



# OFFICIAL VOTER INFORMATION GUIDE

## SPECIAL STATEWIDE ELECTION

**Tuesday, November 8**

### CERTIFICATE OF CORRECTNESS

I, Bruce McPherson, Secretary of State of the State of California, do hereby certify that the measures included herein will be submitted to the electors of the State of California at the Special Statewide Election to be held throughout the State on November 8, 2005, and that this guide has been correctly prepared in accordance with the law.

Witness my hand and the Great Seal of the State in Sacramento, California, this 15th day of August, 2005.

Bruce McPherson  
Secretary of State

# 2005





# SECRETARY OF STATE

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Dear California Voters,

Whether you cast your ballot in person or through the convenience of the mail, I urge you to participate in the special statewide election on November 8th. There is no greater civic responsibility than to exercise your right to vote. Elections are the highest expression of civic participation that we have in a free society, and we must cherish, honor, and protect this privilege faithfully.

There are several important measures for your consideration on the upcoming ballot. These measures were placed on the ballot through the initiative process.

In this pamphlet, you will find information to assist you in making informed choices. Impartial analyses, arguments in favor and against the measures, the official summaries, texts of the measures themselves, and other useful information is presented here as your one-stop educational point of reference. These materials are also available on the Secretary of State's web site at [www.voterguide.ss.ca.gov](http://www.voterguide.ss.ca.gov). The web site also provides a link to campaign finance disclosure information (<http://cal-access.ss.ca.gov/Campaign/Initiatives/List.aspx>) so you can learn who is funding the campaigns.

Special statewide elections are not a common occurrence and often result in a lower turnout than in regularly scheduled elections. But with issues on this ballot that affect social, financial, medical, and educational areas, making the commitment to voice your opinions through the ballot box is a wise investment.

Please let my office or your local elections official know if you have questions, ideas, or concerns about registering to vote or voting. We have a toll-free hotline for contacting us—**1-800-345-VOTE**.

Thank you for being a part of California's future by casting your ballot in the November 8th special statewide election.

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## BALLOT MEASURE SUMMARY

### Quick Reference Pullout Guide

Tuesday, November 8

This pullout reference guide contains summary and contact information for each state proposition appearing on the November 8th ballot.

**Take it with  
you to the polls!**

PROPOSITION **73** | **Waiting Period and Parental Notification Before Termination of Minor's Pregnancy. Initiative Constitutional Amendment.**

**SUMMARY**

Amends California Constitution, defining and prohibiting abortion for unemancipated minor until 48 hours after physician notifies minor's parent/guardian, except in medical emergency or with parental waiver. Mandates reporting requirements. Authorizes monetary damages against physicians for violation. Fiscal Impact: Potential unknown net state costs of several million dollars annually for health and social services programs, the courts, and state administration combined.

**WHAT YOUR VOTE MEANS**

**YES**

A YES vote on this measure means: The California Constitution would be changed to require that a physician notify, with certain exceptions, a parent or legal guardian of a pregnant minor at least 48 hours before performing an abortion.

**NO**

A NO vote on this measure means: Minors would continue to receive abortion services to the same extent as adults. Physicians performing abortions for minors would not be subject to notification requirements.

**ARGUMENTS**

**PRO**

*MORE THAN ONE MILLION CALIFORNIANS'* signatures qualified PROPOSITION 73! It will *RESTORE* Californians' right to counsel and care for their young daughters before—and *after*—an abortion. *Similar laws are protecting girls in over thirty states. FOR OUR DAUGHTERS' SAFETY, HEALTH, AND PROTECTION, VOTE YES on 73!*

**CON**

Prop. 73 says government can mandate family communication. It can't. Scared, pregnant teenagers don't need a judge—they need a counselor. Vulnerable teenagers who can't talk to their parents may resort to unsafe, illegal abortions. Parents rightly want to know, but keeping teens safe is even more important.

**FOR ADDITIONAL INFORMATION**

**FOR**

YES on 73 / Parents' Right to Know and Child Protection  
2555 Rio De Oro Way  
Sacramento, CA 95826  
Toll-Free (866) 828-8355  
Janet@YESon73.net  
www.YESon73.net

**AGAINST**

Steve Smith  
Campaign for Teen Safety  
555 Capitol Mall, Suite 510  
Sacramento, CA 95814  
(916) 669-4802  
info@noonproposition73.org  
www.NoOnProposition73.org

PROPOSITION **74** | **Public School Teachers. Waiting Period for Permanent Status. Dismissal. Initiative Statute.**

**SUMMARY**

Increases probationary period for public school teachers from two to five years. Modifies the process by which school boards can dismiss a teaching employee who receives two consecutive unsatisfactory performance evaluations. Fiscal Impact: Unknown net effect on school districts' costs for teacher compensation, performance evaluations, and other activities. Impact would vary significantly by district and depend largely on future district personnel actions.

