

CALIFORNIA STATE ASSOCIATION OF COUNTIES  
EXECUTIVE COMMITTEE  
Thursday, August 19, 2010  
10:00am - 2:00pm  
Avia Hotel, Long Beach, Los Angeles County, CA

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A G E N D A

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Presiding: Tony Oliveira, President

**10:00am      PROCEDURAL ITEMS**

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|----|---|--------|
| 1. | Roll Call                                       | Page 1 |
| 2. | Approval of Minutes from April 22, 2010 Meeting | Page 2 |

**10:10am      SPECIAL PRESENTATION**

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| 3. | Presentation by Supervisor Don Knabe, Los Angeles County |  |
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**10:45am      ACTION ITEMS**

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| 4. | Consideration of November 2010 Ballot Initiatives <ul style="list-style-type: none"><li>• Paul McIntosh, CSAC Executive Director</li><li>• Jim Wiltshire, CSAC staff</li><li>• Karen Keene, CSAC staff</li></ul> |  |
|----|--|--|

<i>Proposition 19: The Regulate, Control and Tax Cannabis Act of 2010</i> Changes California law to legalize Marijuana and allow it to be regulated and taxed.	Page 5
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<i>Proposition 21: State Parks &amp; Wildlife Conservation Trust Fund Act of 2010</i> Establishes \$18 annual vehicle license surcharge to help fund State Parks and wildlife programs and grants free admission to all State Parks to surcharged vehicles.	Page 29
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<i>Proposition 23: Measure to Suspend Assembly Bill 32</i> Suspends air pollution control laws requiring major polluters to report and reduce greenhouse gas emissions that cause global warming until unemployment drops below specified level for full year.	Page 33
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<i>Proposition 26: The Stop Hidden Taxes Measure</i> Increases legislative vote requirement to two-thirds for State levies and charges. Imposes additional requirement for voters to approve local levies and charges with limited exceptions.	Page 36
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| 5. | Selection of Future Annual Meeting Locations <ul style="list-style-type: none"><li>• Paul McIntosh</li></ul> | Page 54 |
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12:00pm	LUNCH	
1:00pm	ACTION ITEMS (cont.)	
6.	Consideration of Amendment to CSAC Articles of Incorporation <ul style="list-style-type: none"> <li>Paul McIntosh</li> </ul>	Page 56
7.	Consideration of CSAC Realignment Working Group Recommendations <ul style="list-style-type: none"> <li>Jim Wiltshire</li> </ul>	Page 61
8.	Request for CSAC Affiliation from the California City-County Street Light Association (CAL-SIA)	Page 72
1:30pm	INFORMATION ITEMS	
9.	Federal Lands Into Trust Update <ul style="list-style-type: none"> <li>Supervisor Mike McGowan</li> </ul>	
10.	National Association of Counties (NACo) Report <ul style="list-style-type: none"> <li>Supervisor Valerie Brown</li> </ul>	
11.	Public Compensation Disclosure Act of 2010 <ul style="list-style-type: none"> <li>Paul McIntosh</li> </ul>	Page 73
12.	State/Federal Budget Update <ul style="list-style-type: none"> <li>Jim Wiltshire</li> </ul>	
13.	<i>The following items are contained in your briefing materials for your information, but no presentation is planned:</i> <ul style="list-style-type: none"> <li>➤ CSAC Corporate Associates Program Report</li> <li>➤ CSAC Finance Corporation Report</li> <li>➤ CSAC Litigation Coordination Report</li> </ul>	Page 80 Page 82 Page 83
14.	Other Items	
2:00pm	ADJOURN	

NOTE: The next Executive Committee meeting will be on October 6 - 8 in Monterey.

CALIFORNIA STATE ASSOCIATION OF COUNTIES  
EXECUTIVE COMMITTEE  
2010

President:	Tony Oliveira, Kings
1 <sup>st</sup> Vice President:	John Tavaglione, Riverside
2 <sup>nd</sup> Vice President:	Mike McGowan, Yolo
Immed. Past President:	Gary Wyatt, Imperial

Urban Section

Greg Cox, San Diego  
Roger Dickinson, Sacramento  
Federal Glover, Contra Costa  
Don Knabe, Los Angeles  
Liz Kniss, Santa Clara  
Kathy Long, Ventura  
Richard Gordon, San Mateo (alternate)

Suburban Section

Susan Adams, Marin  
Henry Perea, Fresno  
Steve Worthley, Tulare  
Joni Gray, Santa Barbara (alternate)

Rural Section

Merita Callaway, Calaveras  
Robert Williams, Tehama  
Lyle Turpin, Mariposa (alternate)

Ex-Officio Members

Valerie Brown, NACo Past President and Sonoma County Supervisor  
Susan Cash, CSAC Treasurer, Inyo County Supervisor

Advisors

Susan Mauriello, CAOAC President and Santa Cruz Administrative Officer  
Steven Woodside, Sonoma County Counsel

CALIFORNIA STATE ASSOCIATION OF COUNTIES  
EXECUTIVE COMMITTEE

April 22, 2010  
CSAC Conference Center, Sacramento, CA

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M I N U T E S

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Presiding: John Tavaglione, First Vice President and Tony Oliveira, President

1. ROLL CALL

Tony Oliveira, President  
John Tavaglione, 1<sup>st</sup> Vice Pres.  
Mike McGowan, 2<sup>nd</sup> Vice Pres.  
Gary Wyatt, Immed. Past Pres.  
Greg Cox, San Diego (via audio)  
Roger Dickinson, Sacramento  
Liz Kniss, Santa Clara  
Susan Adams, Marin (via audio)

Henry Perea, Fresno  
Joni Gray, Santa Barbara (via audio)  
Merita Callaway, Calaveras  
Lyle Turpin, Mariposa, alternate

Ex-Officio Members  
Susan Cash, Treasurer

2. APPROVAL OF MINUTES

The minutes of January 28 and February 18, 2010 were approved as previously mailed.

3. PROPOSED CSAC BUDGET FOR FY 2010-11

Supervisor Susan Cash, CSAC Treasurer, presented the proposed CSAC Budget for FY 2010-11. Revenues are expected to drop by 10% and expenditures are proposed to be reduced by 6%. The remaining loss of revenues will be covered with savings achieved by the elimination of two staff positions and consolidation of functions.

A discussion ensued and concerns were raised regarding the salaries/benefits line item which includes 2.5% for step increases effective January 1, 2011.

Motion and second to approve the CSAC Budget for 2010-11 with the funds appropriated for any step increase held in abeyance until the Executive Committee further discusses the issue at their annual retreat in October.  
Motion carried unanimously.

The proposed budget will be brought to the full Board of Directors on June 3 for consideration and adoption.

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

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

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

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

5. EXTENSION OF FEDERAL AFFAIRS SERVICES CONTRACT

Waterman and Associates has been the federal advocate for CSAC since September 1996. Their current agreement expires on December 31, 2010. Staff recommended that the contract be extended for a period of four years due to the effectiveness that Waterman and Associates has demonstrated in helping secure approval off issues directly benefiting California counties. The contract extension would include a 5% annual increase.

Motion and second to approve extension of the federal advocacy contract with Waterman & Associates for four years with a 5% annual increase. Motion carried. Supervisor Dickinson abstained.

6. CSAC REFORM TASK FORCE UPDATE

The CSAC Reform Task Force, chaired by Supervisor Kathy Long, met on March 31 to discuss next steps regarding the various reform proposals currently being considered.

Staff outlined a draft memo, as contained in the briefing materials, which addresses the possible effects on counties of the League's initiative titled *Local Taxpayers, Public Safety and Transportation Protection Act of 2010*. The intent is to share the memo with county supervisors prior to the policy discussion at the Board of Directors meeting in June. CSAC policy committees will be meeting prior to the Board meeting to discuss and make recommendations on this initiative.

A conference call has been scheduled for April 28 to discuss the League's initiative. Staff will provide an objective analysis of the measure and answer questions that may arise.

7. CSAC FINANCE CORPORATION REPORT

Staff reported that the Finance Corporation met last week to adopt their budget. Revenues are down this year primarily in the areas of housing, non-profit financing and investment income. All 58 counties are now using the pooled purchasing programs and CalTrust has deposits of over \$1 billion.

8. LEGISLATIVE/STATE BUDGET REPORT

Staff announced that the Governor's May Revise is scheduled to be released on May 14.

Staff provided a report on California's Section 1115 Medicaid Waiver which will expire on August 31. This federal legislation provides the Secretary of Health and Human Services broad authority to authorize experimental, pilot, or demonstration projects likely to assist in promoting the objectives of the Medicaid statute. Stakeholder groups have been working to develop proposals for California's next waiver.

