payments to designated public hospitals for savings of \$150 million in General Fund in 2012-13 and \$75 million in 2013-14.

The Medi-Cal 1115 Bridge to Reform Waiver allows the state and designated public hospitals to access over \$750 million in federal funds for providing care to these individuals. Additionally, unexpended prior year waiver funds can be rolled over to provide additional federal funding. This bill adopts the May Revision proposal which gives 50% of these funds to the state rather than the funding being provided exclusively to these hospitals for General Fund savings of \$100 million in 2012-13 and \$9 million in 2013-14.

### **Medi-Cal - Implementing Copayments (AB 1467)**

This bill adopts the May Revision proposal includes an increase of \$555.3 million in 2012-13 because the federal government rejected the proposal to implement various copayments for Medi-Cal beneficiaries. This bill provides for copayments of \$15 for non-emergency room visits and \$1 and \$3 copayments for pharmacy based on the drug status and how medications are dispensed.

### **Public Health (AB 1464)**

The main budget bill reduced funding to the Public Health Laboratory Director Training Program to \$500,000. The Governor vetoed the same amount which eliminates the program.

### **State Hospitals (AB 1470)**

This bill implements the Governor’s January Budget proposal to reorganize the state hospitals with the creation of a new Department of State Hospitals (DSH). Included in this bill are provisions which allow counties to contract with the new Department of State Hospitals which is consistent with existing law and practice previously under the Department of Mental Health. This bill contains language that still allows counties to contract with DSH, provides that DSH must provide counties with preliminary cost information 60 days in advance and provides that the final rates are subject to contract agreement.

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There is one new provision in this bill regarding county costs which provides that if a county has not contracted with DSH by July 1 of any fiscal year, each monthly reimbursement may be taken from the 1991 Realignment funds.

### Local Government

#### **Election Changes (AB 1499)**

This bill requires that bond measures and constitutional amendments must appear first on the November ballot. This will place the Governor's Initiative at the top of the ballot.

#### **Mandates (SB 1006)**

This bill specifies that local government mandates suspended in the 2012-13 Budget Act shall also be suspended in 2013-14 and 2014-15. This bill implements previous actions made by the Budget subcommittees that rejected the Governor's proposal to repeal most of the mandates.

#### **Redevelopment (AB 1484)**

This bill makes changes to AB 26 x1 enacted last year which eliminated redevelopment. This bill makes numerous changes to the provisions that eliminated redevelopment and provide new provisions regarding enforcement for DOF. Many legislators had concerns over these provisions, and Senate Pro-Tem Steinberg has committed to hold an oversight hearing on many of these issues.

#### **Bonds and Loans**

This bill changes the circumstances under which refunding or other types of refinancing bonds issued by the successor agency are allowed. Specifically, this bill allows successor agencies that have received a finding of completion from DOF additional discretion regarding the use of proceeds from bonds.

This bill also includes as enforceable obligation legitimate loans between the former RDA and the RDA community subject to approval of the oversight board.

The city or county that authorized the creation of a RDA may loan or grant funds to a successor agency for administrative costs, enforceable obligations, or project-related expenses at the city's discretion but the receipt and use of these funds must be reflected on the ROPS.

#### **County Auditor**

This bill makes several changes to the powers and duties of county auditor-controller's as follows:

- Provides that the county auditor-controller may determine which is the largest special district for purposes of this section.

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- By December 1, 2012, the county auditor-controller shall provide the department a report specifying the amount submitted by each successor agency pursuant to subdivision (d) for low and moderate income housing funds.
- A county auditor-controller may review the Recognized Obligation Payment Schedules and object to the inclusion of any items that are not demonstrated to be enforceable obligations and may object to the funding source proposed for any items. This review may take place prior to the submission of the Recognized Obligation Payment Schedule to the oversight board or subsequent to oversight board action. The county auditor-controller shall promptly transmit notice of any of those objections to the successor agency, the oversight board, and the Department of Finance.
- Provides that the county-auditor controller and the department shall each have the authority to demand the return of funds improperly spent or transferred to a private person or other private entity.
- Provides that if a county-auditor fails to determine the amounts owed to taxing entities and present a demand for payment by July 9, 2012, to the successor agencies, DOF may request a writ of mandate to require the county auditor-controller to immediately perform this duty. Any county in which the county auditor-controller fails to perform the duties shall be subject to a civil penalty of 10 percent of the amount owed to taxing entities plus 1.5 percent of the amount owed to taxing entities for each month that the duties are not performed.

### Enforceable Obligations

This bill provides that costs incurred to fulfill collective bargaining agreements for layoff or terminations shall be considered enforceable obligations.

In addition, a successor agency or an oversight board shall not exercise the powers granted by this subdivision to restore funding for an enforceable obligation that was deleted or reduced by the Department of Finance unless it reflects the decisions made during the meet and confer process with the Department of Finance or pursuant to a court order.

### Legal Actions

This bill provides that the time limit for bringing an action shall be tolled with respect to the adoptions, findings, and determinations of any former RDA or its legislative body until DOF has issued a finding of completion to the successor agency.

### Housing assets

This bill requires the entity assuming the housing functions to submit to DOF by August 1, 2012, a list of all housing assets that contains an explanation of how the assets meet the specified criteria. DOF has 30 days to object to any of the assets and if they object the entity assuming the housing functions, may request a meet and confer process within five business days of receiving the objection. If a housing asset has been previously pledged to pay for bonded indebtedness, the successor agency must maintain control of the asset in order to pay the bond debt.

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Other provisions include:

- Provides that housing assets be maintained in a separate fund.
- Defines housing asset and includes in the definition repayments of loans or deferrals owed to the Low and Moderate Income Housing fund.

### Oversight and Enforcement

This bill provides that if a successor agency fails to remit to the county auditor-controller by the deadlines outlined in the bill, the following remedies are available:

- The funds may be recovered through an offset of sales and use tax or property tax allocations to the local agency to which the funds were transferred.
- Also performing the duties of the successor agency, the Department of Finance may order an offset to the distribution provided to the sales and use tax revenue to that agency.

This bill also requires the Controller to review the activities of successor agencies in the state to determine if an asset transfer has occurred after January 31, 2012, between the successor agency and the city, county, or city and county that created a redevelopment agency, or any other public agency, that was not made pursuant to an enforceable obligation, on approved and valid ROPs. If such an asset transfer did occur, to the extent not prohibited by state and federal law, the Controller shall order the available assets to be returned to the successor agency.

### Pass-through Payments

This bill provides that the amount of pass-through agreements computed pursuant to this section, including any pass-through agreements shall be computed as though the requirement to set aside funds for the Low and Moderate Income Housing Fund was still in effect.

Also provides that when all of the debt of a redevelopment agency has been retired or paid off, the successor agency shall dispose of all remaining assets and terminate its existence within one year of the final debt payment. When the successor agency is terminated, all pass-through payment obligations shall cease and no property tax shall be allocated to the Redevelopment Property Tax Trust Fund for that agency.

### Recognized Obligation Payment Schedule (ROPS)

Due to the delay in implementation, this bill allows a successor agency to amend the Enforceable Obligation Payment Schedule to authorize the continued payments of enforceable obligations until the time that the January 1, 2012 through June 30, 2012 ROPS has been approved by the oversight board and by DOF. Also provides that the ROPS for the period of January 1, 2013 to June 20, 2013 must be submitted no later than September 1, 2012.

Other key changes include:

- The Department of Finance shall make its determination of the enforceable obligations and the amounts and funding sources of the enforceable obligations no later than 45 days after the

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ROPS is submitted. Within five business days of the department's determination a successor agency may request additional review by the department and an opportunity to meet and confer on disputed items.

- A successor agency shall be in noncompliance if it only submits to the department an electronic message or a letter stating that the oversight board has approved a ROPS.
- If a successor agency does not submit a ROPS by the deadlines provided in this subdivision, the city, county, or city and county that created the redevelopment agency shall be subject to a civil penalty equal to ten thousand dollars (\$10,000) per day for every day the schedule is not submitted to the department.
- If a successor agency fails to submit a ROPS by the deadline, any creditor of the successor agency or the Department of Finance or any affected taxing entity shall have standing to and may request a writ of mandate to require the successor agency to immediately perform this duty.

### Reserves

This bill provides that a reserve may be held when required by the bond indenture or when the next property tax allocation will be insufficient to pay all obligations due under the provisions of the bond for the next payment due in the following half of the calendar year.

### Successor Agencies

Makes several changes to provisions related to successor agency:

- Provides that a local government that elected not to serve as the successor agency may reverse this decision and agree to serve as the successor agency. Any reversal of this decision shall not become effective for 60 days after notice to the current successor agency and the oversight board.
- Provides that designated local authority members are protected by the immunities applicable to public entities and public employees.
- Provides that a successor agency is a separate public entity from the public agency and the two entities cannot merge. The liabilities of the former RDA shall not be transferred to the sponsoring entity and the assets shall not become assets of the sponsoring entity.
- Each successor agency is deemed a local entity for purposes of the Ralph M. Brown Act.
- Successor agencies shall lack the authority to, and shall not, create new enforceable obligations under the authority of the Community Redevelopment Law or begin new redevelopment work, except in compliance with an enforceable obligation that existed prior to June 28, 2011.
- Successor agencies shall lack the authority to, and shall not, transfer any powers or revenues of the successor agency to any other party, public or private, except pursuant to an enforceable obligation on a ROPS approved by the department.

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### Public Safety

#### Division of Juvenile Justice (SB 1021)

This bill continues to fund the Division of Juvenile Justice (DJJ) for the housing and treatment of the most serious and violent juvenile offenders. However, this bill includes reforms to DJJ including the following:

- Implement a new fee structure to charge counties \$24,000 per year for each offender committed by a juvenile court to the DJJ which would begin on July 1, 2012. This would apply to any person committed to DJJ on or after July 1, 2012. This bill provides that DJJ must present to the county, not more frequently than monthly, a claim for the amount due to the state which the county must process and pay.
- End juvenile parole on January 1, 2013 instead of July 1, 2014.
- Reduce DJJ's age of jurisdiction from 25 to 23. This also provides beginning July 1, 2012 that every person committed to DJJ shall be discharged within 2 years or when the person is 23 years of age whichever is later.

#### County Transfers (SB 1021)

This bill provides that a board of supervisors of a county where adequate facilities are not available for prisoners may enter into an agreement with the board or boards or supervisors of one or more nearby counties whose county adult facilities are adequate and are readily accessible. The agreement must make provision for the support of a person so committed from which the prisoner is committed. When that agreement is in effect, commitments may be made by the court and support of a person so committed shall be a charge upon the county from which he or she is committed.

This bill would also allow counties to enter into an agreement with another county to house adult prisoners with the concurrent of that county's sheriff or director of its county department of corrections.

#### **Board of State and Community Corrections (SB 1022)**

The Board of State and Community Corrections (BSCC) was established by the 2011 Budget Act which would become effective on July 1, 2012. The Board would assume the previous functions of the Corrections Standards Authority and the California Emergency Management Authority.

#### AB 900 Changes.

This bill shifts \$171.3 million in funds from Phase I to Phase II for AB 900 projects.

## UCC Summary of Final Budget June 28, 2012

### New County Jail Construction Program.

This bill authorizes \$500 million in lease revenue bonds to fund the construction of local jail facilities to be administered by BSCC. The program requirements are as follows:

- Allows the BSCC, a participating county, and the State Public Works Board to acquire, design, and construct an adult local criminal justice facility approved by the BSCC.
- Provides that facilities financed under this provision may be delivered through either a design-bid-build or a design-build process.
- Provides that the ownership interest of a participating county in the site or sites for an adult local criminal justice facility shall be determined by the board to be adequate for purposes of its financing in order to be eligible under this chapter.
- Provides that no state moneys shall be encumbered in contracts led by a participating county until one of the following occur:
  - Final architectural plans and specifications have been approved by the BSCC, and subsequent construction bids have been received.
  - Documents prepared by a participating county have been approved by the BSCC, and subsequent design-build proposals have been received.
  - The participating county has notified the State Public Works Board of its intent to exercise an option to purchase the completed facility.
- Provides that participating counties are responsible for the acquisition, design, construction, staffing, operation, repair, and maintenance of the adult local criminal justice facility.
- Provides that the participating county contribution for adult local criminal justice facilities financed under this chapter shall be a minimum of 10 percent of the total project costs. The BSCC may reduce contribution requirements for participating counties with a general population below 200,000 upon petition by a participating county to the BSCC requesting a lower level of contribution.
- The BSCC shall determine the funding criteria. Funding consideration shall be given to counties that are seeking to replace existing compacted, outdated, or unsafe housing capacity or are seeking to renovate existing or build new facilities that provide adequate space for the provision of treatment and rehabilitation services, including mental health treatment. Funding preference shall be given to counties that are most prepared to proceed successfully with this financing in a timely manner. The determination of preparedness to proceed shall include, but not be limited to, counties providing documentation of adequate, available matching funds authorized by the county board of supervisors from a source or sources compatible with this financing authority as determined by the State Public Works Board in its sole discretion.

## **UCC Summary of Final Budget June 28, 2012**

### **Transportation (SB 1006)**

This bill would take a portion of the new HUTA pursuant to the Transportation Tax Swap done in 2010. This would result in a loss of \$312 million in new HUTA for General Fund relief through FY 2012-13 and \$128 million annually on a permanent basis beginning in FY 2013-14.

While UCC, along with other partners were advocating for a 3-year sunset on this shift as part of the compromise made by Leadership, the 3-year sunset was removed. It is our understanding that the Administration did not want a sunset clause included and wanted this to be permanent.

The State is able to sweep this share of new HUTA due to an unintended consequence resulting from the Swap. Specifically, the State Controller has been applying the statute that directs a specified percentage of old HUTA revenues to special funds to new HUTA which was not the intent of this provision. This money was intended to flow through the new HUTA formula: 12 percent to the SHOPP, 44 percent to the STIP and 44 percent to cities and counties for local streets and roads.

**OFFICE OF THE COUNTY ADMINISTRATOR  
CONTRA COSTA COUNTY**

TO: Legislation Committee  
Supervisor Mary N. Piepho, Chair  
Supervisor Karen Mitchoff, Vice Chair

FROM: Lara DeLaney, Legislative Coordinator

DATE: July 30, 2012

SUBJECT: **Agenda Item #5: November Ballot Initiatives**

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**RECOMMENDATION**

ACCEPT the report on the November Ballot and provide direction, as necessary.

**REPORT**

As you may know, 11 measures have qualified for the November ballot. (*See table below and Attachment A for additional information.*) The Contra Costa County Board of Supervisors does not review or consider taking a position on every statewide ballot measure, only those that have a direct impact on counties. The following measures, Propositions 30, 31, 34, and 35, are considered those that may have an impact on counties and may be considered for a position recommendation by the Legislation Committee to the Board of Supervisors.

*Note that Proposition 30 has already been endorsed by the Board of Supervisors at their June 26, 2012 meeting.*

Prop. 30	Governor's Tax Increase	PIT increase for 7 years, ¼ cent sales tax increase for 7 years
Prop. 31	CA Forward Reforms	2 year budget, no new legislative expenditures over \$25 million without corresponding revenue, Gov authority to cut in fiscal emergency, performance based budgeting.
Prop 32	Paycheck Protection	Prohibits use of payroll-deducted funds for political purposes. Prohibits unions and corporations from contributing directly or indirectly to candidates or candidate-controlled committees.
Prop 33	Auto Insurance Rates	Permits insurance companies to set prices based on whether the driver previously carried insurance with any insurance company.
Prop 34	Death Penalty Repeal	Repeals the death penalty and replaces it with life without the possibility of parole.
Prop 35	Human Trafficking	Increases penalties for human trafficking and requires sex offender registration
Prop 36	Three Strikes Revision	Revises "three strikes" to impose life sentence only when new felony conviction is serious or violent
Prop 37	Genetically Engineered Foods	Requires labeling on raw or processed food if made from plants or animals with genetic material changed

Prop 38	Munger Tax Increase	Increases PIT for nearly all earners on a sliding scale (from .4% to 2.2%) for 12 years. Revenue goes to schools, debt, and early childhood programs for first 4 years. Schools and early childhood only for last 8.
Prop 39	Single Sales Factor	Mandatory single sales factor for multistate businesses. Dedicates \$550 million in anticipated revenue to energy efficiency and clean energy projects and jobs.
Prop 40	State Senate Districts	Repeals the newly-drawn Senate maps. (Proponents have publicly declared that they will not pursue passage of the measure.)

**Prop. 30: Temporary Taxes to Fund Education. Guaranteed Local Public Safety Funding. Initiative Constitutional Amendment.** Increases personal income tax on annual earnings over \$250,000 for seven years. Increases sales and use tax by one quarter cent for four years. Allocates temporary tax revenues 89 percent to K-12 schools and 11 percent to community colleges. Bars use of funds for administrative costs, but provides local school governing boards discretion to decide, in open meetings and subject to annual audit, how funds are to be spent. Guarantees funding for public safety services realigned from state to local governments.

- **Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government:** Increased state revenues over the next seven fiscal years. Estimates of the revenue increases vary — from \$6.8 billion to \$9 billion for 2012-13 and from \$5.4 billion to \$7.6 billion, on average, in the following five fiscal years, with lesser amounts in 2018-19. These revenues would be available to: (1) pay for the state's school and community college funding requirements, as increased by this measure; and (2) address the state's budgetary problem by paying for other spending commitments. Limitation on the state's ability to make changes to the programs and revenues shifted to local governments in 2011, resulting in a more stable fiscal situation for local governments.
- **Direct impact on local government:** Constitutionally protects aggregate funding for cops (\$72 million), booking fee (\$35 million) and other “realignment” programs with formerly discretionary VLF funds (approx.. \$130 million) that formerly went to cities, including four (4) new cities. [This is the subject of a current lawsuit.]