**WHAT YOUR VOTE MEANS**

**YES**

A YES vote on this measure means: The probationary period for new teachers would be extended from two to five years, and school districts could dismiss permanent teachers who received two consecutive unsatisfactory performance evaluations using a modified dismissal process.

**NO**

A NO vote on this measure means: The probationary period for new teachers would remain two years, and no changes would be made to the dismissal process for permanent teachers.

**ARGUMENTS**

**PRO**

Proposition 74 is Real Education Reform—ensuring our children have high-quality teachers. YES on 74 changes tenure eligibility from 2 years to 5 years. YES on 74 rewards good teachers, but weeds out problem teachers. YES on 74—Improve education, ensure our children get the best possible teachers.

**CON**

Prop. 74 won't improve student achievement, punishes hardworking teachers, and ignores our schools' real problems. California's teachers can be and are fired. They're not guaranteed a life-time job, just a hearing before dismissal—this initiative revokes that right for many. Prop. 74 discourages recruitment of quality teachers we desperately need.

**FOR ADDITIONAL INFORMATION**

**FOR**

Governor Schwarzenegger's California Recovery Team  
310 Main Street, Suite 225  
Santa Monica, CA 90405  
Joinarnold.com

**AGAINST**

Andrea Landis  
No on 74, a Coalition of Teachers and School Board Members for Quality Teaching and Learning  
1510 J Street, Suite 210  
Sacramento, CA 95814  
(916) 443-7817  
info@noonproposition74.com  
www.noonproposition74.com

**PROPOSITION 75** | **Public Employee Union Dues. Restrictions on Political Contributions. Employee Consent Requirement. Initiative Statute.**

**SUMMARY**

Prohibits using public employee union dues for political contributions without individual employees' prior consent. Excludes contributions benefitting charities or employees. Requires unions to maintain and, upon request, report member political contributions to Fair Political Practices Commission. Fiscal Impact: Probably minor state and local government implementation costs, potentially offset in part by revenues from fines and/or fees.

**WHAT YOUR VOTE MEANS**

**YES**

A YES vote on this measure means: Public employee unions would be required to get annual, written consent from government employee union members and nonmembers to charge and use any dues or fees for political purposes.

**NO**

A NO vote on this measure means: Public employee unions could charge and use dues or fees for political purposes without annual, written consent. Fees from a nonmember of a union could not be spent on political purposes if the nonmember objects.

**ARGUMENTS**

**PRO**

Proposition 75 protects public employee union members from having political contributions made from their dues without their annual permission. Currently public employee union members are *forced to contribute* their hard earned money to political candidates or issues they may oppose. Yes on Proposition 75 will make those contributions clearly voluntary.

**CON**

Prop. 75 is unfair to teachers, nurses, police, and firefighters. It makes their labor unions play by different rules than big corporations. It's unnecessary. The U.S. Supreme Court says no public employee can be forced to join a union and contribute to politics. It's sponsored by corporations who oppose unions.

**FOR ADDITIONAL INFORMATION**

**FOR**

Californians for Paycheck Protection  
1500 W. El Camino Ave. #113  
Sacramento, CA 95833  
(916) 786-8163  
info@caforpaycheckprotection.com  
www.caforpaycheckprotection.com

**AGAINST**

Shawnda Westly  
The Strategy Group  
35 S. Raymond Ave. #405  
Pasadena, CA 91105  
(626) 535-0710  
info@prop75No.com  
www.prop75No.com

**PROPOSITION 76** | **State Spending and School Funding Limits. Initiative Constitutional Amendment.**

**SUMMARY**

Limits state spending to prior year's level plus three previous years' average revenue growth. Changes minimum school funding requirements (Proposition 98). Permits Governor, under specified circumstances, to reduce budget appropriations of Governor's choosing. Fiscal Impact: State spending likely reduced relative to current law, due to additional spending limit and new powers granted to Governor. Reductions could apply to schools and shift costs to other local governments.

**WHAT YOUR VOTE MEANS**

**YES**

A YES vote on this measure means: State expenditures would be subject to an additional spending limit based on an average of recent revenue growth. The Governor would be granted new authority to unilaterally reduce state spending during certain fiscal situations. School and community college spending would be more subject to annual budget decisions and less affected by a constitutional funding guarantee.