California Department of Health Care Services staff are working on a more detailed paper that will further flesh out the ideas under discussion in the stakeholder group meetings. A detailed proposal will be sent to the Centers for Medicare and Medicaid Services.

Fact sheets regarding the federal health reform plan are posted on the CSAC web site. Senate and Assembly hearings regarding child welfare service are taking place today.

SB 1399 (Leno) is currently being considered in the Legislature. This bill relates to release of terminally ill inmates onto supervised parole.

The Medical Marijuana Working Group met last week and directed staff to analyze the November ballot initiative related to legalizing marijuana and provide that analysis to the Board of Directors at the June Board meeting.

The Williamson Act Working Group is working on developing alternative funding solutions to the current subventions. The Governor has indicated that he may agree to restore the current subventions as long as alternative funding can be identified.

Some pension reform legislation is currently being considered in the Legislature. AB 1987 and SB 1425 address the "spiking" issue. SB 919 seeks to change the retirement formula for future state employees. The Little Hoover Commission is also looking at pension reform issues. President Oliveira testified at Commission's first hearing this morning.

AB 155 – municipal bankruptcy legislation – passed committee and is now headed for Governor's desk.

Federal Lands Into Trust legislation is moving forward and CSAC has been successful in obtaining some amendments. Wisconsin, Idaho and New York are part of a coalition with CSAC on this issue and will be sharing in the cost of a federal advocacy contract.

Counties will be reimbursed next week by the state for seven months worth of Highway Users Tax Authority (HUTA) funds.

9. OTHER ITEMS

Assembly Concurrent Resolution (ACR) 121 passed the Assembly this morning. This legislation recognizes April as National County Government month. Supervisors Valerie Brown and John Tavaglione were presented with a resolution.

Michael Blake, President Obama's Director of Intergovernmental Affairs, addressed the Board regarding several issues the President is working on such as the Sustainable Communities Initiative, Health Reform and financial industry reform.

CSAC staff has made presentations at 34 Boards of Supervisors meeting within the last two months and will be visiting all 58 counties by the end of May.

Meeting adjourned.



1100 K Street  
Suite 101  
Sacramento  
California  
95814

Telephone  
916.327-7500

Facsimile  
916.441.5507

August 2, 2010

To: CSAC Administration of Justice Policy Committee

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

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

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

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

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

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

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

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

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

### **A. Legalization of Marijuana Activities**

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

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

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

***B. Commercial Regulations and Controls***

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

***C. Taxes and Fees***

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



**D. *Criminal and Civil Penalties***

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

**EXISTING STATE LAW**

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

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

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

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

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

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

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

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

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

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

### **III. EXISTING FEDERAL LAW**

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

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

### **IV. EFFECTS**

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

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

#### **A. Regulation**

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

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

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

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

#### ***B. Taxation and Costs***

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

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

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

#### ***C. Public Safety***

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

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

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

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

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

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

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

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

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

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

#### ***D. Medical Marijuana and Cultivation***

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

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

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

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

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

#### ***E. Proponents and Opponents***

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

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

#### **V. CONCLUSION**

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

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

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

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



1100 K Street  
Suite 101  
Sacramento  
California  
95814

Telephone  
916.327-7500  
Facsimile  
916.441.5507

August 2, 2010

To: CSAC Government Finance & Operations Policy Committee

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

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

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

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

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

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

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

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

### **A. *Legalization of Marijuana Activities***

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

## ***B. Commercial Regulations and Controls***

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

## ***C. Taxes and Fees***

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

## ***D. Criminal and Civil Penalties***

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



## II. EXISTING STATE LAW

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

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

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

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

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

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

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

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

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

## III. EXISTING FEDERAL LAW

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

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

#### **IV. EFFECTS**

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

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

##### **A. Regulation**

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

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

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

##### **B. Taxation and Costs**

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

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

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

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

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

### **C. Public Safety**

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

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

#### **D. Medical Marijuana and Cultivation**

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

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

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

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

#### **E. Proponents and Opponents**

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

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

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

#### **V. CONCLUSION**

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

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

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

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

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

**BACKGROUND**

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

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

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

## **PROPOSAL**

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

### **State Legalization of Marijuana Possession and Cultivation for Personal Use**

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

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

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

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

### **Authorization of Commercial Marijuana Activities**

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

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



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

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

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

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

## **FISCAL EFFECTS**

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

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

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

## **Impacts on State and Local Expenditures**

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

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

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

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

### **Impacts on State and Local Revenues**

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

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

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

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

**Yes/No Statement**

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

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



1100 K Street  
Suite 101  
Sacramento  
California  
95814

Telephone  
916.327-7500  
Facsimile  
916.441.5507

August 3, 2010

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

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

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

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

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

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

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

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

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

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

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

Specifically, the Proposition:

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



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

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

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

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

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

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



1100 K Street  
Suite 101  
Sacramento  
California  
95814

Telephone  
916.327-7500  
Facsimile  
916.441.5507

August 3, 2010

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

**Re: Proposition 23: Measure to Suspend Assembly Bill 32**

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

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

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

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

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

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

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

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

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

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

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

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

*Table One: Measures Included/ Excluded Under Proposition 23*

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

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

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

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

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

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

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

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

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



1100 K Street  
Suite 101  
Sacramento  
California  
95814

Telephone  
916.327-7500  
Facsimile  
916.441.5507

August 2, 2010

To: CSAC Government Finance & Operations Policy Committee

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

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

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

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

## **I. SUMMARY OF PROPOSITION 26**

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

Specifically, the Act would make the following changes:

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

### **A. Legislative Vote Requirement for Revenue Measures**

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

### **B. Defining "Tax" for State Purposes**

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

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

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

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

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

### **C. Defining "Tax" for Local Purposes**

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

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

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

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

## **II. EXISTING STATE LAW**

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

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

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

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

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

### III. EFFECTS

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

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

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

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

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

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

### IV. SUPPORT AND OPPOSITION

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



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

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

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

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

### ***SPECIFIC INDUSTRY EXAMPLES***

#### ***Restaurants***

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

#### ***Public Utilities***

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

#### ***Alcohol***

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

#### ***Oil***

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

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

### **Tobacco**

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

### **Telecommunications**

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

### **Technology Companies**

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

### **Agriculture**

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

### **Food (Retailers/Grocers/Malls)**

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

### **Fast Food**

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

## **TAXES**

### **Entertainment**

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

*consequences linked to programming*

### **Non-Indian Gaming**

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

### **Pharmaceuticals**

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

### **Railroads**

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

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

### **Airlines**

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

### **Truckers**

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

### **Auto Manufacturing**

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

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

### **Chemicals**

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

### **General Business**

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

### **Insurance**

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

## **Proposition 26**

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

#### **BACKGROUND**

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

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

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

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

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

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

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

### Proposal

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

Figure 2 summarizes its main provisions.

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



### **Definition of a State or Local Tax**

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

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

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

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

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

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

### **Approval Requirement for State Tax Measures**

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

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

### **State Laws in Conflict With Proposition 26**

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

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

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

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

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

## FISCAL EFFECTS

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

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

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

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

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

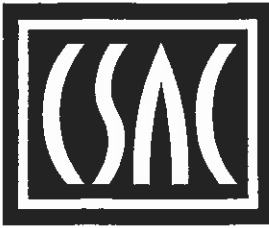
**Proposition 26**

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

**Yes/No Statement**

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

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



California State Association of Counties  
1100 K Street, Suite 101  
Sacramento, CA 95814  
916.327.7500 Facsimile 916.441.5507

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Date: August 3, 2010

To: CSAC Executive Committee

From: Paul McIntosh, Executive Director  
David Liebler, Director of Public Affairs & Member Services  
Patti Hughes, Meeting Planner

Re: Sites for Future CSAC Annual Meetings

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CSAC staff has researched sites for the 2012-14 Annual Meetings. Traditionally, CSAC has followed a north/south state rotation. The recommendations below follow this rotation. Staff visited a number of sites in preparation of this memo.

Staff recommendations are based on 1) site availability, 2) conference/hotel space requirements, 3) cost, and 4) past popularity/success of venue. There are only a small number of California counties that can accommodate CSAC's Annual Meeting needs. In Northern California, that number dwindles to a handful. Having said that, we believe the following sites will be strong venues for our upcoming conferences.

#### **2012 – Long Beach/Los Angeles County**

In searching potential sites for the 2012 and 2014 Annual Meetings, CSAC visited a number of venues in Los Angeles, Orange and San Bernardino Counties. Since San Diego and Riverside will have been Annual Meeting hosts in 2008 and 2010, respectively, we focused on other Southern California counties.

The Long Beach Convention Center is a strong site for our Annual Meeting, with ample adjacent hotel accommodations. CSAC was last in Los Angeles County in 2002 and has not held a major meeting in Long Beach since the early 1990s.