**Prop. 31: State Budget. State and Local Government. Initiative Constitutional Amendment and Statute. Initiative Constitutional Amendment.** Establishes two-year state budget cycle. Prohibits Legislature from creating expenditures of more than \$25 million unless offsetting revenues or spending cuts are identified. Permits Governor to cut budget unilaterally during declared fiscal emergencies if Legislature fails to act. Requires performance reviews of all state programs. Requires performance goals in state and local budgets. Requires publication of all bills at least three days prior to legislative vote. Gives counties power to alter state statutes or regulations related to spending unless Legislature or state agency vetoes changes within 60 days.

- **Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government:** Decreased state revenues and commensurate increased local revenues, probably in the range of about \$200 million annually, beginning in 2013-

14. Potential decreased state program costs or increased state revenues resulting from changes in the fiscal authority of the Legislature and Governor. Increased state and local costs of tens of millions of dollars annually to implement new budgeting practices. Over time, these costs would moderate and potentially be offset by savings from improved program efficiencies.

- **Direct impact on local government:** More time to advocate on state legislation, including budget trailer bills; some costs to implement performance based budgeting mandate; potential for greater state control of local budgets; and potential new revenue if cities participate in countywide plans.

For more information about Proposition 31, see *Attachment B*.

**Prop. 34: Death Penalty Repeal. Initiative Statute.** Repeals death penalty as maximum punishment for persons found guilty of murder and replaces it with life imprisonment without possibility of parole. Applies retroactively to persons already sentenced to death. Requires persons found guilty of murder to work while in prison, with their wages to be applied to any victim restitution fines or orders against them. Creates \$100 million fund to be distributed to law enforcement agencies to help solve more homicide and rape cases.

- **Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government:** Net savings to the state and counties that could amount to the high tens of millions of dollars annually on a statewide basis due to the elimination of the death penalty. One-time state costs totaling \$100 million from 2012-13 through 2015-16 to provide funding to local law enforcement agencies.
- **Direct Impact on local government:** Unclear.

For more information about Proposition 34, see *Attachment C*.

**Prop. 36: Three Strikes Law. Sentencing for Repeat Felony Offenders. Initiative Statute.** Revises three strikes law to impose life sentence only when new felony conviction is serious or violent. Authorizes re-sentencing for offenders currently serving life sentences if third strike conviction was not serious or violent and judge determines sentence does not pose unreasonable risk to public safety. Continues to impose life sentence penalty if third strike conviction was for certain non-serious, non-violent sex or drug offenses or involved firearm possession. Maintains life sentence penalty for felons with non-serious, non-violent third strike if prior convictions were for rape, murder, or child molestation.

- **Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government:** State savings related to prison and parole operations that potentially range in the high tens of millions of dollars annually in the short run, possibly exceeding \$100 million annually in the long run. Increased state and county costs in the millions to low tens of millions of dollars annually in the first few years, likely declining substantially in future years, for state court activities and county jail, community supervision, and court-related activities.

- **Direct Impact on local government:** Unclear.

For more information about Proposition 36, see *Attachment D*.

## November 2012 Statewide Ballot Measures

### **Proposition 30**

Initiative Constitutional Amendment

1578. (12-0009) - [Final Random Sample Update - 06/20/12](#)

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

Qualified: 06/20/12

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

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

### **Proposition 31**

Initiative Constitutional Amendment and Statute

1537. (11-0068) - [Final Random Sample Update - 06/26/12](#)

**State Budget. State and Local Government. Initiative Constitutional Amendment and Statute.**

Qualified: 06/26/12

Proponent: Sunne Wright McPeak c/o Robin B. Johansen and James C. Harrison (510) 346-6200

Establishes two-year state budget cycle. Prohibits Legislature from creating expenditures of more than \$25 million unless offsetting revenues or spending cuts are identified. Permits Governor to cut budget unilaterally during declared fiscal emergencies if Legislature fails to act. Requires performance reviews of all state programs. Requires performance goals in state and local budgets. Requires publication of all

bills at least three days prior to legislative vote. Gives counties power to alter state statutes or regulations related to spending unless Legislature or state agency vetoes changes within 60 days. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Decreased state revenues and commensurate increased local revenues, probably in the range of about \$200 million annually, beginning in 2013-14. Potential decreased state program costs or increased state revenues resulting from changes in the fiscal authority of the Legislature and Governor. Increased state and local costs of tens of millions of dollars annually to implement new budgeting practices. Over time, these costs would moderate and potentially be offset by savings from improved program efficiencies.** (11-0068) ([Full Text](#))

### **Proposition 32**

Initiative Statute

1487. (11-0010) - [Final Random Sample Update - 12/06/11](#)

**Prohibits Political Contributions by Payroll Deduction. Prohibitions on Contributions to Candidates. Initiative Statute.**

Qualified: 12/06/11

Proponent: Ashlee N. Titus c/o Thomas W. Hiltachk (916) 442-7757

Restricts union political fundraising by prohibiting use of payroll-deducted funds for political purposes. Same use restriction would apply to payroll deductions, if any, by corporations or government contractors. Permits voluntary employee contributions to employer or union committees if authorized yearly, in writing. Prohibits unions and corporations from contributing directly or indirectly to candidates and candidate-controlled committees. Other political expenditures remain unrestricted, including corporate expenditures from available resources not limited by payroll deduction prohibition. Limits government contractor contributions to elected officers or officer-controlled committees. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Increased state implementation and enforcement costs of up to hundreds of thousands of dollars annually, potentially offset in part by revenues from fines.** (11-0010.) ([Full Text](#))

### **Proposition 33**

Initiative Statute

1495. (11-0013, Amdt. #1S) - [Final Random Sample Update - 01/18/12](#)

**Changes Law to Allow Auto Insurance Companies to Set Prices Based on a Driver's History of Insurance Coverage. Initiative Statute.**

Qualified: 01/18/12

Proponent: Mike D'Arelli (916) 283-9473

Changes current law to permit insurance companies to set prices based on whether the driver previously carried auto insurance with any insurance company. Allows insurance companies to give proportional discounts to drivers with some prior insurance coverage. Will allow insurance companies to increase cost of insurance to drivers who have not maintained continuous coverage. Treats drivers with lapse as continuously covered if lapse is due to military service or loss of employment, or if lapse is less than 90 days. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Probably no significant fiscal effect on state insurance premium tax revenues.** (11-0013.) ([Full Text](#))

### **Proposition 34**

Initiative Statute

1512. (11-0035) - [Final Random Sample Update - 04/23/12](#)

**Death Penalty Repeal. Initiative Statute.**

Qualified: 04/23/12

Proponent: Jeanne Woodford c/o James C. Harrison (510) 346-6200

Repeals death penalty as maximum punishment for persons found guilty of murder and replaces it with life imprisonment without possibility of parole. Applies retroactively to persons already sentenced to death. Requires persons found guilty of murder to work while in prison, with their wages to be applied to any victim restitution fines or orders against them. Creates \$100 million fund to be distributed to law enforcement agencies to help solve more homicide and rape cases. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: Net savings to the state and counties that could amount to the high tens of millions of dollars annually on a statewide basis due to the elimination of the death penalty. One-time state costs totaling \$100 million from 2012-13 through 2015-16 to provide funding to local law enforcement agencies. (11-0035) ([Full Text](#))

### **Proposition 35**

Initiative Statute

1532. (11-0059) - [Final Random Sample Update - 05/10/12](#)

**Human Trafficking. Penalties. Sex Offender Registration. Initiative Statute.**

Qualified: 05/10/12

Proponent: Daphne Phung c/o James C. Harrison and Kari Krogseng. (510) 346-6200

Increases criminal penalties for human trafficking, including prison sentences up to 15-years-to-life and fines up to \$1,500,000. Fines collected to be used for victim services and law enforcement. Requires person convicted of trafficking to register as sex offender. Requires sex offenders to provide information

regarding Internet access and identities they use in online activities. Prohibits evidence that victim engaged in sexual conduct from being used against victim in court proceedings. Requires human trafficking training for police officers. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Potential one-time local government costs of up to a few million dollars on a statewide basis, and lesser additional costs incurred each year, due to the new mandatory training requirements for certain law enforcement officers. Minor increase to state and local governments on the costs of incarcerating and supervising human trafficking offenders. Unknown amount of additional revenue from new criminal fees, likely not to exceed the low millions of dollars annually, which would fund services for human trafficking victims.** (11-0059) ([Full Text](#))

### **Proposition 36**

Initiative Statute

1530. (11-0057) - [Final Random Sample Update - 06/11/12](#)

**Three Strikes Law. Sentencing for Repeat Felony Offenders. Initiative Statute.**

Qualified: 06/11/12

Proponent: David Mills c/o Dan Newman (415) 981-9940

Revises three strikes law to impose life sentence only when new felony conviction is serious or violent. Authorizes re-sentencing for offenders currently serving life sentences if third strike conviction was not serious or violent and judge determines sentence does not pose unreasonable risk to public safety. Continues to impose life sentence penalty if third strike conviction was for certain non-serious, non-violent sex or drug offenses or involved firearm possession. Maintains life sentence penalty for felons with non-serious, non-violent third strike if prior convictions were for rape, murder, or child molestation. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **State savings related to prison and parole operations that potentially range in the high tens of millions of dollars annually in the short run, possibly exceeding \$100 million annually in the long run. Increased state and county costs in the millions to low tens of millions of dollars annually in the first few years, likely declining substantially in future years, for state court activities and county jail, community supervision, and court-related activities.** (11-0057) ([Full Text](#))

### **Proposition 37**

Initiative Statute

1570. (11-0099) - [Final Random Sample Update - 06/11/12](#)

**Genetically Engineered Foods. Mandatory Labeling. Initiative Statute.**

Qualified: 06/11/12

Proponent: James Wheaton (510) 444-4710 x309

Requires labeling on raw or processed food offered for sale to consumers if made from plants or animals with genetic material changed in specified ways. Prohibits labeling or advertising such food as “natural.” Exempts foods that are: certified organic; unintentionally produced with genetically engineered material; made from animals fed or injected with genetically engineered material but not genetically engineered themselves; processed with or containing only small amounts of genetically engineered ingredients; administered for treatment of medical conditions; sold for immediate consumption such as in a restaurant; or alcoholic beverages. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Potential increase in state administrative costs of up to one million dollars annually to monitor compliance with the disclosure requirements specified in the measure. Unknown, but potentially significant, costs for the courts, the Attorney General, and district attorneys due to litigation resulting from possible violations to the provisions of this measure.** (11-0099) ([Full Text](#))

### **Proposition 38**

Initiative Statute

1574. (11-0100) - [Final Random Sample Update - 06/20/12](#)

**Tax for Education and Early Childhood Programs. Initiative Statute.**

Qualified: 06/20/12

Proponents: Molly Munger, Roberta B. Johansen, James C. Harrison c/o Remcho, Johansen & Purcell, LLP (510) 346-6200

Increases personal income tax rates for annual earnings over \$7,316 using sliding scale from .4% for lowest individual earners to 2.2% for individuals earning over \$2.5 million, ending after twelve years. During first four years, 60% of revenues go to K-12 schools, 30% to repaying state debt, and 10% to early childhood programs. Thereafter, allocates 85% of revenues to K-12 schools, 15% to early childhood programs. Provides K-12 funds on school specific, per-pupil basis, subject to local control, audits, and public input. Prohibits state from directing or using new funds. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Increased state personal income tax revenues beginning in 2013 and ending in 2024. Estimates of the revenue increases vary from \$10 billion to \$11 billion per fiscal year beginning in 2013-14, tending to increase over time. The 2012-13 revenue increase would be about half this amount. Until the end of 2016-17, 60 percent of revenues would be dedicated to K-12 education and 10 percent would be provided to early care and education programs. These allocations would supplement existing funding for these programs. In 2017-18 and subsequent years, 85 percent would be provided to K-12 education and 15 percent to early care and education. General Fund savings on debt-service costs of about \$1.5 billion in 2012-13 and \$3 billion in 2013-14, with savings tending to grow thereafter until the end of 2016-17. In 2015-16 and subsequent years with stronger growth in state personal income tax revenues, some of the revenues raised by this measure—several hundred million dollars per year— would be used for debt-service costs, resulting in state savings.** (11-0100) ([Full Text](#))

### **Proposition 39**

Initiative Statute

1550. (11-0080) - [Final Random Sample Update - 06/20/12](#)

**Tax Treatment for Multistate Businesses. Clean Energy and Energy Efficiency Funding. Initiative Statute.**

Qualified: 06/20/12

Proponent: Joseph Caves

Requires multistate businesses to calculate their California income tax liability based on the percentage of their sales in California. Repeals existing law giving multistate businesses an option to choose a tax liability formula that provides favorable tax treatment for businesses with property and payroll outside California. Dedicates \$550 million annually for five years from anticipated increase in revenue for the purpose of funding projects that create energy efficiency and clean energy jobs in California. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Approximately \$500 million in additional state General Fund revenues in 2012-13 and \$1 billion each year thereafter from requiring a single sales factor formula for corporate taxes, with about half of the additional annual revenues from 2013-14 through 2017-18 supporting energy efficiency and alternative energy projects. Increased Proposition 98 minimum funding guarantee for K-14 schools of roughly \$225 million annually from 2012-13 through 2017-18 and by roughly \$500 million each year thereafter, as a result of additional state General Fund revenues.** (11-0080) [\(Full Text\)](#)

### **Proposition 40**

Referendum

1499. (11-0028) - [Final Full Check Update - 02/24/12](#)

**Redistricting. State Senate Districts. Referendum.**

Qualified: 02/24/12

Proponent: Julie Vandermost c/o Charles H. Bell, Jr. (916) 442-7757

State Senate districts are revised every ten years following the federal census. This year, the voter-approved California Citizens Redistricting Commission revised the boundaries of the 40 Senate districts. This referendum petition, if signed by the required number of registered voters and filed with the Secretary of State, will: (1) Place the revised State Senate boundaries on the ballot and prevent them from taking effect unless approved by the voters at the next statewide election; and (2) Require court-appointed officials to set interim boundaries for use in the next statewide election. (11-0028) [\(Full Text\)](#)

<b>November 2014 Statewide Ballot Measure</b>
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SBx7 2. (Chapter 3, 2009), Cogdill.\*

**[Safe, Clean, and Reliable Drinking Water Supply Act of 2012](#)**

*\*SBx7 2 was amended by [AB 1265](#) (Chapter 126, 2010) Caballero. Safe, Clean, and Reliable Drinking Water Supply Act of 2012: surface storage projects: submission to voters. AB 1265 was amended by [AB 153](#) (Chapter 226, 2010) Hernandez. Safe, Clean, and Reliable Drinking Water Supply Act of 2012: groundwater contamination. AB 153 was amended by [AB 1422](#) (Chapter 74, 2012) Perea. Safe, Clean, and Reliable Drinking Water Supply Act of 2012: submission to voters.*

ACA 4. (Chapter 174, 2010), Gatto.

**State finance.**

*\*ACA 4 was moved from the June 2012 Presidential Primary Election to the November 2014 General Election by [SB 202](#) (Chapter 558, 2011) Hancock. Elections: ballot measures.*

## CSAC Summary of Proposition 31

### Changes to the State Budget Process

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

### *Biennial Budget*

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

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

#### *Oversight*

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

#### *Addressing Fiscal Emergencies*

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

#### Changes to the Local Budget Process

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

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

### Community Strategic Action Plans

#### *Development of a Plan*

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

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

*Funding of Plans*

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

*Oversight of Plans*

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



December 14, 2011

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

Attention: Ms. Dawn McFarland  
Initiative Coordinator

Dear Attorney General Harris:

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

## **BACKGROUND**

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

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

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

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

## **PROPOSAL**

This measure amends the Constitution to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## FISCAL EFFECT

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

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

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

Hon. Kamala D. Harris

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## **SUMMARY OF FISCAL EFFECT**

This measure would have the following major fiscal effects:

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

Sincerely,

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Mac Taylor  
Legislative Analyst

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Ana J. Matosantos  
Director of Finance

# The Government Performance and Accountability Act

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

## Specific Provisions

### 1. Performance Based Budgeting

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

### 2. Legislative Transparency and Oversight

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

### 3. Pay As You Go

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

### 4. Multi Year Budgets With Greater Accountability

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

• **Community Driven Problem Solving**

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

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

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

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

**The Government Performance and Accountability Act**

**SECTION ONE. Findings and Declarations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XI A. COMMUNITY STRATEGIC ACTION PLANS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 6. COMMUNITY STRATEGIC ACTION PLANS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION FOURTEEN. Amendment.**

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

**SECTION FIFTEEN. Severability.**

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

**SECTION SIXTEEN. Effective Date.**

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

**SECTION SEVENTEEN. Legislative Counsel.**

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

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

**Proposition 34**  
**Death Penalty Repeal. Initiative Statute.**

**BACKGROUND**

*Murder and the Death Penalty.* First degree murder is generally defined as the unlawful killing of a human being that (1) is deliberate and premeditated or (2) takes place at the same time as certain other crimes, such as kidnapping. It is punishable by a life sentence in state prison with the possibility of being released by the state parole board after a minimum of 25 years. However, current state law makes first degree murder punishable by death or life imprisonment without the possibility of parole when specified "special circumstances" of the crime have been charged and proven in court. Existing state law identifies a number of special circumstances that can be charged, such as in cases when the murder was carried out for financial gain, was especially cruel, or was committed while the defendant was engaged in other specified criminal activities. A jury generally determines which penalty is to be applied when special circumstances have been charged and proven.