**NO**

A NO vote on this measure means: The state would not adopt an additional spending limit, the Governor would not be granted new powers to reduce state spending during certain fiscal situations, and existing constitutional provisions relating to schools and community college funding would not be changed.

**ARGUMENTS**

**PRO**

**PROPOSITION 76 CONTROLS STATE SPENDING AND FIXES CALIFORNIA'S BROKEN BUDGET SYSTEM.** Yes on 76 protects against future deficits and eliminates wasteful spending, making more money available for roads, healthcare, and law enforcement without raising taxes. It establishes "checks and balances," encouraging bipartisan budget solutions—YES on Prop. 76.

**CON**

Prop. 76 cuts school funding by \$4 billion, overturns voter-approved school funding guarantees, and gives the governor unchecked power over state budget, destroying our system of checks and balances. Does nothing to prevent new taxes. Endangers local funding for police, fire and health care, including trauma centers and child immunization.

**FOR ADDITIONAL INFORMATION**

**FOR**

Governor Schwarzenegger's California Recovery Team  
310 Main Street, Suite 225  
Santa Monica, CA 90405  
Joinarnold.com

**AGAINST**

Andrea Landis  
No on 76, Coalition of educators, firefighters, school employees, health care givers and labor organizations  
1510 J Street, Suite 210  
Sacramento, CA 95814  
(916) 443-7817  
info@noonproposition76.com  
www.noonproposition76.com

PROPOSITION **77** | **Redistricting.  
Initiative Constitutional Amendment.**

**SUMMARY**

Amends state Constitution's process for redistricting California's Senate, Assembly, Congressional and Board of Equalization districts. Requires three-member panel of retired judges selected by legislative leaders. Fiscal Impact: One-time state redistricting costs totaling no more than \$1.5 million and county costs in the range of \$1 million. Potential reduction in future costs, but net impact would depend on decisions by voters.

**WHAT YOUR VOTE MEANS**

**YES**

A YES vote on this measure means: Boundaries for political districts would be drawn by retired judges and approved by voters at statewide elections. A redistricting plan would be developed for use following the measure's approval and then following each future federal census.

**NO**

A NO vote on this measure means: Boundaries for political districts would continue to be drawn by the Legislature and approved by the Governor. A redistricting plan would be developed following each future federal census.

**ARGUMENTS**

**PRO**

**PROPOSITION 77 MAKES POLITICIANS ACCOUNTABLE TO THE PEOPLE.** Yes on Prop. 77 guarantees fair, competitive elections by ensuring voters have the final say on voting districts—not politicians. Prop. 77 reduces special interest influence and holds politicians accountable to their constituents. Fair Districts, Real Competition—Yes on 77.

**CON**

Sponsors want you to believe Prop. 77 makes government better. Don't be fooled! *Read the fine print: Voters lose their right to reject redistricting before it becomes effective; politicians pick judges to draw districts for them; it costs taxpayers millions; and is cemented into our Constitution.* Vote No on 77!

**FOR ADDITIONAL INFORMATION**

**FOR**

Edward J. Costa  
People's Advocate  
3407 Arden Way  
Sacramento, CA 95825  
(916) 482-6175  
emily@peoplesadvocate.org

**AGAINST**

Californians for Fair Representation—No on 77  
1127 11th Street, Suite 950  
Sacramento, CA 95814  
(916) 448-7724  
www.noonproposition77.com

PROPOSITION **78** | **Discounts on Prescription Drugs.  
Initiative Statute.**

**SUMMARY**

Establishes discount prescription drug program for certain low- and moderate-income Californians. Authorizes Department of Health Services to contract with participating pharmacies for discounts and with participating drug manufacturers for rebates. Fiscal Impact: State costs for administration and outreach in the millions to low tens of millions of dollars annually. State costs for advance funding for rebates. Unknown potentially significant savings for state and county health programs.

**WHAT YOUR VOTE MEANS**

**YES**

A YES vote on this measure means: A new state drug discount program would be created to reduce the costs that certain residents of the state, including persons in families with an income at or below 300 percent of the federal poverty level, would pay for prescription drugs purchased at pharmacies.

**NO**

A NO vote on this measure means: The state would not expand its drug discount program beyond an existing state program that assists elderly and disabled persons on Medicare.

**ARGUMENTS**

**PRO**

Proposition 78 provides that millions of seniors and low income, uninsured Californians can buy prescription drugs at discounts of 40%. Adapted from a successful program operating in Ohio, Prop. 78 can take effect immediately without a big government bureaucracy. Seniors, taxpayers, nurses, doctors, and patient advocates say Yes on Proposition 78. [www.calrxnow.org](http://www.calrxnow.org)

**CON**

**SPONSORED BY THE PRESCRIPTION DRUG COMPANIES,** Prop. 78 is a SMOKE SCREEN to stop Prop. 79, a real, enforceable plan backed by consumer groups. Under the "voluntary" Prop. 78, drug companies don't have to provide a single discount, and the plan can END AT ANY TIME. VOTE NO on Prop. 78.