#### **2013 – San Jose/Santa Clara County**

CSAC is recommending that our 2013 Annual Meeting be held in downtown San Jose at the McEnery Convention Center. This was the site of our 2005 Annual Meeting; conference facilities and hotel accommodations received strong approval from our membership.



## **2014 –Anaheim-Disneyland/Orange County**

Always a popular and accommodating venue for the CSAC Annual Meeting, the Disneyland Resort is in the middle of a major hotel and site renovation. Since CSAC last held an Annual Meeting in Orange County in 2006, it will have been eight years between visits.

### **Host Counties – 2000-11**

2011	San Francisco	2005	Santa Clara
2010	Riverside	2004	San Diego
2009	Monterey	2003	Monterey
2008	San Diego	2002	Los Angeles
2007	Alameda	2001	Sacramento
2006	Orange	2000	San Bernardino

### **Recommended Action**

Approve staff recommendations to hold the CSAC Annual Meetings in Los Angeles County (2012), Santa Clara County (2013) and Orange County (2014).



## MEMORANDUM

August 2, 2010

1100 K Street  
Suite 101  
Sacramento  
California  
95814

Telephone  
916.327-7500

Facsimile  
916.441.5507

To: Executive Committee  
California State Association of Counties

From: Paul McIntosh  
Executive Director

Re: **Amendment to Articles of Incorporation**

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The US Internal Revenue Service has been reviewing the tax status of not-for-profit agencies and associations. CSAC is formed as a not-for-profit corporation under Section 501(c)(4) of the Internal Revenues Service Code. To comply with state law, Articles of Incorporation were filed with the Secretary of State on February 24, 1945. Counsel has advised that it would be advantageous to amend the Articles of Incorporation to provide that, upon dissolution of the association, all assets and holdings of the association would revert back to the member counties, proportionate to their share of dues. This would reinforce the fact that CSAC is a not-for-profit organization which does not contemplate any pecuniary gain or profit to its members, and is indeed an instrument of its members to accomplish specific objectives.

We have asked counsel to draft an amendment to be filed with the Secretary of State. The draft amendment will be available for review at the meeting of August 19.

10. Upon the dissolution or winding up of this corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this corporation shall be distributed to the counties of the respective members in proportion to such members' contributions to the corporation through payment of dues and fees.

ARTICLES OF INCORPORATION

OF

COUNTY SUPERVISORS ASSOCIATION OF CALIFORNIA

We, the undersigned, hereby form a nonprofit corporation under the provisions of Title XII, Part IV, Division First of the Civil Code of the State of California, and execute these articles of incorporation which state:

1. The name of this corporation is

COUNTY SUPERVISORS ASSOCIATION OF CALIFORNIA.

2. This is a nonprofit corporation which does not contemplate pecuniary gain or profit to the members thereof. This corporation shall not have any capital stock. It is organized and shall be operated exclusively for educational and public service purposes.

3. The purposes for which it is formed are:

(a) To foster periodical conventions or meetings of the members of the various boards of county supervisors located within the state, for the discussion and solution of problems common to the counties thereof, and for the purpose of promoting efficiency in county government, and for the reduction of the cost of county government.

(b) To foster and disseminate knowledge relating to county government and the problems thereof by appropriate legal means and to arouse greater interest and more active civic consciousness among the people as to the importance and significance thereof.

(c) To assist in the promotion of legislation beneficial to county government and to oppose the passage of legislation detrimental to the best interests of the counties, and to this end among other things the Association may participate in the preparation and sponsorship of such legislation, may attend meetings and

ENDORSED  
FILED  
In the office of the Secretary of State  
of the State of California  
FEB 26 1945

conferences relating thereto, and may through its duly authorized representatives attend the sessions of the state legislature or the United States Congress, or any committee thereof.

(d) To secure harmony of action in the various counties of the state in matters which affect the rights and liabilities of said counties, and to render technical, informational and other services to the various counties of the state and to the state for the improvement of county government and for the general welfare of the people of the state.

(e) To maintain headquarters at Sacramento and to employ a sufficient technical staff to assist the counties and to carry out the purposes of the Association.

(f) To purchase, lease, or otherwise acquire, mortgage and otherwise encumber, and dispose of any and all kinds of real and personal property necessary for carrying out the purposes of the Association.

(g) To possess and exercise any and all such additional powers as are reasonably implied from the purposes hereinabove enumerated and to do and perform everything necessary, suitable or proper for, or incident and appropriate to, the accomplishment of the said purposes, and generally to advance the educational and public service work undertaken by the Association in any manner and by any means within the limitations imposed by law upon nonprofit corporations of a similar character.

4. The principal office for the transaction of the business of this corporation is located in the County of Sacramento, State of California.

5. This corporation shall have Twenty-two (22) directors, but the number of directors may be changed from time to time by amendment of these articles of incorporation or by a duly adopted amendment to the constitution and by-laws. The names and addresses of the persons who are to act in the capacity of directors until the selection of their successors are as follows:

6. The authorized number and qualifications of the members, the officers and board of directors and the different classes of membership shall be as set forth in the constitution and by-laws of this corporation. Neither the members nor the officers or directors of this corporation shall be personally liable for the debts, liabilities or obligations of the corporation.

7. The term of existence of this corporation shall be perpetual, unless hereafter otherwise provided by law, or unless the corporation is dissolved in the manner provided by law.

8. The title to and membership of all the corporate property and of all money or property given or distributed to it shall be vested in the corporation and shall be managed by the Board of Directors for the purposes thereof.

9. The name of the existing unincorporated association, which is being incorporated by these Articles of Incorporation is the same as the name of this incorporation, to wit, COUNTY SUPERVISORS ASSOCIATION OF CALIFORNIA.

IN WITNESS WHEREOF, the undersigned incorporators have executed and entered into these articles of incorporation, at Sacramento, California, for the purpose of incorporating the unincorporated association known as the County Supervisors Association of California.

Dated this 24 day of February, 1945.

Harry Bartell  
Harry Bartell, President.

Frederic L. Alexander  
Frederic L. Alexander,  
Executive Secretary.



1100 K Street  
Suite 101  
Sacramento  
California  
95814

Telephone  
916.327-7500  
Facsimile  
916.441.5507

August 3, 2010

To: CSAC Executive Committee

From: Paul McIntosh, CSAC Executive Director

Re: **State Budget Update: Restructuring/Realignment**

---

**Recommendation.** Recall that the CSAC Executive Committee will have met (via conference call on August 5) to discuss and give staff direction on a restructuring or realignment component of the 2010-11 budget agreement. Staff will provide an update on this matter, likely focusing on advocacy activities in the Capitol on the budget.

We are resubmitting our memo prepared for your August 5 conference call to provide background information for this discussion.

=====

The 2010 CSAC Realignment Working Group has been meeting since mid-June to develop a response to various discussions about realignment or "restructuring" of state and local program responsibility. As you are aware, Senate President pro Tempore Darrell Steinberg unveiled a proposal on June 21 from the Senate Democrats outlining a \$4 billion transfer of program responsibility to counties with revenue to fund that transfer. The Realignment Working Group has focused on the Senate proposal and is in the process of preparing a more detailed county response.

At your August 5 meeting, we are requesting your direction in the following areas:

1. **Consider and approve CSAC 2010 Realignment Principles.** CSAC's Realignment Principles were developed in 2003 and updated in 2005 to guide CSAC's advocacy efforts on new realignment or restructuring concepts. The Working Group took the opportunity to update the principles once again to reflect current county and program conditions. Staff recommends that the Executive Committee approve the CSAC 2010 Realignment Principles.
2. **Consider and approve general response to the Senate Democrats' Restructuring Proposal.** The Realignment Working Group, with the able assistance of technical subcommittees, has developed the attached draft programmatic risk assessment to focus restructuring conversations on those programs that appear to be most feasible for restructuring/realignment. This risk assessment is not intended to reflect a final analysis, but rather to serve as guidance for CSAC's advocacy. Staff recommends that the Executive Committee endorse the general response to the Senate Democrats' Restructuring Proposal.
3. **Consider and approve outline of recommended protections for counties that would be necessary for any restructuring proposal.** The County

Counsels' Association Cost Shift Committee assisted the Realignment Working Group by outlining measures that could provide protections for counties under a restructuring model. The attached draft attempts to communicate the conditions under which a restructuring model could most effectively work for counties. Staff recommends that the Executive Committee endorse the protections outline.