*Implementation of the Death Penalty in California.* Murder trials where the death penalty is sought are divided into two phases. The first phase involves determining whether the defendant is guilty of murder and any charged special circumstances, while the second phase involves determining whether the death penalty should be imposed. Under existing state law, death penalty verdicts are automatically appealed to the California Supreme Court. In these "direct appeals," the defendants' attorneys argue that violations of state law or federal constitutional law took place during the trial, such as evidence improperly being included or excluded from the trial. If the California Supreme Court confirms the conviction and death sentence, the defendant

can ask the U.S. Supreme Court to review the decision. In addition to direct appeals, death penalty cases ordinarily involve extensive legal challenges in both state and federal courts. These challenges involve factors of the case different from those considered in direct appeals (such as the claim that the defendant's counsel was ineffective) and are commonly referred to as "habeas corpus" petitions. Finally, inmates who have received a sentence of death may also request that the Governor reduce their sentence. Currently, the proceedings that follow a death sentence can take a couple of decades to complete in California.

Both the state and county governments incur costs related to murder trials, including costs for the courts and prosecution, as well as for the defense of persons charged with murder who cannot afford legal representation. In addition, the state incurs costs for attorneys employed by the state Department of Justice that seek to uphold death sentences in the appeals process. Various state agencies (including the Office of the State Public Defender and the Habeas Corpus Resource Center) are tasked with providing representation to individuals who have received a sentence of death but cannot afford legal representation.

Since the current death penalty law was enacted in California in 1978, around 900 individuals have received a death sentence. Of these, 14 have been executed, 83 have died prior to being executed, and about 75 have had their sentences reduced by the courts. As of July 2012, California had 725 offenders in state prison who were sentenced to death. Most of these offenders are at various stages of the direct appeal or habeas corpus review process. Condemned male inmates generally are housed at San Quentin State Prison (on death row), while condemned female inmates are housed at the Central California Women's Facility in Chowchilla. The state currently has various security regulations and procedures that result in

increased security costs for these inmates. For example, inmates under a death sentence generally are handcuffed and escorted at all times by one or two officers while outside of their cells. In addition, these offenders are currently required to be placed in separate cells, whereas most other inmates share cells.

## **PROPOSAL**

This measure repeals the state's current death penalty statute. In addition, it generally requires murderers to work while in prison and provides new state funding for local law enforcement on a limited-term basis.

***Elimination of Death Sentences.*** Under this measure no offender could be sentenced to death by the state. The measure also specifies that offenders currently under a sentence of death would not be executed and instead would be resentenced to a prison term of life without the possibility of parole. This measure also allows the California Supreme Court to transfer all of its existing death penalty direct appeals and habeas corpus petitions to the state's Courts of Appeal or superior courts. These courts would resolve issues remaining even after changing these sentences to life without the possibility of parole.

***Inmate Work Requirement.*** Current state law generally requires that inmates—including murderers—work while they are in prison. California regulations allow for some exceptions to these work requirements, such as for inmates who pose too great a security risk to participate in work programs. In addition, inmates may be required by the courts to make payments to victims of crime. This measure specifies that every person found guilty of murder must work while in state prison and have their pay deducted for any debts they owe to victims of crime, subject to

state regulations. Because the measure does not change state regulations, existing prison practices related to inmate work requirements would not necessarily be changed.

***Establishment of Fund for Local Law Enforcement.*** The measure establishes a new special fund, called the SAFE California Fund, to support grants to police departments, sheriffs' departments, and district attorneys' offices for the purpose of increasing the rate at which homicide and rapes are solved. For example, the measure specifies that the money could be used to increase staffing in homicide and sex offense investigation or prosecution units. Under the measure, a total of \$100 million would be transferred from the state General Fund to the SAFE California Fund over four years—\$10 million in 2012-13 and \$30 million in each year from 2013-14 through 2015-16. Monies in the SAFE California Fund would be distributed to local law enforcement agencies based on a formula determined by the state Attorney General.

## **FISCAL EFFECTS**

The measure would have a number of fiscal effects on the state and local governments. The major fiscal effects of the measure are discussed below.

### **Murder Trials**

***Court Proceedings.*** This measure would reduce state and county costs associated with some murder cases that would otherwise have been eligible for the death penalty under current law. These cases would likely be less expensive if the death penalty was no longer an option for two primary reasons. First, the duration of some trials would be shortened. This is because there would no longer be a separate phase to determine whether the death penalty is imposed. Other aspects of murder trials could also be shortened. For example, jury selection time for some trials could be reduced as it would no longer be necessary to remove potential jurors who are unwilling

to impose the death penalty. Second, the elimination of the death penalty would reduce the costs incurred by counties for prosecutors and public defenders for some murder cases. This is because these agencies generally use more attorneys in cases where a death sentence is sought and incur greater expenses related to investigations and other preparations for the penalty phase in such cases.

**County Jails.** County jail costs could also be reduced because of the measure's effect on murder trials. Persons held for trial on murder charges, particularly cases that could result in a death sentence, ordinarily remain in county jail until the completion of their trial and sentencing. As some murder cases are shortened due to the elimination of the death penalty, the persons being charged with murder would spend less time in county jail before being sent to state prison. Such an outcome would reduce county jail costs and increase state prison costs.

**Savings.** The state and counties could achieve several tens of millions of dollars in savings annually on a statewide basis from reduced costs related to murder trials. The actual amount of savings would depend on various factors, including the number of death penalty trials that would otherwise occur in the absence of the measure. It is also possible that the state and counties would redirect some of their court-related resources to other court activities. Similarly, the county jail savings would be offset to the extent that jail beds no longer needed for defendants in death penalty trials were used for other offenders, such as those who are now being released early because of a lack of jail space in some counties.

The above savings could be partially offset to the extent that the elimination of the death penalty reduced the incentive for offenders to plead guilty in exchange for a lesser sentence in some murder cases. If the death penalty is prohibited and additional cases go to trial instead of

being resolved through plea agreements, additional state and county costs for support of courts, prosecution, and defense counsel, as well as county jails, could result. The extent to which this would occur is unknown.

### **Appellate Litigation**

Over time, the measure would reduce state expenditures by the California Supreme Court and the state agencies participating in the death penalty appeal process. These state savings would reach about \$50 million annually. However, these savings likely would be partially offset in the short run because some state expenditures for appeals would probably continue until the courts resolved all pending appeals for inmates who previously received death sentences. In the long run, there would be relatively minor state and local costs—possibly totaling about \$1 million annually—for hearing appeals from additional offenders receiving sentences of life without the possibility of parole.

### **State Corrections**

The elimination of the death penalty would affect state prison costs in different ways. On the one hand, its elimination would result in somewhat higher prison population and higher costs as formerly condemned inmates are sentenced to life without the possibility of parole. Given the length of time that inmates currently spend on death row, these costs would likely not be major. On the other hand, these added costs likely would be more than offset by the savings generated by not having to house hundreds of inmates on death row. As previously discussed, it is generally more expensive to house an inmate under a death sentence than an inmate subject to life without the possibility of parole, due to higher and more expensive security measures to house and supervise inmates sentenced to death.

The net effect of these fiscal impacts would likely be a net reduction in state costs for the operation of the state's prison system, potentially in the low tens of millions of dollars annually. These savings, however, could be higher or lower for various reasons. For example, if the rate of executions that were to occur in the future in the absence of the measure increased, the future cost of housing inmates who have been sentenced to death would be reduced. Therefore, there would be lower correctional savings resulting from this measure's provisions eliminating the death penalty. Alternatively, if the number of individuals sentenced to death in the future in the absence of the measure were to increase, the cost to house these individuals in prison would also increase. Under this scenario, eliminating the death penalty would result in higher correctional savings than we have estimated.

### **General Fund Transfers to the SAFE California Fund**

The measure requires that a total of \$100 million be transferred from the state General Fund to the SAFE California Fund from 2012-13 through 2015-16. As a result, less General Fund resources would be available to support various other state programs in those years, but more funding would be available for local government agencies that receive these grants. To the extent that funding provided from the SAFE California Fund to local agencies results in additional arrests and convictions, the measure could increase state and county costs for trial court, jail, and prison operations.

### **Other Fiscal Effects**

*Prison Construction.* The measure could also affect future prison construction costs by allowing the state to avoid future facility costs associated with housing an increasing number of death row inmates. However, the extent of any such savings would depend on the future growth

in the condemned inmate population, how the state chooses to house condemned inmates in the future, and the future growth in the general prison population.

*Effect on Murder Rate.* To the extent that the prohibition on the use of the death penalty has an effect on the incidence of murder in California, the measure could affect state and local government criminal justice expenditures. The resulting fiscal impact, if any, is unknown.

### **Summary**

In total, the measure would result in net savings to state and local governments related to murder trials, appellate litigation, and state corrections. These savings would likely be about \$100 million annually in the first few years, growing to about \$130 million annually thereafter. The actual amount of these annual savings could be higher or lower by tens of millions of dollars, depending on various factors including how the measure is implemented and the rate of death sentences and executions that would take place in the future if this measure were not approved by voters. In addition, the measure would require the state to provide a total of \$100 million in grants to local law enforcement agencies over the next four years.

**Proposition 34**  
**Death Penalty Repeal. Initiative Statute.**

**Yes/No Statement**

A **YES** vote on this measure means: No offenders could be sentenced to death under state law. Offenders who are currently under a sentence of death would be resentenced to life without the possibility of parole. The state would provide a total of \$100 million in grants to local law enforcement agencies over the next four years.

A **NO** vote on this measure means: Certain offenders convicted for murder could continue to be sentenced to death. The status of offenders currently under a sentence of death would not change. The state would not be required to provide local law enforcement agencies with additional grant funding.

11 0035

RECEIVED

AUG 29 2011

August 26, 2011

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

VIA MESSENGER

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

Attention: Krystal M. Paris

Re: *The Savings, Accountability and Full Enforcement for California Act*

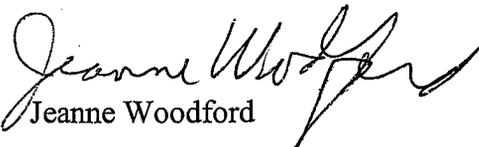
Dear Ms. Paris:

Pursuant to Elections Code section 9002, I request that the Attorney General prepare a title and summary of a measure entitled "The Savings, Accountability and Full Enforcement for California Act." The text of the measure, a check for \$200.00, the address at which I am registered to vote and the signed statement certifying that I will not willfully allow initiative signatures to be used for purposes other than qualification of the measure are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

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

Sincerely,

  
Jeanne Woodford

Enclosures  
(00151205)

This Act amends, repeals, and adds sections to the Penal Code and the Government Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

## PROPOSED LAW

### The SAFE California Act

#### SEC. 1 Title

This initiative shall be known and may be cited as "The Savings, Accountability, and Full Enforcement for California Act," or "The SAFE California Act."

#### SEC. 2 Findings and Declarations

The People of the State of California do hereby find and declare all of the following:

1. Murderers and rapists need to be stopped, brought to justice, and punished. Yet, on average, a shocking 46% of homicides and 56% of rapes go unsolved every year. Our limited law enforcement resources should be used to solve more crimes, to get more criminals off our streets, and to protect our families.
2. Police, Sheriffs, and District Attorneys now lack the funding they need to quickly process evidence in rape and murder cases, to use modern forensic science such as DNA testing, or even hire enough homicide and sex offense investigators. Law enforcement should have the resources needed for full enforcement of the law. By solving more rape and murder cases and bringing more criminals to justice, we keep our families and communities safer.
3. Many people think the death penalty is less expensive than life in prison without the possibility of parole, but that's just not true. California has spent \$4 billion on the death penalty since 1978 and death penalty trials are 20 times more expensive than trials seeking life in prison without the possibility of parole, according to a study by former death penalty prosecutor and Judge, Arthur Alarcon, and law professor Paula Mitchell. By replacing the death penalty with life in prison without the possibility of parole, California taxpayers would save well over \$100 million every year. That money could be used to improve crime prevention and prosecution.
4. Killers and rapists walk our streets free and threaten our safety, while we spend hundreds of millions of taxpayer dollars on a select few who are already behind bars forever on death row. These resources would be better spent on violence prevention and education, to keep our families safe.
5. By replacing the death penalty with life in prison without the possibility of parole, we would save the state \$1 billion in five years without releasing a single prisoner -- \$1 billion that could be invested in law enforcement to keep our communities safer, in our children's schools, and in services for the elderly and disabled. Life in prison without the possibility of parole ensures that the worst criminals stay in prison forever and saves money.

6. More than 100 innocent people have been sentenced to death in this country and some innocent people have actually been executed. Experts concluded that Cameron Todd Willingham was wrongly executed for a fire that killed his three children. With the death penalty, we will always risk executing innocent people.
7. Experts have concluded that California remains at risk of executing an innocent person. Innocent people are wrongfully convicted because of faulty eyewitness identification, outdated forensic science, and overzealous prosecutions. We are not doing what we need to do to protect the innocent. State law even protects a prosecutor if he or she intentionally sends an innocent person to prison, preventing accountability to taxpayers and victims. Replacing the death penalty with life in prison without the possibility of parole will at least ensure that we do not execute an innocent person.
8. Convicted murderers must be held accountable and pay for their crimes. Today, less than 1% of inmates on death row work and, as a result, they pay little restitution to victims. Every person convicted of murder should be required to work in a high security prison and money earned should be used to help victims through the victim's compensation fund, consistent with the victims' rights guaranteed by Marsy's Law.
9. California's death penalty is an empty promise. Death penalty cases drag on for decades. A sentence of life in prison without the possibility of parole provides faster resolution for grieving families and is a more certain punishment.
10. Retroactive application of this Act will end a costly and ineffective practice, free up law enforcement resources to increase the rate at which homicide and rape cases are solved, and achieve fairness, equality and uniformity in sentencing.

### **SEC. 3 Purpose and Intent**

The people of the State of California declare their purpose and intent in enacting the Act to be as follows:

1. To get more murderers and rapists off the streets and to protect our families.
2. To save the taxpayers \$1 billion in five years so those dollars can be invested in local law enforcement, our children's schools, and services for the elderly and disabled.
3. To use some of the savings from replacing the death penalty to create the SAFE California Fund, to provide funding for local law enforcement, specifically police departments, Sheriffs, and District Attorney Offices, to increase the rate at which homicide and rape cases are solved.
4. To eliminate the risk of executing innocent people.
5. To require that persons convicted of murder with special circumstances remain behind bars for the rest of their lives, with mandatory work in a high security prison, and that money earned be used to help victims through the victim's compensation fund.

6. To end the more than 25 year-long process of review in death penalty cases, with dozens of court dates and postponements that grieving families must bear in memory of loved ones.
7. To end a costly and ineffective practice and free up law enforcement resources to keep our families safe; and
8. To achieve fairness, equality and uniformity in sentencing, through retroactive application of this Act to replace the death penalty with life in prison without the possibility of parole.

**SEC. 4 Section 190 of the Penal Code is hereby amended to read:**

190. (a) Every person guilty of murder in the first degree shall be punished by death, imprisonment in the state prison for life without the possibility of parole, or imprisonment in the state prison for a term of 25 years to life. The penalty to be applied shall be determined as provided in Sections ~~190.1~~, 190.2, ~~190.3~~, 190.4, and 190.5.

Except as provided in subdivision (b), (c), or (d), every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 15 years to life.

(b) Except as provided in subdivision (c), every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 25 years to life if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a), (b), or (c) of Section 830.2, subdivision (a) of Section 830.33, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties.

(c) Every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of life without the possibility of parole if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a), (b), or (c) of Section 830.2, subdivision (a) of Section 830.33, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties, and any of the following facts has been charged and found true:

- (1) The defendant specifically intended to kill the peace officer.
- (2) The defendant specifically intended to inflict great bodily injury, as defined in Section 12022.7, on a peace officer.
- (3) The defendant personally used a dangerous or deadly weapon in the commission of the offense, in violation of subdivision (b) of Section 12022.
- (4) The defendant personally used a firearm in the commission of the offense, in violation of Section 12022.5.

(d) Every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 20 years to life if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury.

(e) Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce any minimum term of a sentence imposed pursuant to this section. A person sentenced pursuant to this section shall not be released on parole prior to serving the minimum term of confinement prescribed by this section.

*(f) Every person found guilty of murder and sentenced pursuant to this section shall be required to work within a high security prison as many hours of faithful labor in each day and every day during his or her term of imprisonment as shall be prescribed by the rules and regulations of the Department of Corrections and Rehabilitation, pursuant to section 2700 of the Penal Code. In any case where the prisoner owes a restitution fine or restitution order, the Secretary of the Department of Corrections and Rehabilitation shall deduct money from the wages and trust account deposits of the prisoner and shall transfer those funds to the California Victim Compensation and Government Claims Board according to the rules and regulations of the Department of Corrections and Rehabilitation, pursuant to sections 2085.5 and 2717.8 of the Penal Code.*

**SEC. 5 Section 190.1 of the Penal Code is hereby repealed.**

~~A case in which the death penalty may be imposed pursuant to this chapter shall be tried in separate phases as follows:~~

~~(a) The question of the defendant's guilt shall be first determined. If the trier of fact finds the defendant guilty of first degree murder, it shall at the same time determine the truth of all special circumstances charged as enumerated in Section 190.2 except for a special circumstance charged pursuant to paragraph (2) of subdivision (a) of Section 190.2 where it is alleged that the defendant had been convicted in a prior proceeding of the offense of murder in the first or second degree.~~

~~(b) If the defendant is found guilty of first degree murder and one of the special circumstances is charged pursuant to paragraph (2) of subdivision (a) of Section 190.2 which charges that the defendant had been convicted in a prior proceeding of the offense of murder of the first or second degree, there shall thereupon be further proceedings on the question of the truth of such special circumstance.~~

~~(c) If the defendant is found guilty of first degree murder and one or more special circumstances as enumerated in Section 190.2 has been charged and found to be true, his sanity on any plea of not guilty by reason of insanity under Section 1026 shall be determined as provided in Section 190.4. If he is found to be sane, there shall thereupon be further proceedings on the question of the penalty to be imposed. Such proceedings shall be conducted in accordance with the provisions of Section 190.3 and 190.4.~~

**SEC. 6 Section 190.2 of the Penal Code is hereby amended to read:**

190.2. (a) The penalty for a defendant who is found guilty of murder in the first degree is death or imprisonment in the state prison for life without the possibility of parole if one or more of the following special circumstances has been found under Section 190.4 to be true:

(1) The murder was intentional and carried out for financial gain.

(2) The defendant was convicted previously of murder in the first or second degree. For the purpose of this paragraph, an offense committed in another jurisdiction, which if committed in California would be punishable as first or second degree murder, shall be deemed murder in the first or second degree.

(3) The defendant, in this proceeding, has been convicted of more than one offense of murder in the first or second degree.

(4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden, or concealed in any place, area, dwelling, building, or structure, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to one or more human beings.

(5) The murder was committed for the purpose of avoiding or preventing a lawful arrest, or perfecting or attempting to perfect, an escape from lawful custody.

(6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or caused to be mailed or delivered, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to one or more human beings.

(7) The victim was a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties; or the victim was a peace officer, as defined in the above-enumerated sections, or a former peace officer under any of those sections, and was intentionally killed in retaliation for the performance of his or her official duties.

(8) The victim was a federal law enforcement officer or agent who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a federal law enforcement officer or agent engaged in the performance of his or her duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his or her official duties.

(9) The victim was a firefighter, as defined in Section 245.1, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a firefighter engaged in the performance of his or her duties.

(10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his or her testimony in any criminal or juvenile proceeding, and the killing was not committed during the commission or attempted commission, of the crime to which he or she was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his or her testimony in any criminal or juvenile proceeding. As used in this paragraph, "juvenile proceeding" means a proceeding brought pursuant to Section 602 or 707 of the Welfare and Institutions Code.

(11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this or any other state, or of a federal prosecutor's office, and

the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(12) The victim was a judge or former judge of any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(13) The victim was an elected or appointed official or former official of the federal government, or of any local or state government of this or any other state, and the killing was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity. As used in this section, the phrase "especially heinous, atrocious, or cruel, manifesting exceptional depravity" means a conscienceless or pitiless crime that is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim by means of lying in wait.

(16) The victim was intentionally killed because of his or her race, color, religion, nationality, or country of origin.

(17) The murder was committed while the defendant was engaged in, or was an accomplice in, the commission of, attempted commission of, or the immediate flight after committing, or attempting to commit, the following felonies:

(A) Robbery in violation of Section 211 or 212.5.

(B) Kidnapping in violation of Section 207, 209, or 209.5.

(C) Rape in violation of Section 261.

(D) Sodomy in violation of Section 286.

(E) The performance of a lewd or lascivious act upon the person of a child under the age of 14 years in violation of Section 288.

(F) Oral copulation in violation of Section 288a.

(G) Burglary in the first or second degree in violation of Section 460.

(H) Arson in violation of subdivision (b) of Section 451.

(I) Train wrecking in violation of Section 219.

(J) Mayhem in violation of Section 203.

(K) Rape by instrument in violation of Section 289.

(L) Carjacking, as defined in Section 215.

(M) To prove the special circumstances of kidnapping in subparagraph (B), or arson in subparagraph (H), if there is specific intent to kill, it is only required that there be proof of the elements of those felonies. If so established, those two special circumstances are proven even if the felony of kidnapping or arson is committed primarily or solely for the purpose of facilitating the murder.

(18) The murder was intentional and involved the infliction of torture.

(19) The defendant intentionally killed the victim by the administration of poison.

(20) The victim was a juror in any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(21) The murder was intentional and perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person or persons outside the vehicle with the intent to inflict death. For purposes of this paragraph, "motor vehicle" means any vehicle as defined in Section 415 of the Vehicle Code.

(22) The defendant intentionally killed the victim while the defendant was an active participant in a criminal street gang, as defined in subdivision (f) of Section 186.22, and the murder was carried out to further the activities of the criminal street gang.

(b) Unless an intent to kill is specially required under subdivision (a) for a special circumstance enumerated therein, an actual killer, as to whom the special circumstance has been found to be true under Section 190.4, need not have had any intent to kill at the time of the commission of the offense which is the basis of the special circumstance in order to suffer death or confinement in the state prison for life without the possibility of parole.

(c) Every person, not the actual killer, who, with the intent to kill, aids, abets, counsels, commands, induces, solicits, requests, or assists any actor in the commission of murder in the first degree shall be punished by death or imprisonment in the state prison for life without the possibility of parole if one or more of the special circumstances enumerated in subdivision (a) has been found to be true under Section 190.4.

(d) Notwithstanding subdivision (c), every person, not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony enumerated in paragraph (17) of subdivision (a) which results in the death of some person or persons, and who is found guilty of murder in the first degree therefor, shall be punished by death or imprisonment in the state prison for life without the possibility of parole if a special circumstance enumerated in paragraph (17) of subdivision (a) has been found to be true under Section 190.4.

The penalty shall be determined as provided in this section and Sections ~~190.1, 190.3,~~ 190.4, and 190.5.

**SEC. 7 Section 190.3 of the Penal Code is hereby repealed.**

~~190.3. If the defendant has been found guilty of murder in the first degree, and a special circumstance has been charged and found to be true, or if the defendant may be subject to the death penalty after having been found guilty of violating subdivision (a) of Section 1672 of the Military and Veterans Code or Sections 37, 128, 219, or 4500 of this code, the trier of fact shall determine whether the penalty shall be death or confinement in state prison for a term of life without the possibility of parole. In the~~

proceedings on the question of penalty, evidence may be presented by both the people and the defendant as to any matter relevant to aggravation, mitigation, and sentence including, but not limited to, the nature and circumstances of the present offense, any prior felony conviction or convictions whether or not such conviction or convictions involved a crime of violence, the presence or absence of other criminal activity by the defendant which involved the use or attempted use of force or violence or which involved the express or implied threat to use force or violence, and the defendant's character, background, history, mental condition and physical condition.

~~However, no evidence shall be admitted regarding other criminal activity by the defendant which did not involve the use or attempted use of force or violence or which did not involve the express or implied threat to use force or violence. As used in this section, criminal activity does not require a conviction.~~

~~However, in no event shall evidence of prior criminal activity be admitted for an offense for which the defendant was prosecuted and acquitted. The restriction on the use of this evidence is intended to apply only to proceedings pursuant to this section and is not intended to affect statutory or decisional law allowing such evidence to be used in any other proceedings.~~

~~Except for evidence in proof of the offense or special circumstances which subject a defendant to the death penalty, no evidence may be presented by the prosecution in aggravation unless notice of the evidence to be introduced has been given to the defendant within a reasonable period of time as determined by the court, prior to trial. Evidence may be introduced without such notice in rebuttal to evidence introduced by the defendant in mitigation.~~

~~The trier of fact shall be instructed that a sentence of confinement to state prison for a term of life without the possibility of parole may in future after sentence is imposed, be commuted or modified to a sentence that includes the possibility of parole by the Governor of the State of California.~~

~~In determining the penalty, the trier of fact shall take into account any of the following factors if relevant:~~

~~(a) The circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true pursuant to Section 190.1.~~

~~(b) The presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the express or implied threat to use force or violence.~~

~~(c) The presence or absence of any prior felony conviction.~~

~~(d) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.~~

~~(e) Whether or not the victim was a participant in the defendant's homicidal conduct or consented to the homicidal act.~~

~~(f) Whether or not the offense was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation for his conduct.~~

~~(g) Whether or not defendant acted under extreme duress or under the substantial domination of another person.~~

~~-(h) Whether or not at the time of the offense the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect, or the affects of intoxication.~~

~~-(i) The age of the defendant at the time of the crime.~~

~~-(j) Whether or not the defendant was an accomplice to the offense and his participation in the commission of the offense was relatively minor.~~

~~-(k) Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime.~~

~~After having heard and received all of the evidence, and after having heard and considered the arguments of counsel, the trier of fact shall consider, take into account and be guided by the aggravating and mitigating circumstances referred to in this section, and shall impose a sentence of death if the trier of fact concludes that the aggravating circumstances outweigh the mitigating circumstances. If the trier of fact determines that the mitigating circumstances outweigh the aggravating circumstances the trier of fact shall impose a sentence of confinement in state prison for a term of life without the possibility of parole.~~

**SEC. 8 Section 190.4 of the Penal Code is hereby amended to read:**

190.4. (a) Whenever special circumstances as enumerated in Section 190.2 are alleged and the trier of fact finds the defendant guilty of first degree murder, the trier of fact shall also make a special finding on the truth of each alleged special circumstance. The determination of the truth of any or all of the special circumstances shall be made by the trier of fact on the evidence presented at the trial ~~or at the hearing held pursuant to Subdivision (b) of Section 190.1.~~

In case of a reasonable doubt as to whether a special circumstance is true, the defendant is entitled to a finding that is not true. The trier of fact shall make a special finding that each special circumstance charged is either true or not true. Whenever a special circumstance requires proof of the commission or attempted commission of a crime, such crime shall be charged and proved pursuant to the general law applying to the trial and conviction of the crime.

If the defendant was convicted by the court sitting without a jury, the trier of fact shall be a jury unless a jury is waived by the defendant and by the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived by the defendant and by the people.

If the trier of fact finds that any one or more of the special circumstances enumerated in Section 190.2 as charged is true, ~~there shall be a separate penalty hearing the defendant shall be punished by imprisonment in state prison for life without the possibility of parole, and neither the finding that any of the remaining special circumstances charged is not true, nor if the trier of fact is a jury, the inability of the jury to agree on the issue of the truth or untruth of any of the remaining special circumstances charged, shall prevent the holding of a separate penalty hearing.~~

~~In any case in which the defendant has been found guilty by a jury, and the jury has been unable to reach a unanimous verdict that one or more of the special circumstances charged are true, and does not reach a unanimous verdict that all the special circumstances charged are not true, the court shall dismiss the jury and shall order a new jury impaneled to try the issues, but the issue of guilt shall not be tried by such jury, nor shall such jury retry the issue of the truth of any of the special circumstances which were found by an unanimous verdict of the previous jury to be untrue. If such new jury is unable to reach the unanimous verdict that one or more of the special circumstances it is trying are true, the court shall dismiss the jury and in the court's discretion shall either order a new jury impaneled to try the issues the previous jury was unable to reach the unanimous verdict on, or impose a punishment of confinement in state prison for a term of 25 years.~~

~~-(b) If defendant was convicted by the court sitting without a jury the trier of fact at the penalty hearing shall be a jury unless a jury is waived by the defendant and the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived by the defendant and the people.~~

~~-If the trier of fact is a jury and has been unable to reach a unanimous verdict as to what the penalty shall be, the court shall dismiss the jury and shall order a new jury impaneled to try the issue as to what the penalty shall be. If such new jury is unable to reach a unanimous verdict as to what the penalty shall be, the court in its discretion shall either order a new jury or impose a punishment of confinement in state prison for a term of life without the possibility of parole.~~

~~-(e) (b) If the trier of fact which convicted the defendant of a crime for which he may be subject to imprisonment in state prison for life without the possibility of parole -the death penalty was a jury, the same jury shall consider any plea of not guilty by reason of insanity pursuant to Section 1026, and the truth of any special circumstances which may be alleged, and the penalty to be applied, unless for good cause shown the court discharges that jury in which case a new jury shall be drawn. The court shall state facts in support of the finding of good cause upon the record and cause them to be entered into the minutes.~~

~~-(d) In any case in which the defendant may be subject to the death penalty, evidence presented at any prior phase of the trial, including any proceeding under a plea of not guilty by reason of insanity pursuant to Section 1026 shall be considered an any subsequent phase of the trial, if the trier of fact of the prior phase is the same trier of fact at the subsequent phase.~~

~~-(e) In every case in which the trier of fact has returned a verdict or finding imposing the death penalty, the defendant shall be deemed to have made an application for modification of such verdict or finding pursuant to Subdivision 7 of Section 11. In ruling on the application, the judge shall review the evidence, consider, take into account, and be guided by the aggravating and mitigating circumstances referred to in Section 190.3, and shall make a determination as to whether the jury's findings and verdicts that the aggravating circumstances outweigh the mitigating circumstances are contrary to law or the evidence presented. The judge shall state on the record the reasons for his findings.~~

~~-The judge shall set forth the reasons for his ruling on the application and direct that they be entered on the Clerk's minutes. The denial of the modification of the death penalty verdict pursuant to subdivision~~

~~(7) of Section 1181 shall be reviewed on the defendant's automatic appeal pursuant to subdivision (b) of Section 1239. The granting of the application shall be reviewed on the People's appeal pursuant to paragraph (6).~~

**SEC. 9 Chapter 33 (commencing with Section 7599) is added to Division 7 of Title 1 of the Government Code, to read:**

*Chapter 33. SAFE California Fund to Investigate Unsolved Rapes and Murders*

*Article 1. Creation of SAFE California Fund*

*7599. A special fund to be known as the "SAFE California Fund" is created within the State Treasury and is continuously appropriated for carrying out the purposes of this division.*

*Article 2. Appropriation and Allocation of Funds*

*7599.1. Funding Appropriation*

*On January 1, 2013, \$10,000,000 shall be transferred from the General Fund to the SAFE California Fund for the 2012-13 fiscal year and shall be continuously appropriated for the purposes of this Act. On July 1 of each of fiscal years 2013-2014, 2014-2015 and 2015-2016, an additional sum of \$30,000,000 shall be transferred from the General Fund to the SAFE California Fund and shall be continuously appropriated for the purposes of this Act. Funds transferred to the SAFE California Fund shall be used exclusively for the purposes of this Act and shall not be subject to appropriation or transfer by the Legislature for any other purpose. The funds in the SAFE California Fund may be used without regard to fiscal year.*

*7599.2. Distribution of Monies from SAFE California Fund*

*(a) At the direction of the Attorney General, the Controller shall disburse monies deposited in the SAFE California Fund to police departments, Sheriffs and District Attorney Offices, for the purpose of increasing the rate at which homicide and rape cases are solved. Projects and activities that may be funded include but are not limited to faster processing of physical evidence collected in rape cases, improving forensic science capabilities including DNA analysis and matching, increasing staffing in homicide and sex offense investigation or prosecution units, and relocation of witnesses. Monies from the SAFE California Fund shall be allocated to police departments, Sheriffs and District Attorney Offices through a fair and equitable distribution formula to be determined by the Attorney General.*

*(b) Any costs associated with the allocation and distribution of these funds shall be deducted from the SAFE California Fund. The Attorney General and Controller shall make every effort to keep the costs of allocation and distribution at or close to zero, to ensure that the maximum amount of funding is allocated to programs and activities that increase the rate at which homicide and rape cases are solved.*

**SEC. 10 Retroactive Application of Act**

(a) In order to best achieve the purpose of this Act as stated in Section (3) and to achieve fairness, equality and uniformity in sentencing, this Act shall be applied retroactively.

(b) In any case where a defendant or inmate was sentenced to death prior to the effective date of this Act, the sentence shall automatically be converted to imprisonment in the state prison for life without the possibility of parole under the terms and conditions of this Act. The state of California shall not carry out any execution following the effective date of this Act.

(c) Following the effective date of this Act, the Supreme Court may transfer all death penalty appeals and habeas petitions pending before the Supreme Court to any district of the Court of Appeal or Superior Court, in the Supreme Court's discretion.

**SEC. 11 Effective Date**

This Act shall become effective on the day following the election pursuant to subdivision (a) of Section 10 of Article II of the California Constitution.

**SEC. 12 Severability**

The provisions of this Act are severable. If any provision of this Act or its application is held invalid, including but not limited to Section 10, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

**Proposition 36**  
**Three Strikes Law. Sentencing for Repeat Felony Offenders.**  
**Initiative Statute.**

**Background**

There are three categories of crimes: felonies, misdemeanors, and infractions. A felony is the most serious type of crime, and an individual convicted of a felony may be sentenced to state prison under certain circumstances. Individuals convicted of felonies who are not sentenced to state prison are sentenced to county jail, supervised by the county probation department in the community, or both.

Existing law classifies some felonies as “violent” or “serious,” or both. Examples of felonies currently defined as violent include murder, robbery, and rape. While almost all violent felonies are also considered serious, other felonies are defined only as serious, such as assault with intent to commit robbery. Felonies that are not classified as violent or serious include grand theft (not involving a firearm) and possession of a controlled substance.

As of May 2012, there were about 137,000 inmates in the California prison system. The state’s prison system in 2012-13 is budgeted for almost \$9 billion.