4. **Consider and approve authority to endorse extension of the 0.50 Vehicle License Fee increase as contemplated in the Senate Democrats' Restructuring Proposal.** Among the revenue options outlined in the Senate Democrats' Restructuring Proposal is the extension of the 0.50 Vehicle License Fee to fund county costs associated with new program responsibilities. Specifically, the Senate Democrats' proposal uses this revenue to fund activities associated with public safety and alcohol and drug treatment. Because this extension requires a 2/3 vote of the Legislature to enact, it will be a considerable political challenge to achieve. However, if counties are to consider new program duties, we must also have adequate funding to do so. VLF revenues are historically a well-performing source, are tax deductible for those who itemize their federal tax returns, and a portion of this increase (0.15 of the VLF) is already dedicated to local public safety programs. Staff is requesting authority to support the extension of the VLF to appropriately fund a restructuring plan that includes appropriate program authority, flexibility, and protections.

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

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

Technical subcommittees in the areas of public safety, human services, and revenues began meeting to discuss the specifics of the plan. The Cost Shift Committee of the County Counsels' Association served as our legal subcommittee and evaluated general legal questions that were common across subcommittee conversations. The findings from these subcommittees were then presented to the Working Group in an in-person meeting. Generally, the direction from the Working Group was to move forward with technical analysis, particularly as new information



is revealed in the public safety proposal, and focus on the protections and conditions under which a realignment or restructuring could work for California counties.

The Realignment Working Group continues to meet to develop a more detailed response to the Senate Democrats' plan. Technical subcommittees are also meeting on an as-needed basis to further refine our analysis. Because the Legislature will return to work the first week in August and budget activities could pick up in the Capitol rather quickly, we wanted to inform the Executive Committee as to our activities and confirm our plans for advocacy.

**Action Requested.** Staff is requesting Executive Committee action on the following items:

1. Consider and approve CSAC 2010 Realignment Principles.
2. Consider and approve general response to the Senate Democrats' Restructuring Proposal.
3. Consider and approve outline of recommended protections for counties that would be necessary for any restructuring proposal.
4. Consider and approve authority to endorse extension of the 0.50 Vehicle License Fee increase as contemplated in the Senate Democrats' Restructuring Proposal.

**Staff Contact.** Please contact Paul McIntosh at [pmcintosh@counties.org](mailto:pmcintosh@counties.org) or (916) 327-7500 ext. 506 or the CSAC legislative staff with your questions. Staff has prepared a considerable amount of analysis relating to the various aspects of the restructuring proposal, and we are happy to share with you any additional materials you may wish to review.



1100 K Street  
Suite 101  
Sacramento  
California  
95814

Telephone  
916.327-7500  
Facsimile  
916.441.5507

## 2010 CSAC Realignment Principles

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

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

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

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

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

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

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

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

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

## Senate Multi-Year Restructuring Proposal

### Programmatic Risk Assessment • July 28, 2010

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

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

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

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

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

#### LEGEND –

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

<b>YELLOW: Moderate Risk/Moderate Benefit</b>	
Funded Wobbler Shift (PS1), <i>continued</i>	<ul style="list-style-type: none"> <li>Questions about near- and long-term sufficiency of revenue</li> <li>Inability of county to control sentencing decisions</li> <li>Potential to undercut adult probation investments through SB 678 (Leno and Benoit, 2009)</li> <li>Depending on statutory construct, program could be outside Proposition 1A protections</li> </ul>
Parole Realignment Pilot (PS1)	<ul style="list-style-type: none"> <li>Gives counties ability to self-nominate</li> <li>Would allow counties' to gauge local ability to supervise parolees in community and demonstrate potentially better outcomes</li> <li>Would afford counties opportunity to offer input – based on pilot experiences – into future discussions of parole realignment</li> <li>Creates expectation that parole realignment could be scaled statewide, depending on outcomes</li> <li>Unclear whether probation departments are in a position to take on this responsibility</li> <li>May be difficult for any one county to manage both parole responsibility and wobbler shift</li> <li>Unclear if revenues address full range of county services contemplated: district attorney/public defender role?</li> <li>Unclear how court costs/workload would be covered</li> <li>Unknown interaction with SB 678 (Leno and Benoit, 2009)</li> <li>Uncertain if pilot project is an appropriate component of realignment construct</li> </ul>
Shift Youthful Offender Block Grant to VLF (PS1)	<ul style="list-style-type: none"> <li>Preserves important local public safety funding source into the future</li> <li>Offers potential for revenue growth not available under existing statutory construct</li> <li>Makes YOBG – otherwise unchanged within state General Fund since 2007 – subject to VLF fluctuations and competition with other programs</li> </ul>
Realign Adult Protective Services Program (PASA)	<ul style="list-style-type: none"> <li>Existing APS funding is vulnerable to cuts and/or elimination</li> <li>Potential for significant program growth due to aging population and rising awareness of elder abuse</li> <li>Consider a caseload-driven share of cost model rather than realign the entire program to counties at current funding levels?</li> </ul>
Increase county share of CalWORKs grants from 2.5 to 25 percent (WW)	<ul style="list-style-type: none"> <li>CalWORKs grant levels remain low in real dollars, but caseload may be driven by outside economic and legislative forces</li> <li>Straightforward change, easy for both the state and counties to implement</li> <li>Must be cognizant of future bumps and caseload increases and build in protections against large fluctuations</li> </ul>
<b>RED: High Risk/Low Benefit</b>	
Shift Drug Medi-Cal to counties (PS2)	<ul style="list-style-type: none"> <li>Significant exposure to caseload increases due to federal health care reform and federal parity legislation</li> </ul>

LEGEND –

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

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

LEGEND –

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

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

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

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

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

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

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

**RECOMMENDED PROTECTION MEASURE**

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

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

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

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

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

#### RECOMMENDED PROTECTION MEASURE

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

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

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

#### RECOMMENDED PROTECTION MEASURE

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



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



## CALIFORNIA CITY-COUNTY STREET LIGHT ASSOCIATION CAL-SLA

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mike.glenn@ci.oxnard.ca.us

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Vice-Chairman  
greg.jobe@sanjoseca.gov

County of Marin  
Farhad Mansourian  
Treasurer  
fmansourian@co.marin.ca.us

County of Los Angeles  
Guita Sheik  
Secretary  
gsheik@dpw.lacounty.gov

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Mike Loyola  
mloyola@ci.berkeley.ca.us

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lanunwah@cityofinglewood.org

City of Bakersfield  
Stuart Patteson  
Spateso@bakersfieldcity.us

City of San Diego  
Tom Blair  
tblair@sandiego.gov

City of Hemet  
Mike Underwood  
munderwood@cityofhemet.org

### Staff

Mehdi Sadjadi, P.E.  
Executive Director  
(415) 250-3551  
CAL.SLA@yahoo.com

David J. Byers, Esq.  
Attorney  
McCracken & Byers, LLP  
(650) 697-4890, ext. 213  
dbyers@landuselaw.com

Reed V. Schmidt  
Economist  
Bartle Wells Associates  
(510) 653-3399, ext. 111  
rschmidt@bartlewells.com

July 12, 2010

Paul McIntosh, Executive Director  
CSAC  
1100 K Street, Suite 101  
Sacramento, CA 95814

Subject: CSAC Affiliate Membership

Dear Paul,

The California City-County Street Light Association (CAL-SLA) hereby requests to become an affiliate member of the California State Association of Counties. Our organization has been working very closely with the League of California Cities and CSAC since our inception. CAL-SLA is an affiliate member of the League. Recently I was looking through the CSAC roster and, to my surprise, I could not find CAL-SLA listed as an affiliate. CAL-SLA fits the standards set by CSAC for affiliate membership.

CAL-SLA was organized in 1981 to represent California cities and counties before the California Public Utilities Commission (CPUC) on street light rates and to provide information to cities and counties on lighting issues. Currently we address street lights and traffic signals at the CPUC.

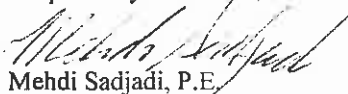
Since 1984 CAL-SLA has intervened and actively worked on every major rate case concerning the three utilities: Pacific Gas and Electric (PG&E), Southern California Edison (SCE), and San Diego Gas and Electric (SDG&E). CAL-SLA has saved California cities and counties over \$300 million.

Street lighting is a unique public service. The CPUC treats street lighting as a separate customer class. CAL-SLA is the only organization that speaks solely for street light customers: cities and counties in California.

In 2009 SCE proposed large increases in facilities charges: up to 185% over six years. SCE proposed to limit the increase in facilities charges to 20% in 2009. CAL-SLA disagreed and recommended much lower increases, averaging 4.8% in future years. CAL-SLA and SCE negotiated a settlement, which the CPUC adopted. The estimated reduction from SCE's request was \$7.6 million in the first year and \$119.6 million cumulative savings over six years.

If you have any questions or need additional information please let me know.