***Three Strikes Sentencing.*** Proposition 184 (commonly referred to as the “three strikes” law) was adopted by voters in 1994. It imposed longer prison sentences for certain repeat offenders. Specifically, the law requires that a person who is convicted of a felony and who previously has been convicted of one or more violent or serious felonies be sentenced to state prison as follows:

- ***Second Strike Offense.*** If the person has *one previous* serious or violent felony conviction, the sentence for *any new* felony conviction (not just a serious or violent felony) is *twice* the term otherwise required under law for the new conviction. Offenders sentenced by the courts under this provision are referred to as “second strikers.” As of March 2012, about 33,000 inmates were second strikers.
- ***Third Strike Offense.*** If the person has *two or more previous* serious or violent felony convictions, the sentence for *any new* felony conviction (not just a serious or violent felony) is a life term with the earliest possible parole after 25 years. Offenders convicted under this provision are referred to as “third strikers.” As of March 2012, about 9,000 inmates were third strikers.

While the law requires the sentences described above, in some instances the court may choose not to consider prior felonies during sentencing. When this occurs, an offender who would otherwise be sentenced as a second or third striker would be sentenced to a lesser term than required under the three strikes law.

***Prison Release Determination.*** Under current law, most second strikers are automatically released from prison after completing their sentences. In contrast, third strikers are only released upon approval by the state Board of Parole Hearings (BPH). After third strikers have served the minimum number of years required by their sentence, a BPH panel conducts a parole consideration hearing to consider their possible release. For example, BPH would conduct such a hearing for a third striker sentenced to 25-years-to-life after the third striker served 25 years. If BPH decides not to release the third striker at that hearing, the board would conduct a subsequent hearing in the future. Since the three strikes law came into effect in 1994, the first third strikers

will become eligible for hearings on their possible release from prison near the end of this decade.

***Post Release Supervision.*** All second and third strikers are required under current law to be supervised in the community after release from prison. If a second striker's most recent conviction was for a nonserious, non-violent crime, he or she will generally be supervised in the community by county probation officers. Otherwise, the second striker will be supervised in the community by state parole agents. All third strikers are supervised in the community by state parole agents following their release. When second or third strikers violate the terms of their community supervision or commit a new offense, they could be placed in county jail or state prison depending on the circumstances.

## **Proposal**

This measure reduces prison sentences served under the three strikes law by certain third strikers whose current offenses are nonserious, non-violent felonies. The measure also allows resentencing of certain third strikers who are currently serving life sentences for specified nonserious, non-violent felonies. Both of these changes are described below.

***Shorter Sentences for Some Third Strikers.*** The measure requires that an offender who has *two or more prior* serious or violent felony convictions and whose *new* offense is a nonserious, non-violent felony receive a prison sentence that is twice the usual term for the new offense, rather than a minimum sentence of 25-years-to-life as is currently required. For example, a third striker who is convicted of a crime in which the usual sentence is two to four years would instead receive a sentence of between four to eight years—twice the term that would otherwise apply—rather than a 25-years-to-life term.

The measure, however, provides for some exceptions to these shorter sentences. Specifically, the measure requires that if the offender has committed certain new or prior offenses, including some drug-, sex-, and gun-related felonies, he or she would still be subject to a life sentence under the three strikes law.

***Resentencing of Some Current Third Strikers.*** This measure allows certain third strikers to apply to be resentenced by the courts. The measure limits eligibility for resentencing to third strikers whose current offense is nonserious, non-violent and who have not committed specified current and prior offenses, such as certain drug-, sex- and gun-related felonies. Courts conducting these resentencing hearings would first determine whether the offender's criminal offense history makes them eligible for resentencing. The court would be required to resentence eligible offenders unless it determines that resentencing the offenders would pose an unreasonable risk to public safety. In determining whether an offender poses such a risk, the court could consider any evidence it determines is relevant, such as the offender's criminal history, behavior in prison, and participation in rehabilitation programs. The measure requires resented offenders to receive twice the usual term for their most recent offense instead of the sentence previously imposed. Offenders whose requests for resentencing are denied by the courts would continue to serve out their life terms as they were originally sentenced.

## **Fiscal Effects**

***State Correctional Savings.*** This measure would have a number of fiscal impacts on the state's correctional system. Most significantly, the measure would reduce state prison costs in two ways. First, fewer inmates would be incarcerated for life sentences under the three strikes law because of the measure's provisions requiring that such sentences be applied only to third

strikers whose current offense is serious or violent. This would reduce the sentences of some future felony offenders. Second, the resentencing of third strikers could result in many existing inmates receiving shorter prison terms. This would result in a reduction in the inmate population beginning in the near term.

The measure would also result in reduced state parole costs. This would occur because the offenders affected by this measure would generally be supervised by county probation—rather than state parole—following their release from prison. This is because their current offense would be nonserious and non-violent. In addition, the reduction in the third striker population would reduce the number of parole consideration hearings BPH would need to conduct in the future.

State correctional savings from the above changes would likely be around \$70 million annually, with even higher savings—up to \$90 million annually—over the next couple of decades. However, these annual savings could be tens of millions of dollars higher or lower depending on several factors. In particular, the actual level of savings would depend on the number of third strikers resentenced by the court and the rate at which BPH would have released third strikers in the future under current law.

***Resentencing Costs.*** This measure would result in a one-time cost to the state and counties related to the resentencing provisions of this measure. These provisions would increase court caseloads, which would result in added costs for district attorneys, public defenders, and county sheriff's departments that would manage this workload and staff these resentencing proceedings. In addition, counties would incur jail costs to house inmates during resentencing proceedings. These costs could be a few million dollars statewide over a couple of years.

***Other Fiscal Impacts.*** There would be some additional court-, probation-, and jail-related costs for the state and counties. This is because some offenders released from prison due to this measure would be supervised by probation departments instead of state parole, and would have court hearings and receive jail sentences if they violate the terms of their supervision or commit new crimes. We estimate that such long-term costs would not be significant.

This measure could result in a variety of other state and local government fiscal effects. For instance, governments would incur additional costs to the extent that offenders released from prison because of this measure require government services (such as government-paid health care for persons without private insurance coverage) or commit additional crimes. There also would be some additional state and local government revenue to the extent that offenders released from prison because of this measure entered the workforce. The magnitude of these impacts is unknown.

**Proposition 36**  
**Three Strikes Law. Sentencing for Repeat Felony Offenders.**  
**Initiative Statute.**

**Yes/No Statement**

A **YES** vote on this measure means: Some criminal offenders with two prior serious or violent felony convictions who commit certain nonserious, non-violent felonies would be sentenced to shorter terms in state prison. In addition, some offenders with two prior serious or violent felony convictions who are currently serving life sentences for many nonserious, non-violent felony convictions could be resentenced to shorter prison terms.

A **NO** vote on this measure means: Offenders with two prior serious or violent felony convictions who commit any new felony could continue to receive life sentences. In addition, offenders with two prior serious or violent felony convictions who are currently serving life sentences for nonserious, non-violent felonies would continue to serve the remainder of their life sentences.

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October 18, 2011

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

Honorable Kamela Harris  
Attorney General of California  
Attn: Initiative Coordinator  
Department of Justice  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, CA 95814

Re: Request for Title and Summary for the Three Strikes Reform Act of 2012 Initiative

Dear Attorney General Harris:

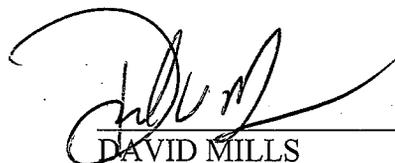
I hereby request your office prepare a circulating Title and Summary for the enclosed proposed initiative pursuant to Article II, Section 10(d) of the California Constitution.

Please find attached the statements required by Elections Code sections 9001 and 9608, the name and residence address of the proponent and a check for \$200.

The public contact information for the proponent is:

Dan Newman  
SCN Strategies  
114 Sansome Street  
San Francisco, CA 94104  
(415) 981-9940  
Dan@scnstrategies.com

Sincerely,

  
\_\_\_\_\_  
DAVID MILLS  
Proponent

## THREE STRIKES REFORM ACT OF 2012

### SECTION 1

#### Findings & Declarations:

The People enact the Three Strikes Reform Act of 2012 to restore the original intent of California's Three Strikes law—imposing life sentences for dangerous criminals like rapists, murderers, and child molesters.

This act will:

- (1) Require that murderers, rapists, and child molesters serve their full sentences—they will receive life sentences, even if they are convicted of a new minor third strike crime.
- (2) Restore the Three Strikes law to the public's original understanding by requiring life sentences only when a defendant's current conviction is for a violent or serious crime.
- (3) Maintain that repeat offenders convicted of non-violent, non-serious crimes like shoplifting and simple drug possession will receive twice the normal sentence instead of life.
- (4) Save hundreds of millions of taxpayer dollars every year for at least ten years. The state will no longer pay for housing or long-term health care for elderly, low-risk, non-violent inmates serving life sentences for minor crimes.
- (5) Prevent the early release of dangerous criminals who are currently being released early because jails and prisons are overcrowded with low-risk, non-violent inmates serving life sentences for petty crimes.

### SECTION 2

**Section 667 of the Penal Code is amended as follows:**

**[Additions to the Penal Code are *italicized*, deletions from the Penal Code are ~~struck-out~~.]**

667(a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

- (2) This subdivision shall not be applied when the punishment imposed under other provisions of

law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, "serious felony" means a serious felony listed in subdivision (c) of Section 1192.7.

(5) This subdivision shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of subdivision (c) of Section 1192.7.

(b) It is the intent of the Legislature in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of *one or more* serious and/or violent felony offenses.

(c) Notwithstanding any other law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior *serious and/or violent* felony convictions as defined in subdivision (d), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior *serious and/or violent* felony conviction and the current felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).

(7) If there is a current conviction for more than one serious or violent felony as described in

paragraph (6), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a *serious and/or violent* felony shall be defined as:

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior felony for purposes of subdivisions (b) to (i), inclusive:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A *prior* conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison *shall constitute a* ~~A~~ prior conviction of a particular *serious and/or violent* felony ~~shall include a~~ *if the prior conviction in the another jurisdiction is* for an offense that includes all of the elements of a particular *violent* felony as defined in subdivision (c) of Section 667.5 or *serious felony as defined in* subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication shall constitute a prior *serious and/or violent* felony conviction for purposes of sentence enhancement if:

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

(B) The prior offense is listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2) as a *serious and/or violent* felony.

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court

law.

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other enhancement or punishment provisions which may apply, the following shall apply where a defendant has a *one or more* prior *serious and/or violent* felony convictions:

(1) If a defendant has one prior *serious and/or violent* felony conviction *as defined in subdivision (d)* that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.

(2) (A) *Except as provided in subparagraph (C), If* if a defendant has two or more prior *serious and/or violent* felony convictions as defined in subdivision (d) that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the ~~greater~~ *greatest* of:

(i) Three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior *serious and/or violent* felony convictions.

(ii) Imprisonment in the state prison for 25 years.

(iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(C) *If a defendant has two or more prior serious and/or violent felony convictions as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7 that have been pled and proved, and the current offense is not a serious or violent felony as defined in subdivision (d), the defendant shall be sentenced pursuant to paragraph (1) of subdivision (e) unless the prosecution pleads and proves any of the following:*

(i) *The current offense is a controlled substance charge, in which an allegation under Section 11370.4 or 11379.8 of the Health and Safety Code was admitted or found true.*

(ii) *The current offense is a felony sex offense, defined in subdivision (d) of Section 261.5 or Section 262, or any felony offense that results in mandatory registration as a sex offender*

*pursuant to subdivision (c) of Section 290 except for violations of Sections 266 and 285, paragraph (1) of subdivision (b) and subdivision (e) of Section 286, paragraph (1) of subdivision (b) and subdivision (e) of Section 288a, Section 314, and Section 311.11.*

*(iii) During the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.*

*(iv) The defendant suffered a prior conviction, as defined in subdivision (d) of this section, for any of the following serious and/or violent felonies:*

*(a) a "sexually violent offense" as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code;*

*(b) oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than he or she as defined by Section 288a, sodomy with another person who is under 14 years of age and more than 10 years younger than he or she as defined by Section 286, or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than he or she, as defined by Section 289;*

*(c) a lewd or lascivious act involving a child under 14 years of age, in violation of Section 288;*

*(d) any homicide offense, including any attempted homicide offense, defined in Sections 187 to 191.5, inclusive;*

*(e) solicitation to commit murder as defined in Section 653f;*

*(f) assault with a machine gun on a peace officer or firefighter, as defined in Section 245(d)(3);*

*(g) possession of a weapon of mass destruction, as defined in Section 11418(a)(1);*

*(h) any serious and/or violent felony offense punishable in California by life imprisonment or death.*

*(f)(1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be applied in every case in which a defendant has a *one or more* prior *serious and/or violent* felony convictions as defined in subdivision (d). The prosecuting attorney shall plead and prove each prior *serious and/or violent* felony conviction except as provided in paragraph (2).*

*(2) The prosecuting attorney may move to dismiss or strike a prior *serious and/or violent* felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior *serious and/or violent* felony conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior *serious and/or violent* felony conviction, the court may dismiss or strike the allegation. *Nothing in this Section shall be read to alter a court's authority under Section 1385.**

(g) Prior *serious and/or violent* felony convictions shall not be used in plea bargaining as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony *serious and/or violent* convictions and shall not enter into any agreement to strike or seek the dismissal of any prior *serious and/or violent* felony conviction allegation except as provided in paragraph (2) of subdivision (f).

(h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as they existed on ~~June 30, 1993~~ *the effective date of this Act*.

(i) If any provision of subdivisions (b) to (h), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

(j) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by ~~roll call~~ *roll call* vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

### SECTION 3

Section 667.1 of the Penal Code is amended to read:

Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after the effective date of this act, all references to existing statutes in subdivisions (c) through (g), inclusive, of Section 667, are to those statutes as they existed on the effective date of this act, including amendments made to those statutes by this act.

### SECTION 4

**Section 1170.12 of the Penal Code is amended to read:**

§ 1170.12. Aggregate and consecutive terms for multiple convictions; Prior conviction as prior felony; Commitment and other enhancements or punishment

(a) Notwithstanding any other provision of law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior *serious and/or violent* felony convictions, as defined in subdivision (b), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior *serious and/or violent* felony conviction and the current

felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to this section.

(7) If there is a current conviction for more than one serious or violent felony as described in subdivision (b) the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(b) Notwithstanding any other provision of law and for the purposes of this section, a prior *serious and/or violent* conviction of a felony shall be defined as:

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior *serious and/or violent* felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior *serious and/or violent* conviction is a felony for purposes of this section:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A *prior* conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison shall constitute a prior conviction of a particular *serious and/or violent* felony ~~shall include a~~ if the prior conviction in the another jurisdiction is for an offense that includes all of the elements of the particular *violent* felony as

defined in subdivision (c) of Section 667.5 or *serious felony as defined in* subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication shall constitute a prior *serious and/or violent* felony conviction for the purposes of sentence enhancement if:

(A) The juvenile was sixteen years of age or older at the time he or she committed the prior offense, and

(B) The prior offense is

(i) listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, or

(ii) listed in this subdivision as a *serious and/or violent* felony, and

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law, and

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(c) For purposes of this section, and in addition to any other enhancements or punishment provisions which may apply, the following shall apply where a defendant has a *one or more* prior *serious and/or violent* felony convictions:

(1) If a defendant has one prior *serious and/or violent* felony conviction *as defined in subdivision (b)* that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.

(2)(A) *Except as provided in subparagraph (C) If* a defendant has two or more prior *serious and/or violent* felony convictions, as defined in ~~paragraph (1)~~ subdivision (b), that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the ~~greater~~ *greatest* of:

(i) three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior *serious and/or violent* felony convictions, or

(ii) twenty-five years or

(iii) the term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title

7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

*(C) If a defendant has two or more prior serious and/or violent felony convictions as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7 that have been pled and proved, and the current offense is not a felony described in paragraph (1) of subdivision (b) of this section, the defendant shall be sentenced pursuant to paragraph (1) of subdivision (c) of this section, unless the prosecution pleads and proves any of the following:*

*(i) The current offense is a controlled substance charge, in which an allegation under Section 11370.4 or 11379.8 of the Health and Safety Code was admitted or found true.*

*(ii) The current offense is a felony sex offense, defined in subdivision (d) of Section 261.5 or Section 262, or any felony offense that results in mandatory registration as a sex offender pursuant to subdivision (c) of Section 290 except for violations of Sections 266 and 285, paragraph (1) of subdivision (b) and subdivision (e) of Section 286, paragraph (1) of subdivision (b) and subdivision (e) of Section 288a, Section 314, and Section 311.11.*

*(iii) During the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.*

*(iv) The defendant suffered a prior conviction, as defined in subdivision (b) of this section, for any of the following serious/and or violent felonies:*

*(a) a "sexually violent offense " as defined by subdivision (b) of Section 6600 of the Welfare and Institutions Code;*

*(b) oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than he or she as defined by Section 288a, sodomy with another person who is under 14 years of age and more than 10 years younger than he or she as defined by Section 286 or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than he or she, as defined by Section 289;*

*(c) a lewd or lascivious act involving a child under 14 years of age, in violation of Section 288;*

*(d) any homicide offense, including any attempted homicide offense, defined in Sections 187 through 191.5, inclusive;*

*(e) solicitation to commit murder as defined in Section 653f;*

*(f) assault with a machine gun on a peace officer or firefighter, as defined in Section 245(d)(3);*

*(g) possession of a weapon of mass destruction, as defined in Section 11418(a)(1);*

*(h) any serious and/or violent felony offense punishable in California by life imprisonment or death.*

(d)(1) Notwithstanding any other provision of law, this section shall be applied in every case in which a defendant has a *one or more* prior *serious and/or violent* felony convictions as defined in this section. The prosecuting attorney shall plead and prove each prior *serious and/or violent* felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior *serious and/or violent* felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior *serious and/or violent* conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior *serious and/or violent* felony conviction, the court may dismiss or strike the allegation. *Nothing in this Section shall be read to alter a court's authority under Section 1385.*

(e) Prior *serious and/or violent* felony convictions shall not be used in plea bargaining, as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior *serious and/or violent* felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior *serious and/or violent* felony conviction allegation except as provided in paragraph (2) of subdivision (d).