Respectfully submitted,

  
Mehdi Sadjadi, P.E.  
CAL-SLA Executive Director

cc: Karen Keene

CAL-SLA c/o Marin County Department of Public Works, PO Box 4186, San Rafael CA 94913-4186  
CALSLA@yahoo.com (415) 250-3551 www.CAL-SLA.org



## MEMORANDUM

August 3, 2010

1100 K Street  
Suite 101  
Sacramento  
California  
95814

Telephone  
916.327-7500

Facsimile  
916.441.5507

To: Executive Committee  
California State Association of Counties

From: Paul McIntosh  
Executive Director

Re: **Public Compensation Disclosure**

An expose in the *Los Angeles Times* revealed that senior managers in the City of Bell were being paid exorbitant salaries - pay that far exceeded any relationship to their scope of duty and responsibility. The City Manager (\$787,637), Chief of Police (\$457,000) and Assistant City Manager (\$367,000) resigned as a result of the article, but the repercussions of this event continue to resonate. The League of California Cities, a co-sponsor of Proposition 22 on the November 2, 2010 ballot, has reacted strongly to condemn the practices taking place in the City of Bell and distance itself from those actions.

The League has moved in two directions in response to anticipated reactions by the California Legislature as it returns from its summer recess this week. First, the League has formed a task force of City Managers to review best practices and prepare guidelines for the review and setting of salaries for senior managers. CSAC has participated in this task force along with county administrators Nancy Watt (Napa County), Greg Devereaux (San Bernardino County) and Terry Schutten (CAOAC Executive Director). Attached is a draft of the task force's efforts thus far.

Second, the League has been drafting legislation they would propose be adopted to provide for transparency in the setting of senior salaries. The root of the problem within the City of Bell is that the City Manager held an "evergreen" contract that continued to increase his salary without any oversight by the City Council, or transparency to the public.

California counties have significant transparency in the setting of compensation. Section 1 of Article XI of the California Constitution requires the governing body of a county to prescribe the compensation of its members by ordinance and the compensation is subject to referendum. Further, the governing body of the county must provide for the number, compensation, tenure, and appointment of employees. Section 4 of the same article extends this requirement to Charter Counties. In addition, Government Code §25300 provides that *"(t)he board of supervisors shall prescribe the compensation of all county officers and shall provide for the number, compensation, tenure, appointment and conditions of employment of county employees. Except as otherwise required by Section 1 or 4 of Article XI of the California Constitution, such action may be taken by resolution of the board of supervisors as well as by ordinance."*

Through these measures, California counties have been fully transparent in the setting of salaries for elected and appointed officials. The legislation proposed by the League would provide for the following:

By March 1, 2011, and each year thereafter, publish on the agency's Internet website, or if no website exists, in a conspicuous public place at the offices of the agency:

- The salaries of all elected officials and the current adopted salary ranges for each employee position in the agency;
- The total taxable compensation (reported on W-2) in the prior calendar year of all elected officials
- The total taxable compensation (reported on W-2) in the prior calendar year of all appointed officials or employees earning more than \$100,000 in total taxable compensation.
- The total payments in the prior calendar year (reported on Form 1099) to contractors providing public official or public employee services.

This is all data that is readily available to counties and the posting of this data does not appear to be an onerous requirement. For that reason, we recommend that CSAC support the efforts of the League to bring additional transparency to the setting of compensation for public employees.

Attachment

## City Manager Compensation Guidelines

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### Overview

The standard practice for establishing the compensation of local government managers should be reasonable, transparent, and tied to experience and salaries at comparable agencies. Compensation should be based on the City Manager's job requirements, the complexity of the city both in the make up of the organization and community, the leadership needed, labor market conditions, and the organization's ability to pay. In addition to these factors, there are ethical considerations about what is just and fair. Salaries public employees receive impact public perception and trust.

### Compensation Guidelines for City Managers

A starting point in any *salary negotiation* should be to:

- Determine the requirements of the job and the experience needed to successfully perform the job duties. The individual's credentials may be used as factors to set salary.
- Learn what comparable public sector executives earn. A best practice would be to gather information using the pre-determined benchmark cities/agencies.
- Understand the services provided by the City along with the nature of the current issues at the City and in the community and then compare these with the City Manager's expertise and proven ability to resolve those issues.
- Identify the City's current financial position and its ability to pay.
- In areas where cost of living is high and the Council wants the manager to reside in the city, salary negotiations may take into account this unique situation.

#### *Compensation changes:*

- Benefits and salary increases should be comparable to those City Managers receive at the benchmark cities or regional area receive.
  - A consistent measure for determining annual salary increases (COLAs) should be pre-determined and followed. Many organizations use a local CPI for a specific timeframe along with expected salary increases of their benchmark agencies.
- City Managers should avoid taking steps regarding their own pension that would serve to solely profit them. Examples include dramatically increasing salary thereby leading to pension spiking. Recommending or implementing single highest year to determine retirement benefits is discouraged.
- City Managers should not put their personal compensation interests before the good of the overall organization and that of the citizens.

#### *Transparency:*

- City Managers should provide full disclosure regarding their total compensation package to the Council when requesting compensation changes. Issues related to City Manager compensation must be considered and approved in a public meeting.
- The salary plan and salary ranges for city positions, including the City Manager, should be publicly accessible on the agency's website.
- City Managers should receive a single salary that recognizes all duties and responsibilities assigned rather than different salaries for different assignments.

### General Compensation Practice Guidelines

- Each local government should establish benchmark agencies which are determined using set criteria, such as:
  - Close geographic proximity
  - Similar with regard to the nature of the services provided
  - Similar in employer size/population size
  - Other major employers in the immediate area
- Each local government should develop defensible compensation levels that are in line with their labor market. Doing so will enable the city to establish and maintain a reputation as a fair and equitable employer as well as a good steward of public funds.
- When considering any salary or benefit changes, the immediate and anticipated long-term financial resources of the organization always should be taken into account.
- Ensure notice is provided and a public hearing is held on any adjustment in to the terms and conditions of the City Manager's compensation

*The Public Compensation Disclosure Act of 2010*

Sec. 1 In enacting this Act, the Legislature finds and declares that open access to the compensation paid to state and local public officials and public employees is necessary to advance the transparency of government and is critical to a functioning democratic process and ensures public accountability.

**Sec. 2 A new Chapter 3.6 is added to Title 1, Division 7 of the Government Code to read as follows:**

6280 (a) Every employment agreement, or an agreement with a private contractor to act in the capacity of a public official or public employee, between a state agency or local agency and any public official, public employee, or contractor is a public record that is not subject to any exemption from disclosure to the public set forth in this division.

(b) Each state agency or local agency shall disclose by March 1, 2011, on the agency's website, if the agency has one, and shall make available for immediate public inspection at a conspicuous public place at the offices of the agency, all of the following information for all public officials, public employees, and contractors acting in the capacity of a public official or public employee that earn more than \$100,000 for the prior calendar year of the public agency:

(1) The public official's, employee's, or contractor's full name, title, and total compensation for the prior fiscal year. If the contractor agreement is with a private firm rather than with an individual, the employee or employees of the private firm primarily responsible for acting in the capacity of a public official or public employee shall be identified by name.

(2) For purposes of this chapter, "total compensation" means the highest amount of compensation shown on the Form W-2 or the Form 1099, as those forms may be revised or renumbered, reported by the local agency to the federal government for income tax purposes for the relevant calendar year.

(c) The information disclosed pursuant to subdivision (b) shall be updated annually by each state or local agency by March 1, of each year.

(d) Each state agency or local agency shall disclose on the agency's website, if it has one, and shall make available for immediate public inspection at a conspicuous public place at the offices of the agency all the following information:

(1) The salary ranges for all employment positions in the agency. In addition, each state agency or local agency shall make available for immediate public inspection at a conspicuous public place at the offices of the agency all written employment agreements and collective bargaining agreements currently in effect, and amendments to those agreements, if any, that the agency has entered into with agency employees or bargaining units.

(2) All compensation received by members of the agency's governing body for service as a member of the governing body, including compensation received for serving on boards, commissions, task forces or non-profit entities that are formed by action of the governing body.

(3) Other agencies upon which any public official or public employee serves as a member of the other agency's governing body if the public official receives compensation for such service, which compensation shall also be disclosed.

(e) As used in this chapter:

(1) "Local agency" includes a county; city, whether general law or chartered; city or county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(2) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency.

**Sec. 3 A new subsection (f) is added to Section 54957.5 of the Government Code to read as follows:**

54957.5 (f) (1) It is the intent of the Legislature in enacting this section to expand opportunities for public disclosure, comment and performance review of contracts which contain automatic increases of compensation for public employees earning more than \$100,000 per year.

(2) A legislative body shall provide notice prior to the meeting at which the legislative body will consider approval of employee compensation that will result in both the employee earning over \$100,000 per year in total compensation and the approval of automatic increases to compensation without further action by the legislative body. This requirement shall not apply where the automatic increase is consistent with increases in compensation for the local agency's other employees. The notice shall be disclosed on the agency's website, if one exists, and disclosed in a conspicuous public place at the offices of the agency, no later than 7 days prior to the meeting at which the compensation amount will be considered by the legislative body. The notice shall contain the officer or employee's full name, position, and the proposed total compensation.

(3) For purposes of this chapter, "total compensation" means the highest amount of compensation on an annual basis that will be reported on the Form W-2 or the Form 1099, as those forms may be revised or renumbered, for income tax purposes if the proposed compensation increase is approved by the legislative body.

**Sec. 4 Section 54957.6 is amended to read as follows:**

54957.6. (a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives



regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

Closed sessions with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.

Closed sessions held pursuant to this section shall not include final action on the proposed compensation of one or more unrepresented employees. Any employment agreement, or the setting of compensation and benefits by other means, for one or more unrepresented employees shall be approved in open session with a complete copy of the agreement, or a report setting forth the compensation and benefits, provided to the legislative body in the public agenda packet.

For the purposes enumerated in this section, a legislative body of a local agency may also meet with a state conciliator who has intervened in the proceedings.

(b) For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee, but shall not include any elected official.

Section 5 It is the intent of the Legislature, in amending 54957.6 of the Government Code in this Act to codify existing law with respect to the setting of employee compensation in open session only. The amended section is declaratory of existing law and shall not be construed or interpreted as creating a new law or as modifying or changing an existing law.

8/3/2010



## Memorandum

August 3, 2010

To: CSAC Executive Committee

From: Paul McIntosh, CSAC Executive Director  
Lindsay Pangburn, CSAC Corporate Relations Manager

Re: **Corporate Associates Program Updates  
INFORMATION ITEM**

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Following please find updates on the CSAC Corporate Associates program activities so far this year.

- Membership and sponsorship solicitation efforts for 2010 are ongoing, with current efforts geared towards the CSAC Annual Meeting in November.
- We have received 2010 membership commitments from 60 organizations, including nine new members.
  - To date, the program has raised more than \$159,000 in membership dues, as well as an additional \$13,000 in event sponsorship funds.
  - Attached please find a listing of our current Platinum, Gold, Silver and Bronze members (Basic and Small Business levels not included).
- The Exhibit Hall for the CSAC 116<sup>th</sup> Annual Meeting in Riverside County is more than 50 percent committed.
  - Exhibitor registration fees received to-date exceed \$34,000.
- We are continuing to distribute regular communications to all Corporate Associates members, including the new CSAC e-bulletin and the Executive Director's Watch.
- Plans are in place for an Annual Meeting workshop featuring Corporate Associates members that will highlight program case studies of successful county-private sector partnerships.
- Upcoming events:
  - Corporate Associates Business Meeting – September 8, Sacramento
  - CSAC Board of Directors/Corporate Associates Event – September 8, Sacramento

If you have any questions about the Corporate Associates program, please feel free to contact Lindsay Pangburn, at (916) 327-7500 ext. 528 or [lpangburn@counties.org](mailto:lpangburn@counties.org).

## CSAC Corporate Associates ~ 2010 Program Members

### PLATINUM (\$15,000)

AT&T  
California Communities/U.S. Communities  
CSAC Finance Corporation  
Eli Lilly and Company  
Kaiser Permanente  
Nationwide Retirement Solutions  
Pacific Gas & Electric Company  
San Diego Gas & Electric – A Sempra Energy Utility  
Southern California Edison

### GOLD (\$10,000)

Republic Services, Inc.  
Southern California Gas Company – A Sempra Energy Utility

### SILVER (\$5,000)

Barclays Capital  
Employee Relations, Inc.  
HdL Companies  
HDR / CUH2A  
Morgan Stanley  
Office Depot  
Siemens Building Technologies  
Sierra West Group, LLC  
Vanir Construction Management  
Wells Capital Management

### BRONZE (\$3,000)

Aramark  
California Tribal Business Alliance  
Comcast  
Corrections Corporation of America  
Hubbert Systems Consulting  
Kitchell  
PARS  
ShoreTel, Inc.  
Wedbush Morgan Securities  
Xerox Corporation

*Please Note: **Basic Level** and **Small Business** members not listed above.*



## CALIFORNIA STATE ASSOCIATION OF COUNTIES FINANCE CORPORATION

August 2, 2010

To: CSAC Executive Committee

From: Tom Sweet, Executive Director, CSAC Finance Corporation

RE: Finance Corporation Program Update  
INFORMATION ITEM

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

### **CalTRUST**

- CalTRUST currently has over 90 participants and current assets exceed \$1 Billion.
- The CalTRUST website, [www.caltrust.org](http://www.caltrust.org), has been updated and relaunched with a fresh look.
- A meeting was held at the NACo Annual Conference with representatives of about a dozen other states who are interested in replicating what we have done in California with the CalTRUST program.

### **California Communities**

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

### **U.S. Communities**

- U.S. Communities Q1 2010 numbers are now available. California County sales were up slightly over the previous quarter and total California sales were up by almost 7%.

### **Nationwide Retirement Solutions**

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

### **General Information**

- On Thursday, August 19th, a webinar will be held for cities and counties to inform decision-makers on the benefits available through the U.S. Communities cooperative purchasing program and specifically which U.S. Communities suppliers provide solutions for facilities maintenance.
- We continue to meet with individual counties and their department heads to present our programs and benefits. Please let us know if you would like a meeting set with your county's department heads.

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



# County Counselors' Association of California

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## BOARD OF DIRECTORS

## MEMORANDUM

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Mono County

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## EXECUTIVE DIRECTOR

Jennifer B. Henning

**To: Supervisor Tony Oliveira, President, and  
Members of the CSAC Executive Committee**

**From: Jennifer Henning, Litigation Coordinator**

**Date: August 19, 2010**

**Re: Litigation Coordination Program Update**

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

### I. New Case Activity Since Last Executive Committee Meeting

#### ***Altman v. City of Agoura Hills***

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

This case involves a challenge to the city's environmental impact report (EIR) for a specific plan project. The trial court found three areas of the EIR inadequate, and set aside approval of the EIR and specific plan until the EIR was corrected. But the court found that the remaining portions of the EIR were adequate. The city revised the defective parts of the EIR, circulated the revisions for public comment, and ultimately certified the revised EIR and re-adopted the specific plan. Petitioner then challenged several of the unrevised parts of the EIR. The trial court found that this second challenge was time-barred because it was not brought within the statute of limitations for challenging the original EIR. The Second District affirmed in an unpublished opinion, concluding that the notice of determination as to the revised EIR did not trigger a new limitations period except as to the revised sections of the document. CSAC has requested publication.

#### ***Barragan v. County of Los Angeles***

184 Cal.App.4th 1373 (2d Dist. May 25, 2010)(B217398), *petition for review pending* (filed July 7, 2010)(S184178)

This case involves the issue of when a person can be excused from filing a tort claim against the county within the statutory time period. Relevant law permits the time to be extended where a claimant is incapacitated. Until this case, however, case law had established that disability would not excuse failure to

comply with the limitations period under the theory that an injured party, even if not able to personally file a claim, can still authorize another party to pursue a claim on his or her behalf. But the Second Appellate District has now decided that such case law did not create an absolute rule. Instead, the court found that a claimant can be excused from the limitations period with evidence of a physical and/or mental disability that so limited the claimant's function that a reasonable person under similar circumstances would not have sought out counsel to pursue a claim. LA County is petitioning for California Supreme Court review, and CSAC will file a letter in support.

***City of Alhambra v. County of Los Angeles***

--- Cal.App.4th ---, 2010 Cal.App.LEXIS 1061 (2d Dist. July 7, 2010)(B218347)

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

***City of Scotts Valley v. County of Santa Cruz***

Pending in the First Appellate District (filed Jan. 7, 2010)(A126357)

This case involves the proper apportionment of property tax to cities under the Tax Equity Allocation Act (TEA; Rev. & Tax Code § 98), which was enacted to address the inequities created after Prop. 13 by AB 8—the legislative distribution of property taxes following Prop. 13 – for those cities that possessed either no property taxes or a very low tax rate ("Low Tax Cities"). Scotts Valley, a low tax city, challenged the county's apportionment method of computing TEA payments. That methodology, which arose following a State Controller audit in 1997, required the TEA comparison be done to the "gross" AB 8 Apportionment, without deduction for redevelopment or ERAF II payments. The trial court disagreed, and concluded instead that the City should be reimbursed, in material part, for its ERAF II payment, ERAF III payment, and Redevelopment Contribution. Santa Cruz has appealed, and CSAC has filed a brief in support.