*(f) If any provision of subdivisions (a) to (e), inclusive, or of Section 1170.126, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.*

*(g) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.*

## **SECTION 5**

### **Section 1170.125 of the Penal Code is amended to read:**

1170.125. Notwithstanding Section 2 of Proposition 184, as adopted at the November 8, 1994 General Election, for all offenses committed on or after the effective date of this act, all references to existing statutes in Sections Section 1170.12 and 1170.126 are to those sections as they existed on the effective date of this act, including amendments made to those statutes by this act.

## **SECTION 6**

**Section 1170.126 is added to Penal Code to read:**

*(a) The re-sentencing provisions under this Section and related statutes are intended to apply exclusively to persons presently serving an indeterminate term of imprisonment pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12, whose sentence under this Act would not have been an indeterminate life sentence.*

*(b) Any person serving an indeterminate term of life imprisonment imposed pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12 upon conviction, whether by trial or plea, of a felony or felonies that are not defined as serious and/or violent felonies by subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, may file a petition for a recall of sentence, within two years after the effective date of the this Act or at a later date upon a showing of good cause, before the trial court that entered the judgment of conviction in his or her case, to request re-sentencing in accordance with the provisions of subdivision (e) of Section 667, and/or subdivision (c) of Section 1170.12, as those statutes have been amended by this Act.*

*(c) No person who is presently serving a term of imprisonment for a "second strike" conviction imposed pursuant to paragraph (1) of subdivision (e) of Section 667 or paragraph (1) of subdivision (c) of Section 1170.12, shall be eligible for re-sentencing under the provisions of this section.*

*(d) The petition for a recall of sentence described in subdivision (b) shall specify all the currently charged felonies, which resulted in the sentence under paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12, or both, and shall also specify all of the prior convictions alleged and proved under subdivision (d) of Section 667 and subdivision (b) of Section 1170.12.*

*(e) An inmate is eligible for re-sentencing if:*

*(1) The inmate is serving an indeterminate term of life imprisonment imposed pursuant to Section 667(e)(2) and/or Section 1170.12(c) for a conviction of a felony or felonies that are not defined as serious and/or violent felonies by Section 667.5(c) or Section 1192.7(c).*

*(2) The inmate's current sentence was not imposed for any of the offenses appearing in Section 667(e)(2)(C)(i-iii) and/or Section 1170.12(c)(2)(C)(i-iii), as amended by this Act; and*

*(3) The inmate has no prior convictions for any of the offenses appearing in Section 667(e)(2)(C)(iv) and/or Section 1170.12(c)(2)(C)(iv), as amended by the this Act.*

*(f) Upon receiving a petition for recall of sentence under this Section, the court shall determine whether the petitioner satisfies the criteria in subsection (e). If the petitioner satisfies the criteria in subsection (e) the petitioner shall be re-sentenced pursuant to Section 667(e)(1) and/or Section*

1170.12(c)(1) unless the court, in its discretion, determines that re-sentencing the petitioner would pose an unreasonable risk of danger to public safety.

(g) In exercising its discretion in subsection (f), the court may consider:

(1) The petitioner's criminal conviction history, including the type of crime(s) committed, the extent of injury to victims, the length of prior prison commitments, the remoteness of the crimes;

(2) The petitioner's disciplinary record and record of rehabilitation while incarcerated; and

(3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.

(h) Under no circumstances may re-sentencing under this Act result in the imposition of a term longer than the original sentence.

(i) Notwithstanding subdivision (b) of Section 977, a defendant petitioning for re-sentencing may waive his or her appearance in court for the re-sentencing, provided that the accusatory pleading is not amended at the re-sentencing, and that no new trial or retrial of the individual will occur. The waiver shall be in writing and signed by the defendant.

(j) If the court that originally sentenced the defendant is not available to re-sentence the defendant, the presiding judge shall designate another judge to rule on the defendant's petition.

(k) Nothing in this Section is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.

(l) Nothing in this and related Sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this Act.

(m) A re-sentencing hearing ordered under this Act shall constitute a "post-conviction release proceeding" under California Constitution, Article I, section 28, subdivision (b)(7) ("Marsy's Law").

## SECTION 7

**LIBERAL CONSTRUCTION:** This Act is an exercise of the public power of the People of the State of California for the protection of the health, safety, and welfare of the People of the State of California, and shall be liberally construed to effectuate those purposes.

## SECTION 8

**SEVERABILITY:** If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this

Act, which can be given effect without the invalid provision or application in order to effectuate the purposes of this Act. To this end, the provisions of this Act are severable.

## **SECTION 9**

**CONFLICTING MEASURES:** If this measure is approved by the voters, but superseded by any other conflicting ballot measure approved by more voters at the same election, and the conflicting ballot measure is later held invalid, it is the intent of the voters that this Act shall be given the full force of law.

## **SECTION 10**

**EFFECTIVE DATE:** This Act shall become effective on the first day after enactment by the voters.

## **SECTION 11**

**AMENDMENT:** Except as otherwise provided in the text of the statutes, the provisions of this Act shall not be altered or amended except by one of the following: (a) By statute passed in each house of the Legislature, by roll call entered in the journal, with two-thirds of the membership and the Governor concurring; or (b) By statute passed in each house of the Legislature, by roll call vote entered in the journal, with a majority of the membership concurring, to be placed on the next general ballot and approved by a majority of the electors; or (c) By statute that becomes effective when approved by a majority of the electors.

**OFFICE OF THE COUNTY ADMINISTRATOR  
CONTRA COSTA COUNTY**

TO:           Legislation Committee  
              *Supervisor Mary N. Piepho, Chair*  
              *Supervisor Karen Mitchoff, Vice Chair*

FROM:       Lara DeLaney, Legislative Coordinator

DATE:        July 30, 2012

SUBJECT:    **Agenda Item #7: Federal Legislation and MAP-21**

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**RECOMMENDATION**

ACCEPT the report on federal legislative matters and direct follow-up as needed.

**REPORT**

With transportation reauthorization in the rearview mirror (see additional information below), Congress has shifted its focus to some of the major fiscal issues facing the country, including efforts to revise the **impending across-the-board spending cuts in defense and non-defense programs**. The reductions, which were approved as part of last year's Budget Control Act (PL 112-25), are scheduled to take effect on January 2nd.

Republicans and Democrats remain far apart on how to revise the automatic cuts, known as **budget sequestration**, though both parties acknowledge that the reductions need to be modified. Republicans generally support spending cuts, with some modifications, while many Democrats argue that additional revenue must be part of any potential solution. Lawmakers on both sides of the aisle agree, however, that more information is needed on how the sequester would be implemented and how the cuts would impact individual programs and industries.

The House overwhelmingly approved legislation (HR 5872) on July 18 that would require the Obama administration to explain how sequestration would affect both domestic and defense programs. Across Capitol Hill, the Senate adopted an amendment to its farm bill reauthorization measure (S 3240) that would require similar reports from the Office of Management and Budget, the Defense Department, and the White House. It is unclear whether Senate Majority Leader Harry Reid (D-NV) will bring a separate measure to the floor.

In a related development, House Democrats are calling on GOP leaders to allow a quick and "clean" vote on a **bill to raise the federal debt ceiling** before the nation reaches its borrowing limit. Although there is no definitive date forecast for when the debt limit will be breached, Democrats are hoping to avoid the same budget confrontation that led to the Budget Control Act. For his part, House Speaker John Boehner (R-OH) continues to maintain that Congress should cut spending by an amount equivalent to the debt ceiling increase.

With all of the focus on the budget sequester and debt limit, **the fiscal year 2013 appropriations measures have temporarily taken a backseat**. Thus far, the House Appropriations Committee has cleared 11 of the 12 annual spending bills, with five measures approved by the full House. In the Senate, the Appropriations Committee has approved nine spending bills, but the full chamber has yet to consider any of the fiscal year 2013 appropriations measures.

At this point, it is likely that **lawmakers will need to approve a stopgap measure to extend federal funding** beyond the end of the current fiscal year, which ends in September. Leaders of both parties would be open to an early deal in order to avoid any threat of a government shutdown before the elections. While there is no agreement in place on the duration and size of a continuing resolution (CR), it will likely last beyond election day and possibly until the end of December.

Perhaps further complicating budget negotiations, the Department of Health and Human Services recently announced that it would grant waivers to states, exempting them from the work requirements written into welfare legislation (PL 104-193) enacted during the Clinton administration. Under the law, states generally must enroll half of their participating families in job-training programs in order to qualify for the funding. Republicans contend that the waivers will undermine the law's goal of weaning people off welfare and guiding them into the workforce.

Senate Democrats, meanwhile, advanced a package outlined by President Obama that would **extend expiring Bush-era tax cuts on income under \$200,000 for single filers and \$250,000 for joint filers**. On July 25, they narrowly pushed through a measure to extend tax rates for family income up to \$250,000 for a year, as both parties continue their election-year messaging war on taxes. By a 51-48 margin, Democrats overcame 2 defections to win passage of a measure that would also raise the top rate on capital gains and dividends, as well as continue several targeted tax provisions that Democrats say help the middle-class. House Republicans, on the other hand, are planning a vote to extend the tax cuts to everyone, including high-income earners. Both measures are entirely symbolic and have no chance of passage. They are, instead, intended to draw the stark differences between the two parties in advance of the November elections.

In other developments, the House Agriculture Committee approved its **farm bill reauthorization measure (HR 6083) on July 11**. Overall, the legislation would produce a savings of \$35 billion in mandatory funding over the next 10 years, which is \$12 billion more than the Senate-approved bill (S 3240).

**Cuts to the Supplemental Nutrition Assistance Program (SNAP), formally known as food stamps, would make up the biggest savings - \$16.1 billion**. This is more than three times the amount proposed in the Senate bill. Most of the cuts would come from scaled-back automatic eligibility in the program. During a marathon markup session, the panel rejected Democratic efforts to restore funding to the program, as well as a GOP amendment that would have made even deeper cuts. It is unclear when, or if, HR 6083 will be scheduled for floor time.

In other news, the House last week approved legislation (HR 6079) that would repeal the Affordable Care Act (ACA) in its entirety. The move was largely a symbolic response to the Supreme Court's recent ruling to uphold the constitutionality of the law. Since the start of the 112th Congress, House Republicans have made more than 30 attempts to cut back, dismantle, or defund parts of the ACA. Like the GOP's earlier efforts, HR 6079 will likely not be considered by the Senate.

### **CBO Releases New Cost Estimates for Affordable Care Act**

The Congressional Budget Office (CBO) released two new cost analyses of the Affordable Care Act (ACA) on July 24. One report estimates the cost of implementing the ACA, factoring in the Supreme Court's ruling that the Medicaid expansion would be optional for states, and the other estimates the cost of repealing the Act altogether.

CBO now estimates that the ACA health insurance coverage expansion provisions will cost the federal government \$1,168 billion over 11 years versus the \$1,252 billion it projected last March for that same period, for a net savings of \$84 billion. The savings result from lower Medicaid enrollment due to states opting out of the Medicaid expansion. Some individuals who would have been Medicaid eligible are expected to enroll in federally subsidized health insurance coverage through the new exchanges, but those cost increases would be more than offset by the projected drop in Medicaid costs.

CBO also predicts that due to the Supreme Court's decision, six million fewer people than previously estimated would be covered by Medicaid and the Children's Health Insurance Program (CHIP) by 2022, estimating that three million more people will have coverage in the exchanges, and three million more people will remain uninsured. CBO predicts that H.R. 6079, the Repeal of Obamacare Act, passed by the House on July 11, would increase the federal budget deficit by a net of \$109 billion over ten years, because the cost of eliminating spending under the ACA is outweighed by the elimination of savings and revenue generating provisions.

### **Report Finds that Sequestration May Cost Jobs in California**

A report commissioned by the Aerospace Industries Association was released on July 17, 2012, detailing the impact on the economy should the automatic federal spending reductions required by the Budget Control Act of 2011 take effect beginning January 2, 2013. The report, The Economic Impact of the Budget Control Act of 2011 on DOD & non-DOD Agencies, was authored by Stephen S. Fuller, Ph.D. Dwight Schar Faculty Chair and University Professor, Director, Center for Regional Analysis, George Mason University, Virginia.

The economic impact assessment contained in the report, according to the author, "includes all discretionary spending subject to cutbacks under the BCA of 2011 (both the effects of statutory limits and automatic reductions) for DOD and non-DOD agencies (e.g., Agriculture, Commerce, Education, EPA, Energy, Health and Human Services, Homeland Security, Housing and Urban Department, Interior, Justice, Labor, NASA, State, and Transportation). However, it excludes spending reductions for all federal mandatory programs such as Medicare."

The report finds that overall the pending sequestration would:

- Reduce the nation's GDP by \$215 billion;
- Decrease personal earnings of the workforce by \$109.4 billion; and,
- Cost the U.S. economy 2.14 million jobs.

Furthermore, as a consequence of sequestration, GDP growth in 2013 will be reduced by two-thirds and unemployment will increase by as much as 1.5 percentage points raising the current national rate above 9 percent, Fuller concludes.

Regarding the impacts at the state level, the report finds that ten states account for more than one-half (55.3 percent) of the total potential job losses, with California topping the list and accounting for 10.5 percent and second-place Virginia accounting for 9.7 percent, representing a combined 20.2 percent of the job losses based on their FY 2010 share of DOD and non-DOD federal payroll and procurement outlays.

In California, the report predicts that 135,209 jobs will be lost as a result of DOD cuts, and 90,255 jobs lost as a result of non-DOD cuts, for a total of 225,464 jobs lost. Virginia would be the second hardest hit state suffering a total of 207,571 jobs lost as a result of both DOD and non-DOD cuts.

The report also finds that sequestration would result in a loss of \$22.676 billion in California's Gross State Product (GSP) as a result of both DOD and non-DOD losses. \$11.719 billion of this would be due to DOD cuts, and \$10.957 billion because of non-DOD losses. In lost income, the report estimates that the state's workers would suffer \$11.543 billion in lost income (\$5.768 billion as a result of DOD cuts, and \$5.775 billion as a result of non-DOD cuts).

The report can be found at: [http://www.aia-aerospace.org/assets/Fuller\\_II\\_Final\\_Report.pdf](http://www.aia-aerospace.org/assets/Fuller_II_Final_Report.pdf)

### **Federal Transportation Legislation Signed by President**

On Friday, July 6, President Obama signed into law a new two-year transportation authorization, entitled Moving Ahead for Progress in the 21st Century (MAP-21).

While the funding authorized is below the levels sought in President Obama's budget, Secretary LaHood has acknowledged that the new law is a good bipartisan bill that will provide steady and predictable funding for the next two years in order to keep construction workers on the job rebuilding our transit systems, roads, rails, and bridges. Consistent with the President's budget proposals, MAP-21 consolidates certain programs to improve their efficiency and provides significant funding increases specifically for improving the state of repair of our transit systems.

MAP-21 will take effect on October 1, 2012. Until then, current programs are managed under existing law (SAFETEA-LU), which expires on September 30, 2012.

The conference committee's statement stated: "The Senate and the House both sought to consolidate the number of programs in the federal-aid highway program to focus priorities and

resources on key national goals. The conference report consolidates the number of highway programs by two-thirds. The elimination of dozens of programs makes more resources available to states and metropolitan areas to invest in their most critical needs to improve the condition and performance of their transportation system."

In addition, "The conference report combined provisions from the House and Senate bills focusing on the shared priority of accelerating project delivery. It maintains the vast majority of project acceleration provisions from S. 1813 and provisions from the House bill in addition to new provisions that will maintain substantive environment and public health protections while streamlining the creation and use of documents and environmental reviews, enhancing efficiency and accountability in the project delivery process."

The conference report did not include language expediting the construction of the Keystone XL pipeline, nor did it include language to prevent government regulation of toxic ash, a product of power plants that burn coal. It did, however, disallow funds to be used for projects related to pedestrian or bicycle safety, as well as restricted environmental regulations for road and highway projects. In general, the bill provides more spending flexibility to states, enacts safety laws, and works to encourage private investment in transportation projects by expanding a federal loan guarantee program.

For more information about MAP-21, see *Attachment A*.