***Coito v. Superior Court (State of California)***

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

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

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

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

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

***Dillingham-Ray-Wilson v. City of Los Angeles***

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

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

***Espinosa v. City and County of San Francisco***

598 F.3d 528 (9th Cir. Mar. 9, 2010)(08-16853), *petition for en banc review pending* (filed May 3, 2010)

Plaintiff family members brought this action after their family member, Sullivan, was shot and killed when officers entered an apartment without a warrant on a tip the place was being used for drugs. The officers entered the home when the door was ajar and a bloody shirt was visible from the doorway. Ultimately, a stand off between Sullivan and the officers ensued, and the officers shot Sullivan when they mistakenly believed he was about to fire a weapon. The district court denied the officers' immunity, and a 3-judge panel of the Ninth Circuit affirmed. The court first found that as a "guest" in the apartment, Sullivan had an expectation of privacy. The court then determined that there was a question of material fact as whether the discovery of the bloody shirt through an open door created an exigent circumstance sufficient to justify a warrantless entry. The

court also found it was possible the officers used excessive force, even in the mere act of entering the apartment with their guns drawn. The city is seeking rehearing in the Ninth Circuit, and CSAC has filed a letter brief in support.

***Foster Poultry Farms v. City of Livingston***

Pending in the Fifth Appellate District (filed Mar. 2, 2010)(F059871)

The Merced County Superior Court has determined that a multi-year water rate increase adopted by the City of Livingston is unconstitutional. The city's water rate had been so low that for years it was being subsidized by the general fund. After 14 years with no increase, in July 2009, the city raised the water rate following a Prop. 218 process and protest hearing. The Prop. 218 notices offered three scenarios for the new water rates, though none exceeded the cost of service. After the close of the protest hearing, the City Council discussed the matter over the course of several meetings, and ultimately adopted the new rates by resolution on a 3-2 vote. Of the three scenarios set out in the notice, the council adopted the least aggressive rate increase, and in addition, it implemented a 15% across the board reduction for the first six months of the new rate to ease the burden on ratepayers. The city's largest water user brought this Prop. 218 challenge. The court decided, among other things: (1) the city only has authority to impose water rates under Health and Safety Code section 5471 and that a 2/3 vote is required; (2) that an agency cannot set a water rate other than the one for which it gives notice (even for a lower rate); and (3) the agency has to issue a new 45-day notice under Prop. 218 each time it continues a rate hearing. CSAC will file a brief in support of the city on appeal.

***Greene v. Camreta***

588 F.3d 1011 (9th Cir. Dec. 10, 2009)(06-35333), *petition for certiorari pending* (filed June 4, 2010)(09-1454)

The Ninth Circuit Court of Appeals has found that a child protective services caseworker violated the constitutional rights of two minor girls who were interviewed at their school in connection with a sexual abuse investigation. After an arrest was made in connection with sexual abuse of another minor, there was a concern that the two minors involved in this case may have also been abused. The social worker went with a deputy sheriff to interview the girls at their school, and sometime later the mother brought this lawsuit arguing the interview violated the girls' Fourth Amendment rights. The Ninth Circuit agreed, holding that plaintiff stated a claim for a Fourth Amendment violations. The State of Oregon is seeking U.S. Supreme Court review, and CSAC has filed a brief in support.

***Harris v. City of Santa Monica***

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

A city bus driver was terminated during her probationary period based on several incidents of misconduct, but also shortly after she disclosed to her employer that she was pregnant. She sued the city for pregnancy discrimination. At trial, the city sought jury instructions on the mixed-motive affirmative defense. The trial court refused, and instead instructed the



jury that the city was liable for discrimination if plaintiff's pregnancy was a motivating factor for the discharge even if other factors may have also contributed to the decision. The jury returned a verdict for plaintiff. The Second District reversed, finding that the court's failure to instruct the jury on the mixed-motive affirmative defense deprived the city of a legitimate defense. The Supreme Court has granted review. CSAC will file a brief in support of the city.

***Howard v. County of San Diego***

184 Cal.App.4th 1422 (4th Dist. Div. 1 Apr. 29, 2010)(D055419), *request to depublish pending* (filed July 8, 2010)(S184016)

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

***In re W.B.***

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

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

***In re Jairo V.***

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

A 17 year old is a dependent of the juvenile court. He has been AWOL from his foster home since November 2008. He was arrested in April 2010 on a drug offense. Upon discovery that he is in the country illegally, Immigration and Customs Enforcement (ICE) took him into custody and placed an immigration hold on him. The San Francisco Human Services Agency then filed a motion with the juvenile court asking it to dismiss the dependency case because the minor no longer met the statutory requirements for

dependency. The court has yet to rule on that motion, but in the meantime it ordered the Agency to take custody of the minor from ICE in order to forestall the immigration proceedings. The Agency has filed for an emergency writ at the Court of Appeal, and CSAC filed a brief in support. The First District granted the writ on July 8.

***Lobo v. Tamco***

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

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

***Madison County, NY v. Oneida Indian Nation of New York***

605 F.3d 149 (2d Cir. Apr. 27, 2010)(05-6408), *petition for certiorari pending* (filed July 9, 2010)(10-72)

Under a relatively recent Supreme Court decision, local taxing authorities can impose real property taxes on land owned in fee simple by Indian tribes. (*City of Sherrill v. Oneida Indian Nation of New York* (2005) 544 U.S. 197.) In the present case, the Second Circuit Appellate Court in New York concluded that counties could impose a tax on a tribe, but could not foreclose on tribe-owned property for non-payment of county taxes. The court concluded that the tribe was immune from suit under the long-standing doctrine of tribal sovereign immunity. A concurring opinion put the issue this way: “The holding in this case comes down to this: an Indian tribe can purchase land (including land that was never part of a reservation); refuse to pay lawfully-owed taxes; and suffer no consequences because the taxing authority cannot sue to collect the taxes owed. This rule of decision defies common sense. But absent action by our highest Court, or by Congress, it is the law.” Madison and Oneida Counties are seeking U.S. Supreme Court review. CSAC will file a brief in support.

***Save the Plastic Bag Coalition v. City of Manhattan Beach***

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

The Second District has concluded that adoption of an ordinance prohibiting the distribution of plastic bags to customers at the point of sale requires an environmental impact report under CEQA (rather than a negative declaration) in order to determine the

impacts of the increased use of paper bags that will be caused by the ordinance. In so ruling, the court emphasized “that the fair argument test sets a low threshold for preparation of an environmental impact report and reflects a preference for resolving doubts in favor of environmental review.” The Supreme Court has granted review. CSAC will file a brief in support of the city.

***Sunnyvale West Neighborhood Assoc. v. City of Sunnyvale***

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

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

***Tomlinson v. County of Alameda***

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

Plaintiffs challenged the county’s decision to approve a subdivision development, deeming it exempt from CEQA under the categorical exemption for in-fill development (Cal. Code Regs., tit. 14, § 15332). The First District first determined that section 21177’s requirement to exhaust administrative remedies does not apply to an action challenging an exemption determination, rejecting even the plaintiffs’ acknowledgment that the exhaustion requirement applied to their claim. The court went on to conclude that the in-fill development exemption did not apply to this project because it was not “within city limits,” as is required. The court rejected the county’s argument that the phrase “within city limits” must be construed in a manner that promotes in-fill development within urbanized areas. The court granted rehearing to reconsider its decision in light of another recently-decided opinion that came to the opposite conclusion on the issue. CSAC has filed a letter brief in support of the county.

***Wills v. Orange County Superior Court***

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

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

accommodation, and that she was terminated for legitimate, non-discriminatory reasons. Plaintiff has appealed. CSAC will file a brief in support of the court.

## **II. Amicus Cases Decided Since Last Executive Committee Meeting**

### ***City of Ontario v. Quon***

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

Outcome: Positive

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

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

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

Outcome: Negative

The City of San Jose filed a petition for writ of supersedeas after a trial court ruling that PERB has exclusive jurisdiction over work stoppages threatened by "essential" employees whose absence could result in health and safety problems for the community. The Sixth District affirmed, holding that PERB has exclusive jurisdiction when a strike involving statutory unfair labor practice claims is threatened by public employees whose services are essential to municipal health and safety. The California Supreme Court affirmed, finding "that PERB has initial jurisdiction over a claim by a public entity that a strike by some or all of its employees is illegal. In addition, we conclude that a public entity must exhaust its administrative remedies before PERB before seeking judicial relief unless one of the recognized exceptions to the exhaustion of administrative remedies requirement is established." The Court did, however, reject the union's argument that the doctrine of exhaustion of administrative remedies always applies in actions pertaining to public employee strikes that give rise to claims of unfair labor practices under the MMBA, leaving open the possibility that a factual situation could arise that would excuse exhaustion of administrative remedies. CSAC filed a brief in support of the city.