**H.R. 4348, THE “MOVING AHEAD FOR PROGRESS IN THE 21<sup>ST</sup> CENTURY ACT”**  
**CONFERENCE REPORT**  
**SUMMARY OF PROVISIONS WITHIN THE JURISDICTION OF**  
**THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**  
*Prepared by the Committee on Transportation and Infrastructure Democratic Staff*  
*June 29, 2012*

**DIVISION A – FEDERAL AID HIGHWAYS AND HIGHWAY SAFETY**

**Highways Provisions**

- Authorizes \$40.56 billion for FY 2013 and \$40.625 billion for FY 2014 for Federal-aid highway programs, of which \$40.038 billion and \$40.595 billion are provided out of the Highway Trust Fund.
- *Federal-aid Highway Program*: Restructures highway programs by eliminating or consolidating approximately 60 programs, and structures the Highway Program around four core formula programs:
  - National Highway Performance Program: Provides \$22.25 billion in FY 2013 and \$22.4 billion in FY 2014 to improve the condition and performance of the National Highway System. This program consolidates the existing Interstate Maintenance and National Highway System formula programs, and aspects of the Highway Bridge program that cover bridges on the Federal-aid system.
  - Surface Transportation Program: Provides \$10.2 billion in FY 2013 and \$10.3 billion in 2014 to assist states and local governments to improve the condition and performance of Federal-aid highways and bridges on any public road. This program would continue to provide broad eligibility and would be suballocated within the state to local governments based on population. It also includes expanded eligibility for bridges off the Federal-aid system (which are currently eligible under the Highway Bridge program).
  - Highway Safety Improvement Program (HSIP): Provides \$2.44 billion in FY 2013 and \$2.46 billion in FY 2014 annually to support projects that improve the safety of road infrastructure. Continues to set-aside \$225 million in HSIP funds for highway-railway grade crossings. Eliminates set-aside for high-risk rural roads, but continues eligibility for these activities under HSIP.
  - Congestion Mitigation and Air Quality program (CMAQ): Provides \$2.26 billion in FY 2013 and \$2.28 billion for CMAQ program. Drops S. 1813 provision providing CMAQ funds be suballocated.

- *Distribution of Federal-aid Highway Funds:* Eliminates all formula factors for individual highway programs. Instead, distributes highway formula funds to states based on each state's share of total highway funds distributed in FY 2012. These amounts would include both apportioned formula and allocated (discretionary or earmarked) amounts.
- *Equity Bonus Program:* Eliminates Equity Bonus program, which was designed to ensure that each state receives a minimum return of highway funds based on its share of gas tax payments into the HTF. The agreement ensures that every state would be guaranteed a minimum return of 95 percent of its payments into the HTF. Currently, every state receives more back in Federal aid highway program funding than it contributes to the trust fund.
- *Transportation Alternatives:* Provides that 2 percent of amounts apportioned to states be set-aside for a new Transportation Alternatives (TA) program. This funding would be used to carry out transportation enhancements (TE) activities, the Safe Route to School program, the recreational trails program, and to plan, design and construct boulevards, main streets, and other roadways. Under this consolidated program, funding for these activities would be reduced by approximately \$300 million annually.

Requires that 50 percent of a state's TA allocation to be suballocated within the state based on population. The remaining 50 percent of TA funds can be used for projects in any area of the State. Metropolitan areas with populations above 200,000 would be given project selection authority over its portion of the suballocated amounts.

The conference report changes the definition of TA by consolidates and remove activities (like transportation museums), and expands the definition to include environmental mitigation activities.

The conference report also allows states to transfer up to 50 percent of the amount of TA funds that are not suballocated within the states to other programs, and allows states to transfer funding out of the TA set-aside to CMAQ if the state has a backlog of TA funds exceeding 100 percent of its annual TA set-aside.

- *National Freight Program:* The National Freight Program included in S. 1813 is dropped from the final agreement. Instead, the agreement establishes a national freight policy, which requires the designation of a primary freight network of up to 30,000 miles. The agreement also requires the development of a national freight strategic plan, and encourages states to develop state freight plans. To incentivize states to invest in freight projects, the conference report increases the Federal share for freight mobility projects identified on state freight plans. The federal share would increase from 80 percent to 90 percent for non-Interstate projects, and from 90 to 95 percent for projects on the Interstate system.
- *Buy America:* Strengthens Buy America requirements that apply to Federal highway and bridge projects by prohibiting the segmentation of such projects to avoid Buy America requirements.

- *Veterans' Preference*: Includes veterans preference language for Federal-aid highway construction projects
- *TIFIA*: Increases annual funding available for Federal credit assistance under the Transportation Infrastructure Finance and Innovation Act (TIFIA) program from \$122 million to \$750 million in FY 2013 and \$1 billion in FY 2014. Removes all evaluation criteria for projects seeking credit assistance, and provides funds for eligible projects on a first-come, first-served basis. In addition to providing project-by-project credit assistance, MAP-21 allows credit assistance to be provided for a program of projects through a master credit agreement.
- *Tolling and Public-Private Partnerships*: Expands ability of states to place tolls on any Federal-aid facility (including the Interstate) for new capacity. In the case of new capacity being added to existing facilities, the number of new tolled lanes cannot exceed the number of free lanes. Removes the provision from S. 1813 that reduced highway formula funds for states that sell or lease toll facilities to private companies.
- *Federal Lands and Tribal Transportation*: Restructures the Federal Lands Highway Program into a new Federal Lands and Tribal Transportation program. The new program would have three major components:
  - Federal Lands Transportation ó Provides \$300 million in funding annually for Federal lands transportation facilities owned by the National Parks Service (NPS), the Forest Service, Fish and Wildlife Service (FWS), the Army Corps of Engineers, and the Bureau of Land Management. \$260 million annually would be reserved for the NPS and FWS; the remaining \$40 million would be awarded on a competitive basis.
  - Federal Lands Access ó Provides \$250 million annually to be allocated among states by formula based on amount of public land, number of visitors, miles of Federal roads, and number of Federally owned bridges.
  - Tribal Transportation ó Includes a new controversial funding formula. Does not include a proposal to extend self-governance for tribes to the Department of Transportation.
- *Puerto Rico and Territorial Program*: Provides \$190 million annually for a new program combining the Puerto Rico and Territorial Highway programs. Of this amount, Puerto Rico would receive 75 percent of the funding (\$150 million), and the remaining 25 percent (\$40 million) would be set-aside for the territories.
- *Projects of National and Regional Significance (PNRS)*: Authorizes \$500 million from the General Fund in FY 2013 for high-cost surface transportation projects that provide significant national and regional economic benefits and increase global competitiveness.
- *Ferry Boat and Terminal Facilities*: Provides \$67 million in both FY 2012 and FY 2013 for the Ferry Boat and Ferry Terminal Facilities program. The set-asides in current law are eliminated and the funds are distributed by formula.

- *Appalachian Development Highway System (ADHS) Program*: Eliminates the ADHS program, but continues eligibility under the new Transportation Mobility Program and increase Federal share on ADHS corridor projects to 100 percent.
- *Surface Transportation Research*: Provides \$400 annually for transportation research and education, and would authorize 35 competitive grants to be provided annually for University Transportation Centers.
- *Transportation Planning*: The conference agreement is largely consistent with existing law.

### **Environmental Streamlining Provisions**

While the provisions in the conference report are a significant improvement over the drastic provisions that were included in H.R. 7 and H.R. 4348, there are still some provisions in this section that are of concern and could actually have the unintended effect of slowing project delivery instead of accelerating it.

- *Advance Acquisition of Real Property Interests*: Allows States to acquire real property interests before the completion of the NEPA review process required for the project. Stipulates that the acquisition cannot limit the choice of reasonable alternatives analyzed or prevent the lead agency from making an impartial decision, and is likely it will influence the outcome of the NEPA analysis.
- *Letting of Contracts*: Allows States to be reimbursed for pre-construction and design contracts let before the NEPA analysis has been completed. Again, it seems highly likely this will influence the outcome of the NEPA analysis.
- *Innovative Project Delivery Methods*: Allows up to 100 percent Federal cost share for projects that use innovative technologies that increase the efficiency of construction and improve the safety and extend the life of highways and bridges.
- *Rulemaking Regarding Efficient Environmental Reviews for Project Decision-making*: Requires the Secretary to promulgate a rulemaking to allow for the use of programmatic approaches to conduct environmental reviews. Allows the Secretary to designate a single modal administration to serve as the lead Federal agency in a multimodal project.
- *Accelerated Decision-making*: Sets deadlines for decisions by lead agency and other Federal agencies with responsibilities for environmental review. Escalates dispute resolution for environmental reviews to Agency heads, Governors, CEQ, and finally President. Includes provision providing an "out" for other Federal agencies who do not receive needed information, but DOT can disagree and elevate dispute.

Requires financial penalties for agencies that do not complete other environmental reviews by certain deadlines, thereby further impacting the budgets and resources of agencies that they are pressing to speed up reviews. Allows rescission to be avoided only if lead agency

(DOT) certifies that agency in question has not received info or new info required additional analysis. Fines can be up to 7 percent of agency office budget for the fiscal year.

- *Assistance to affected Federal and State agencies:* Requires MOUs in cases where DOT funds dedicated staff at other agencies.
- *Limitations on Claims:* Shortens the statute of limitations for filing a challenge to a project from 180 days to 150 after the Record of Decision. This time frame was already reduced from six years to six months in the last reauthorization, SAFETEA-LU.
- *Accelerating Completion of Complex Projects:* Requires DOT to establish schedules for the completion of all reviews for a project within 4 years after the Notice of Intent (NOI) was issued. Does not provide any waiver for this deadline for situations where project scope is changed. Links failure to complete to the financial penalties provision.
- *Integration of Planning and Environmental Review:* Allows planning products to be adopted by the lead Federal agency and used by other Federal agencies in their environmental reviews under certain conditions.
- *Development of Programmatic Mitigation Plans:* Allows states or Metropolitan Planning Organizations (MPOs) to develop programmatic mitigation plans to address the potential impact of future transportation projects.
- *State Assumption of Responsibility for Categorical Exclusions:* Amends current program to stipulate that a state, as a condition of assuming responsibility for determining categorical exclusions, is not required to forego project delivery methods that are otherwise permissible for highway projects.
- *Surface Transportation Project Delivery Program:* Makes permanent the current pilot program that lets DOT delegate NEPA review authority to five states. Expands the option to all states and to include rail, public transit and multimodal projects. Continues to prevent delegation of Clean Air Act determinations.
- *Application of Categorical Exclusions (CE) for Multimodal Projects:* Allows lead agency to use CEs of cooperating agencies and modes.
- *Categorical Exclusions in Emergencies:* In the case of an emergency declared by State in concurrence with the Secretary or a disaster under the Stafford Act, the Secretary shall promulgate a rulemaking to treat repairs or reconstruction as an activity that is CE of repair is in same capacity, and design and commenced within 2 years after the damage occurred.
- *Rulemaking Regarding Categorical Exclusions for Projects within the Rights of Way:* Within 180 days the Secretary shall designate any project within an existing operational right of way as a CE. Operational right of way is defined as all real property interests acquired for the construction, operation, or mitigation of a project including the location of the roadway, bridges, interchanges, culverts, drainage, traffic control, landscaping and signage, and any

rest areas with direct access to a controlled access highway. Activities that are CE do not have public participation in the development of the project.

- *Categorical Exclusions for Projects with Limited Federal Assistance*: Designates projects with less than \$5 million in Federal funds or with a total estimated cost of less than \$30 million with no more than 15 percent of Federal funds as a CE, regardless of potential impact. Again, there will be no public involvement in the development of these projects.
- *Programmatic Agreements and Additional Categorical Exclusions*: Requires DOT to survey the use of CEs, solicit new ideas for CEs and move several types of CEs from the documented list to the undocumented list. Also encourage more programmatic agreements for environmental reviews and allows DOT to delegate CE qualification determinations to the States.
- *Accelerated Decision-making of Environmental Reviews*: Allows for errata sheets to be used to modify a final EIS and promotes the use of a combined final EIS and Record of Decision.
- *Memoranda of Agency Agreements for Early Coordination*: Includes a Sense of the Congress to use early coordination and MOUs.
- *Environmental Procedures Initiative*: Requires DOT to establish an initiative to review and develop consistent procedures for environmental review and permitting of formula funded projects.
- *Review of State environmental Reviews and Approvals for the Purpose of Eliminating Duplication of Environmental Reviews*: Requires a Government Accountability Office (GAO) study to assess whether States have laws that are comparable to Federal environmental review laws.
- *Review of Federal Projects and Program Delivery*: Requires a DOT study of the completion times of CEs, Environmental Assessments and Environmental Impact Statements in the pre-2005 time period, 2005 to present, and after the date of enactment of this Act. GAO and IG studies also required.

### **Gulf Coast Restoration – RESTORE Act**

- Establishes a Gulf Coast Restoration Trust Fund and credits to the Trust Fund amounts equal to 80 percent of all administrative and civil penalties paid by a responsible party in connection with the Deepwater Horizon oil spill pursuant to Section 311 of the Clean Water Act (33 U.S.C. 1321). The amounts in the fund and the interest earned shall be available without further appropriation solely for the purposes and eligible activities of this subtitle.
- Establishes a mechanism to govern the allocation of penalties deposited in the Gulf Coast Restoration Trust Fund and to establish the conditions under which funds would be expended in the five Gulf Coast States (Alabama, Florida, Louisiana, Mississippi, and Texas) to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, coastal wetlands, and economy of the Gulf Coast.

### **Harbor Maintenance Trust Fund Provisions**

- *Sense of Congress Regarding Utilize of Harbor Maintenance Trust Fund (HMTF) Collections:* Provide a sense of Congress that the Administration fully utilization of HMTF collections for operation and maintenance activities at navigation channels in the United States. Includes a provision that Congress ensure that “other programs, projects, and activities of the [Corps] Civil Works Program are not adversely affected” by activities funded through the HMTF, for budgetary purposes. Requires the President to include, as part of his annual budget submission, an assessment of the percentage of eligible channels that would be maintained with the Corps budget request, as well as an assessment of the amount needed to reach 95 percent availability of navigation channels over a 3 year period.

## DIVISION B—PUBLIC TRANSPORTATION

- Authorizes \$10.584 billion for FY 13 and \$10.701 billion for FY 14 for transit, of which \$8.478 billion and \$8.595 billion are out of the Mass Transit Account of the Highway Trust Fund.
- *Public Transportation Formula Programs*: Authorizes the following public transportation formula programs:
  - *Urbanized Area Formula*: Provides \$4.398 billion in FY 2013 and \$4.459 billion in FY 2014.
  - *Elderly and Disabled Formula Grants*: Provides \$254.8 million for FY 2013 and \$258.3 billion for FY 2014 for a program that consolidates the existing Elderly and Disabled and New Freedom programs into a single program. Eliminates the Job Access and Reverse Commute program (JARC) but requires funding for these activities under the urban and rural formula programs.
  - *Rural Area Formula Grants*: Provides \$599.5 million in FY 2013 and \$607.8 million for FY 2014 for the Rural Area Formula grants. Creates two new programs within the Rural program:
    - Public Transportation on Indian Reservations—\$30 million (\$5 million to be distributed competitively each year, and \$25 million as formula grants to tribes).
    - Appalachian Development Public Transportation Program—\$20 million.
  - *Bus and Bus Facilities Formula Grants*: Provides \$422 million in FY 2013 and \$427.8 million in FY 2014 for program, which converts the existing competitive Bus and Bus Facilities program into a formula program (\$65 million of program funds are distributed evenly among states and territories with each getting a fixed amount; the rest distributed according to population and the bus factors).
  - *State of Good Repair Grants* (former Rail Modernization program): Provides \$2.136 billion in FY 2013 and \$2.166 billion in FY 2014.
  - *High Density Formula Grants*: Provides \$518.7 million in FY 2013 and \$525.9 million in FY 2014.
- *Limited Transit Operating Assistance*: Allows transit systems operating fewer than 100 buses in peak service to use a portion of their Section 5307 grant funds for operating expenses. Does not include the Senate-passed provision to allow all transit systems in areas over 200,000 in population to use a portion of their 5307 funds for operating assistance during times of high unemployment.
- *New Starts*: Streamlines the New Starts program; makes core capacity projects eligible for funding; and retains existing eligibility for Bus Rapid Transit projects. However, allows

FTA to provide up to three BRT projects each year that meet the criteria of fixed guideway bus projects to receive an 80 percent Federal share under New Starts.

- *Rail Modernization*: Replaces the existing Rail Modernization program with a program to move all systems towards a state of good repair. Eliminates funding tiers and earmarks and replaces these with a new structure that focuses on the age of the system, revenue vehicle miles and directional route miles. Sets aside 2.85 percent of program funds for a High-Intensity Motorbus program to fund bus systems that operate primarily in HOV lanes.
- *Public Transportation Safety*: Strengthens transit safety; requires public transportation agencies to establish comprehensive safety plans; provides FTA with a regulatory and enforcement role over transit safety but retains the existing State Safety Oversight structure; authorizes FTA to withhold small amount of funds or direct all funds for SSOs that are not meeting established requirements.
- *Buy America Provision*: Requires FTA to issue an annual report to Congress on any transit waivers of Buy America granted. Removes anti-segmentation language as included in the Senate-passed bill.
- *Veterans Preference*: Includes veterans preference language for transit construction projects.
- *Privatization*: Includes several privatization provisions that were contained in H.R. 7, including provisions requiring FTA to:
  - better coordinate public and private sector-provided public transportation services and promote more effective utilization of private sector expertise, financing, and operational capacity to deliver costly and complex new fixed guideway capital projects;
  - provide technical assistance to recipients of Federal transit grant assistance on practices and methods to best utilize private providers of public transportation;
  - identify best practices, if requested by a New Starts project sponsor, for public-private partnerships models, develop standard public-private partnership transaction model contracts;
  - perform financial assessments that include the calculation of public and private benefits of a proposed public-private partnership transaction.
  - identify any regulations or practices that impede greater use of public-private partnerships and private investment in public transportation capital projects and develop and implement approaches similar to Special Experimental Program 15 (SEP-15) for highways.
  - conduct a study on the effects of contracting out public transit services on cost, availability and level of service, efficiency, and quality of service. The study must specifically look at the extent of unionization among privately contracted employees and the impact to wages and benefits of employees when publicly provided public transportation services are contracted out to a private for-profit entity; and

- publish policy guidance regarding how to best document compliance by recipients of Federal assistance with the requirements regarding private enterprise participation in transit planning.