***County of Santa Clara v. Atlantic Richfield***

--- Cal.4th ---, 2010 Cal.LEXIS 7241 (July 26, 2010)(S163681)

Outcome: Positive

This case addresses the issue of whether, under *People ex rel. Clancy v. Superior Court* (1985) 39 Cal.3d 740, public entities can use outside counsel who will be paid a contingent fee to prosecute a nuisance abatement action, which in this case is an action involving harms from lead paint. After the trial court found that *Clancy* precluded such a contingent fee arrangement, the county plaintiffs (Santa Clara, Santa Cruz, Alameda, Solano, San Francisco, San Mateo, Monterey and Los Angeles) filed a writ petition, and the Sixth District granted the writ, concluding that *Clancy* does not bar the public entities' contingent fee agreements with their private counsel. The Supreme Court affirmed. The Court concluded that *Clancy* should not be read so broadly as to prevent contingency agreements in all cases, and that a strict rule of disqualification is not required. Nevertheless, the Court held that there must be adequate arrangements in place to ensure that critical government authority is not delegated to a private attorney who might be motivated to use the government's power for private financial gain. Specifically, contingency fee arrangements must provide: "(1) that the public-entity attorneys will retain complete control over the course and conduct of the case; (2) that government attorneys retain a veto power over any decisions made by outside counsel; and (3) that a government attorney with supervisory authority must be personally involved in overseeing the litigation." Because some of the contingency fee agreements used in this case lacked one or more of these elements, the Court remanded, but made clear the entities could move forward with the case using contingency counsel after revising their retention agreements to comply with the decision. CSAC filed an amicus brief in support of the counties.

***Fogarty-Hardwick v. County of Orange***

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

Outcome: Negative

Plaintiff and her husband divorced and were involved in child custody proceedings in family court. After an allegation of sexual abuse of one of the children, the county's Department of Social Services filed a petition. The family court proceedings were stayed while the juvenile court acted on the petition. The children were initially placed with their mother, then in a group home and a foster home. The parties ultimately reached an agreement awarding custody to the father, and the juvenile court terminated jurisdiction in favor of informal monitoring. The family court then resumed its activities and also awarded the father custody with weekend visitation for mother. Mother then filed this action in Superior Court alleging the county violated her civil rights by deceiving the juvenile court. A jury found in mother's favor and awarded her nearly \$5 million. The court later awarded over \$1.6 million in attorney fees. The county appealed. The court found that plaintiff was not barred from relitigating the juvenile court custody order because custody orders are, by their nature, *sui generis*, and are not really "final" for purposes of estoppel. The court also found there was no compelling reason to conclude

that, in the absence of the social worker's misconduct, the family court's custody orders would have been the same. Finally, the court concluded the county waived its defense of absolute immunity, and that the qualified immunity defense is not available. CSAC filed an amicus brief in support of the county.

***Greene v. Marin County Flood Control and Water Conservation District***

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

Outcome: Positive

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

***Los Angeles Unified School District v. Great American Insurance***

--- Cal.4th ---, 2010 Cal.LEXIS 6619 (July 12, 2010)(S165113)

Outcome: Negative

The school district contract with Hayward Construction Company to take over a school construction project after its first contractor defaulted. The contract included a stipulation that the maximum amount payable by the district would not exceed \$4.5 million and included a list of specific tasks to be completed. Disputes soon arose between Hayward and the district over work not included on the list, and Hayward advised the district that unforeseen conditions made it necessary to exceed the \$4.5 million maximum in the contract. The district advanced additional costs to Hayward but specified it was reserving the right to seek appropriate repayment. Eventually, the district requested that Hayward and its surety, defendant Great American Insurance Company, repay \$1.1 million of the advancement. When they refused, the district initiated this action and Hayward cross-complained for breach of contract. The Second District Appellate Court concluded that Hayward could submit extrinsic evidence to prove damages. The Supreme Court affirmed. The Court first noted that whether a contractor may recover when the plans and specifications are correct, but the public authority failed to disclose information in its possession that materially affected the cost of performance, has divided the Courts of Appeal. In resolving the issue, the Court concluded that a contractor need not prove an affirmative fraudulent intent to conceal. Instead, a public entity may be required to provide

extra compensation if it knew, but failed to disclose, material facts that would affect the contractor's bid or performance.

***Mead v. City of Cotati***

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

Outcome: Positive

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

***Stockton Citizens for Sensible Planning v. City of Stockton***

48 Cal.4th 481 (Apr. 1, 2010)(S159690)

Outcome: Positive

This case arises in the context of a challenge to a Wal-Mart Supercenter. The project went into an area covered by a Master Development Plan (MDP). The location of the project was initially designated for high density residential. The project was approved by a letter from the Planning Director informing the developer that staff had determined the project was in substantial conformance with the MDP. Plaintiff filed the complaint more than 35 days after the filing of a notice of determination that the project was exempt from CEQA, and the developer argued the statute of limitations had run under Public Resources Code section 21167. The appellate court held that the Director's letter did not constitute an "approval" of the Wal-Mart project, and that the Director's letter did not constitute a determination by a "public agency" since the Director was not delegated and could not have been delegated authority to approve a project requiring environmental review. Finally, the court concluded the limitations period of section 21167 does not apply to the jurisdictional question of whether the Director had authority to act for the City. The California Supreme Court granted review and reversed. "We agree with appellants that flaws in the decision-making process underlying a facially valid and properly filed NOE do not prevent the NOE from triggering the 35-day period to file a lawsuit challenging the agency's determination that it has approved a CEQA-exempt project. By describing the project in question, setting

forth the agency's action or decision, and detailing the reasons for the exemption finding, this notice tells the public that the brief period within which a CEQA challenge to the propriety of the noticed action or decision may be commenced has begun to run." CSAC filed an amicus brief in support of the city.



## Calendar of Events

2010

### **January**

- 13-14 RCRC Board Meeting, Sacramento County
- 28 CSAC Executive Committee Meeting, Sacramento County

### **February**

- 18 CSAC Executive Committee Meeting, Sacramento County

### **March**

- 6-10 NACo Legislative Conference, Washington, D.C.
- 24 RCRC Board Meeting, Sacramento County
- 25 CSAC Board of Directors Meeting, Sacramento County

### **April**

- 19-23 CSAC County Government Week
- 21 RCRC Board Meeting, Sacramento County
- 22 CSAC Executive Committee Meeting, Sacramento County

### **May**

- 26-28 NACo WIR Conference, Yellowstone County (Billings), Montana

### **June**

- 2-3 CSAC Legislative Conference, Sacramento County
- 3 CSAC Board of Directors Meeting, Sacramento County
- 16-17 RCRC Board Meeting, Modoc County

### **July**

- 16-20 NACo Annual Meeting, Washoe County (Reno), Nevada

### **August**

- 18 RCRC Board Meeting, Sacramento County
- 19 CSAC Executive Committee Meeting, Los Angeles County

### **September**

- 9 CSAC Board of Directors Meeting, Sacramento County
- 22-24 RCRC Annual Meeting, Napa County

### **October**

- 6-8 CSAC Executive Committee Retreat, Monterey County

### **November**

- 15-16 CSAC New Supervisors Institute (Session I), Riverside County
- 16-19 CSAC 116th Annual Meeting, Riverside County

- 18 CSAC Board of Directors Meeting

## ***December***

- 15 RCRC Board Meeting, Sacramento County

2011

## ***January***

- 20 CSAC Executive Committee Meeting, Sacramento County

## ***March***

- 5-9 NACo Legislative Conference, Washington, D.C.

- 24 CSAC Board of Directors Meeting, Sacramento County

## ***May***

- 5 CSAC Executive Committee Meeting, Sacramento County

## ***June***

- 1-2 CSAC Legislative Conference, Sacramento County

- 2 CSAC Board of Directors Meeting, Sacramento County

## ***July***

- 15-19 NACo Annual Meeting, Multnomah County (Portland), Oregon

## ***August***

- 11 CSAC Executive Committee Meeting, Location TBD

## ***September***

- 15 CSAC Board of Directors Meeting, Sacramento County

## ***October***

- 5-7 CSAC Executive Committee Retreat, San Diego County

- 19-22 NACo National Council of County Association Executives Annual Fall Meeting

## ***November***

- 29-2 CSAC 117th Annual Meeting, San Francisco City & County

## ***December***

- 1 CSAC Board of Directors Meeting, San Francisco City & County

- 14-16 CSAC Officers Retreat, Location TBD

2012

## ***March***

- 3-7 NACo Legislative Conference, Washington, D.C.

## ***July***

- 13-17 NACo Annual Meeting, Allegheny County (Pittsburgh), Pennsylvania

## ***October***

17-20 NACo National Council of County Association Executives Annual Fall Meeting

2013

**March**

2-6 NACo Legislative Conference, Washington, D.C.

2014

**March**

1-5 NACo Legislative Conference, Washington, D.C.