## DIVISION C—TRANSPORTATION SAFETY AND SURFACE TRANSPORTATION POLICY

### NHTSA Provisions

- *Funding:* Subtitle A authorizes \$747 million for FY 2013 and \$756 million for FY 2014 for the National Highway Traffic Safety Administration, for the following programs:
  - \$243 million per year for the section 402 Highway Safety grants to States;
  - \$130 million for FY 2013 and \$139 million for FY 2014 for Highway Safety Research and Development;
  - \$306 million per year for National Priority Safety grants to States, of which
    - \$46 million per year for Occupant Protection grants;
    - \$43 million per year for State Traffic Safety Information System Improvement grants;
    - \$139 million per year for Impaired Driving grants;
    - \$40 million per year for Distracted Driving grants;
    - \$6 million per year for Motorcyclist Safety grants; and
    - \$23 million for Graduated Driver Licensing grants;
  - \$5 million per year for the National Driver Register;
  - \$37 million per year for the High Visibility Enforcement program; and
  - \$25.6 million for FY 2013 and \$25.9 million for FY 2014 for administrative expenses.
  
- *Highway Safety Plan:* Requires States to develop and submit a highway safety plan to the Secretary as a condition of receiving section 402 grants. Plans must be approved by the Secretary and must include quantifiable annual performance measures. Prohibits States from using NHTSA grant funds to purchase, operate, or maintain red light cameras or speed cameras.
  
- *Highway Safety Research:* Establishes a new \$2.5 million cooperative research and evaluation program, jointly managed by NHTSA and the Governor's Highway Safety Association, to evaluate priority highway safety countermeasures. Also authorizes NHTSA to carry out research on in-vehicle technology to detect and prevent alcohol-impaired driving. The Secretary may use funds from the National Priority Safety grants program to conduct such research.
  
- *National Priority Safety Grants:* Combines several existing incentive grant programs into a National Priority Safety grant program and sets aside funding within the program for specific grants to prioritize certain State activities.
  - *Occupant Protection Grants:* Makes grants available to States that adopt and implement effective occupant protection programs. States with a seat belt use rate of higher than 90 percent are eligible to flex up to 75 percent of these grant funds to fund any activity eligible under section 402. States with a seat belt use rate of lower than 90 percent must meet additional criteria to qualify for grant funds and are not eligible to flex any funding.

- State Traffic Safety Information System Improvement Grants: Makes grants available to States to improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of State safety data.
- Impaired Driving Countermeasures Grants: Makes grants available to States to reduce driving under the influence of alcohol and/or alcohol. States with an average impaired driving fatality rate of 0.60 or higher must meet additional criteria to be eligible for grant funds and are more restricted in how they must expend funding. States with a rate between 0.30 and 0.60 have more flexibility, and States with a rate below 0.30 are automatically eligible for funding and have the most flexibility. In addition, any State that adopts and enforces a mandatory alcohol-ignition interlock law for individuals convicted of driving under the influence of drugs or alcohol are eligible for an additional incentive grant under this section.
- Distracted Driving Grants: Makes grants available to States that have laws in place prohibiting drivers from texting while driving or prohibiting cell phone use by drivers.
- Motorcyclist Safety: Makes grants available to States that adopt and implement effective programs to reduce the number of crashes involving motorcyclists.
- Graduated Driver's Licensing Program Grants: Makes grants available to States that have laws in place to require drivers younger than 21 to comply with a 2-stage licensing process that meets Federal requirements before receiving an unrestricted driver's license.
- *Vehicle Provisions*: Authorizes NHTSA to conduct motor vehicle safety research and development and contains several provisions to improve transparency and accountability related to motor vehicle defects and recalls. Requires several rulemakings on child safety standards, including side impact crash protection, child seat anchor (or latch) systems, and reminders for unattended children left in rear seating positions.
- *Drops Event Data Recorders*: Does not require that event data recorders be installed in personal vehicles, as proposed in the Senate-passed bill.
- *Visibility of Agricultural Equipment*: Requires NHTSA to issue a rule within two years to improve the daytime and nighttime visibility of agricultural equipment operating on a public road.

## FMCSA Provisions

- *Safety Grants*: Retains current law structure and funding levels for motor carrier safety grants to States and authorizes the following programs and amounts for each of FY 2013 and 2014:
  - Motor Carrier Safety Assistance Program (MCSAP) grants: \$212 million
  - Commercial Driver's License Program Improvement grants: \$30 million
  - Border Enforcement grants: \$32 million
  - Performance and Registration Information Systems Management grants: \$5 million
  - Commercial Vehicle Information Systems and Networks Deployment: \$25 million
  - Safety Data Improvement Grants: \$3 million
  - New Entrant Audits: \$32 million
  
- *Motor Carrier Oversight*: Tightens registration requirements for new carriers, including requiring a carrier to pass a written proficiency examination prior to being granted registration. Requires new trucking companies to undergo a safety audit within 12 months of operation (down from 18 months under current law) and new motorcoach companies to undergo a safety audit within 120 days of operation. Requires motor carriers, brokers, and freight forwarders to update their registration within 30 days of a change in the carrier's information. Requires bus companies to update their registration information quarterly for the first two years of operation.
  
- *Reincarnated Carriers*: Includes several provisions to strengthen FMCSA's oversight of carriers seeking operating authority from the agency, to ensure that carriers are not able to "reincarnate" as new carriers to mask safety violations or evade penalties or shut down orders.
  
- *Financial Responsibility*: Requires DOT to review and issue a report on the appropriateness of minimum financial responsibility requirements within 6 months of enactment and every 4 years thereafter.
  
- *Penalties and Enforcement*: Increases maximum penalties for carriers operating without a registration, for failure to respond to a subpoena, for denial of access to records, for violation of out of service orders, and for evasion of regulations. Authorizes new enforcement authority to revoke registration if a carrier poses an imminent hazard, to place a carrier's entire fleet out of service, and to respond to patterns of violations by motor carriers and their officers.
  
- *Vehicle Safety*: Requires FMCSA to conduct an analysis of the need for crashworthiness standards for commercial motor vehicles. Includes several provisions to strengthen oversight of foreign motor carriers and drivers operating in the U.S. Requires a study of accidents that occur in rental trucks.
  
- *Hours of Service and Electronic On-Board Recorders (EOBRs)*: Requires FMCSA to complete a field study by March 31, 2013 of the efficacy of the agency's "restart" provision in the most recent hours of service rule. Requires, within one year, FMCSA to issue a rule mandating electronic logging devices on commercial motor vehicles involved in interstate

commerce. The requirements shall apply to vehicles two years after the date that regulations are published. Establishes the performance measures and requirements such devices must meet, and certification criteria, in order to be minimally compliant.

- *Driver Safety:* Requires FMCSA to establish a national registry of medical examiners within one year and makes other improvements to oversight of driver medical qualifications; requires employers to periodically verify the CDL status of employees; requires FMCSA to issue final regulations on driver training, including mandatory behind-the-wheel training within one year; and requires FMCSA to set up a national clearinghouse for drug and alcohol testing results for commercial drivers.
- *CDLs for Veterans:* Requires DOT and DOD to jointly study how to facilitate the acquisition of commercial driver's licenses by members and former members of the Armed Forces and to develop accelerated licensing procedures for veterans who have documented driving experience that makes use of the accelerated procedures appropriate.
- *Agricultural Exemptions:* Expands an existing hours of service exemption for drivers transporting agricultural commodities to apply up to a 150 mile radius (from 100 miles under current law), apply even if a vehicle crosses state lines, and to apply to trips between wholesale distribution points and retail distribution points. Creates a new exemption from all Federal motor carrier safety regulations (CDL requirements, drug and alcohol testing, hours of service, and vehicle inspection, repair, and maintenance requirements) for vehicles operated by farm or ranch owners, operators, their family members, or their employees. Vehicles weighing less than 26,000 pounds are completely exempted, and those weighing more than 26,000 pounds are exempt up to a 150 air mile radius from the farm or ranch.
- *Broker and Freight Forwarder Oversight:* Requires FMCSA to determine that a broker or freight forwarder is qualified by experience to act and is fit, willing, and able to provide the service and to comply with applicable regulations of the Secretary; requires a broker or freight forwarder to employ an individual who has at least 3 years of experience or appropriate training; and prohibits a freight forwarder or broker from providing transportation as a motor carrier unless registered separately as a motor carrier. Raises the surety bond requirement to \$75,000 (to be reviewed every 4 years by FMCSA to ensure this amount continues to be adequate); establishes rules for when and how the surety bond is to be paid out, particularly in cases of financial insolvency; requires freight forwarder and broker insurance; and requires FMCSA to suspend a broker or freight forwarder's registration if the available financial security falls below the amount required.

Prohibits a person acting as a broker from providing interstate brokerage services unless that person is registered under and in compliance with the new broker and freight forwarder requirements; prescribes civil penalties up to \$10,000 for violators of the requirements; establishes a private right of action for injured parties; and extends liability to any corporate entity and individual officers.

- *Truck Size and Weight:* Requires FMCSA to complete a comprehensive truck size and weight study within 2 years. The study must evaluate accident risk and frequency, impact to

infrastructure including bridges, safety impacts, and freight diversion to other modes and must look at each State that currently allows vehicles in excess of Federal size and weight laws to operate, as well as the potential impacts of heavier and longer alternative truck configurations. FMCSA must also compile a list of allowable weights in excess of Federal limits on each route of the National Highway System authorized under State law or a State grandfather right.

### **Motorcoach Provisions**

- NHTSA must issue the following regulations increasing motorcoach safety standards:
  - Within one year, requiring seat belts on motorcoaches;
  - Within two years, establishing roof strength and crush resistance standards;
  - Within two years, consider requiring anti-ejection safety countermeasures and rollover crash avoidance; and
  - Within three years, consider requiring tire pressure monitoring systems and consider issuing a rule to upgrade performance standards for tires.
- Any regulations NHTSA prescribes with respect to the above areas shall apply to all newly-manufactured motorcoaches three years after the publication of the final rule. The conference report does not authorize or mandate retrofit of existing buses with respect to any of the above standards. Instead, the conference report permits NHTSA to assess the feasibility, benefits, and costs with respect to applying such standards to existing buses.
- *Research and Testing:* NHTSA must conduct research and testing on the causes of and methods to prevent motorcoach fires, on interior impact protection, on compartmentalization safety countermeasures, and collision avoidance systems. NHTSA is directed to issue motor vehicle safety standards in each of these areas within two years of completion of the research and testing.
- *Motorcoach Safety Fitness Rating:* FMCSA must assign a safety fitness rating to each motorcoach company within three years of enactment, and must establish requirements to improve the accessibility to the public of safety rating information for motorcoach companies. FMCSA must also review and assess the requirements for a passenger endorsement on a driver's CDL within two years. FMCSA must also complete a rulemaking to consider requiring States to establish annual inspection programs for buses.

### **Hazardous Materials Provisions**

- *Hazmat Training for Emergency Responders:* Requires operations-level training for fire fighters that respond to accidents and incidents involving hazardous materials. Current law requires only basic, general awareness training.
- *Hazmat Train-the-Trainer Program:* Current law authorizes \$4 million annually in grants for labor organizations to train hazmat workers to become hazmat instructors. The conference report reauthorizes the training grant program but allows any national nonprofit organization to apply for the grants.

- *Increases Civil Penalties for Hazmat Transportation Violations:* Increases the maximum civil penalties for hazmat transportation violations and authorizes new penalties on individuals who obstruct investigations. Also prohibits carriers from transporting hazmat, and shippers from offering hazmat for transportation, if they fail to pay a civil penalty assessed by the Secretary or fail to arrange and abide by an acceptable payment plan for the penalty.
- *Hazmat Special Permits:* Requires the development of clear and consistent procedures and criteria for evaluating applications for special permits and approvals, and requires the Secretary to conduct a review and analysis of special permits that have been in continuous effect for a 10-year period to determine which special permits may be converted into the hazmat regulations.

### **Rail Provisions**

The Conference Report does not include any provisions on rail. It also does not include provisions to assist minority and women-owned businesses in receiving rail contracts. Nor does it extend Buy America coverage to Federal Railroad Administration's grant and loan programs. The Conference Report also does not reauthorize the now-expired Rail Line Relocation Program.

## DIVISION F — MISCELLANEOUS

### **Maritime Provisions**

- *Repeal of Transportation Requirement for USAID Food Aid Shipments:* The provision would reduce the percentage of USAID foreign food aid shipped on U.S. vessels from 75 percent to 50 percent, and repeals the Maritime Administration cargo freight differential reimbursement authority.

This provision óó which was not included in either the House or Senate-passed bills óó will result in the loss of vessels and hundreds of irreplaceable jobs. It is opposed by the Maritime Administration, USA Maritime (which includes virtually all of the U.S.-flag vessel owners), and all of the maritime labor organizations and trade associations engaged in the U.S.-foreign trade.

**OFFICE OF THE COUNTY ADMINISTRATOR  
CONTRA COSTA COUNTY**

TO: Legislation Committee  
*Supervisor Mary N. Piepho, Chair*  
*Supervisor Karen Mitchoff, Vice Chair*

FROM: Lara DeLaney, Legislative Coordinator

DATE: July 30, 2012

SUBJECT: **Agenda Item #7: Lobbyists Contracts**

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**RECOMMENDATION**

PROVIDE input to staff on the RFP process for soliciting proposals for state and federal advocacy services for Contra Costa County.

**REPORT**

At its April 5, 2012 meeting, the Legislation Committee recommended that the contracts for the state and federal lobbyists be extended through December 31, 2012 to allow time for staff to conduct an RFP process to solicit for new service contracts and requested that staff return with a schedule for accomplishing this task.

CAO staff is currently drafting a Request For Proposals (RFP) for state and federal advocacy services. The prior Legislation Committee recommended that transportation advocacy services be considered a component of a contract. Staff is requesting direction from the Legislation Committee on the following issues:

- ✓ schedule of solicitation, evaluation of responses, and selection of firm(s).

Staff recommends utilizing the County's Bidsync system to solicit proposals and may supplement this solicitation with additional outreach in publications directed at firms that engage in government affairs.

Staff recommends that responses be evaluated by rating group of 5 (ideally) comprised of CAO staff (CAO or Assistant Chief CAO), staff representing a large County department, an Intergovernmental Relations Manager of a nearby county, legislative staff of CCTA, and a member of the Legislation Committee. Staff also recommends that the top four firms be interviewed by the rating committee for a recommendation of Contractor to the Board of Supervisors.

Staff proposes the following schedule for consideration by the Legislation Committee.

EVENT	DATE	
County Issues RFP for State and Federal Contracts	8/31/12	
Proposals Due	10/1/12	
Rating Panel Reviews Responses and Interviews	10/15/12	10/19/12
Recommendation from the Legislation Committee to Board	11/1/12	
Board of Supervisors Action on Recommendation	11/12	
Contract Issued	01/01/13	

*Attachment A* is a survey of advocacy services for other large urban counties.

## Survey of Urban Counties' State and Federal Lobbying Contracts

conducted 10-11-11

County	State Lobbyist	How long under contract for State Lobbyist?	State Contract Term	Annual State Contract Amount	Federal Lobbyist	How long under contract for Federal Lobbyist?
<b>Alameda</b>	Suter, Wallauch, Corbett & Associates*	Since 1986	3 years, with 2 optional one-year renewals	\$335,000	CJ Lake, LLC	Since 1991
<b>Contra Costa</b>	Nielsen, Mersksamer, Parrinello, Gross & Leoni	Since 2004	1/1/2008--3/31/2012	\$180,000	Alcalde & Fay	Since Dec. 1, 2001
<b>Los Angeles</b>						
<b>Orange</b>	Platinum Advisors	Since 2003	2 years, with two renewal options	\$264,000	James F. McConnell	Since 1986
<b>Riverside</b>						
<b>Sacramento</b>						
<b>San Bernardino</b>	Platinum Advisors	Since 2003	3 years, with 2 optional one-year renewals	\$240,000	Potomac Partners DC	Since 2008
<b>San Diego</b>	Nielsen, Mersksamer, Parrinello, Gross & Leoni					
<b>San Francisco</b>						
<b>San Mateo</b>	Political Solutions	Since 2009	1 year	\$150,000	Smith Dawson & Andrews	Since 2009
<b>Santa Clara</b>	County Employee--Michael Rattigan			\$87,054 - \$135,375 Salary Range	Prime Policy Group	Since 1998
<b>Ventura</b>	Suter, Wallauch, Corbett & Associates*	Since 1996	1 year, with extensions thru 6/ 2014	\$190,000	Thomas Walters & Associates, Inc.	Since 1982
				\$226,500		

\* Suter sold firm to Platinum Advisors, effective Jan. 1, 2012

Federal Contract Term	Annual Federal Contract Amount	Who Provides Transportation Lobbying Services
3 years, with 2 optional one-year renewals	\$180,000	No separate firms
11/1/2007--3/31/2012	\$101,496	Smith, Watts & Co.
2 years, with two renewal options	\$252,150	No separate firms
3 years, with one-year optional renewal	\$144,000	No separate firms
1 year	\$100,000	No separate firms
3 year, with 2 extensions thru 9/30/2012	\$208,000	No separate firms
1 year, with extensions thru 6/ 2014	\$190,000	No separate firms
	\$167,949	