**FOR ADDITIONAL INFORMATION**

**FOR**

Californians for Affordable Prescriptions  
1415 L Street, Suite 1250  
Sacramento, CA 95814  
info@calrxnow.org  
www.calrxnow.org

**AGAINST**

Anthony Wright  
Health Access California  
414 13th Street, Suite 450  
Oakland, CA 94612  
(510) 873-8787  
awright@health-access.org  
www.VoteNoOnProp78.com

**PROPOSITION** | **Prescription Drug Discounts.  
State-Negotiated Rebates.  
Initiative Statute.**

**79**

**SUMMARY**

Provides drug discounts to Californians with qualifying incomes. Funded by state-negotiated drug manufacturer rebates. Prohibits Medi-Cal contracts with manufacturers not providing Medicaid best price. Fiscal Impact: State costs for administration and outreach in low tens of millions of dollars annually. State costs for advance funding for rebates. Unknown potentially significant: (1) net costs or savings for Medi-Cal and (2) savings for state and county health programs.

**WHAT YOUR VOTE MEANS**

**YES**

A YES vote on this measure means: A new state drug discount program would be created to reduce the costs that certain residents of the state, including persons in families with an income at or below 400 percent of the federal poverty level, would pay for prescription drugs purchased at pharmacies. The new program would be linked to Medi-Cal for the purpose of obtaining rebates on drugs.

**NO**

A NO vote on this measure means: The state would not expand its drug discount program beyond an existing state program that assists elderly and disabled persons on Medicare.

**ARGUMENTS**

**PRO**

Prop. 79 provides ENFORCEABLE discounts on prescription drugs for millions of Californians. Prop. 79 provides DEEPER DISCOUNTS TO MORE PEOPLE than the drug industry's "voluntary" Prop. 78. Prop. 79 saves taxpayers money by reducing prescription drug costs. JOIN CONSUMER, HEALTH, AND SENIOR CITIZEN ADVOCATES and VOTE YES on Prop. 79.

**CON**

Proposition 79 can't deliver what it promises. It's based on a failed program from Maine that never took effect. Prop. 79 won't receive federal approval because it threatens poor patients' access to needed drugs. Proposition 79 creates a big government bureaucracy costing millions. Worse, trial lawyers can file thousands of frivolous lawsuits. [www.calrxnow.org](http://www.calrxnow.org)

**FOR ADDITIONAL INFORMATION**

**FOR**

Anthony Wright  
Health Access California  
414 13th Street, Suite 450  
Oakland, CA 94612  
(510) 873-8787  
[awright@health-access.org](mailto:awright@health-access.org)  
[www.VoteYesOnProp79.com](http://www.VoteYesOnProp79.com)

**AGAINST**

Californians Against  
the Wrong Prescription  
1415 L Street, Suite 1250  
Sacramento, CA 95814  
[info@calrxnow.org](mailto:info@calrxnow.org)  
[www.calrxnow.org](http://www.calrxnow.org)

**PROPOSITION** | **Electric Service Providers.  
Regulation.  
Initiative Statute.**

**80**

**SUMMARY**

Subjects electric service providers to regulation by California Public Utilities Commission. Restricts electricity customers' ability to switch from private utilities to other providers. Requires all retail electric sellers to increase renewable energy resource procurement by 2010. Fiscal Impact: Potential annual administrative costs ranging from negligible to \$4 million, paid by fees. Unknown net impact on state and local costs and revenues from uncertain impact on electricity rates.

**WHAT YOUR VOTE MEANS**

**YES**

A YES vote on this measure means: The Public Utilities Commission (PUC) would have broadened authority to regulate electric service providers. The PUC's current policies related to the electricity procurement process, resource adequacy requirements, and the renewables portfolio standard would be put into law. Small electricity customers in existing buildings could not be required to accept time-differentiated electricity rates without their consent. The current prohibition on new "direct access" for electricity service would be continued beyond 2015.

**NO**

A NO vote on this measure means: The PUC would not have broadened authority to regulate electric service providers. The PUC's current policies related to the electricity procurement process, resource adequacy requirements, and the renewables portfolio standard would not be put into law. The PUC would determine whether and how small electricity customers in existing buildings would be required to have time-differentiated electricity service. New "direct access" for electricity service would continue to be prohibited until 2015, after which time it would be allowed.

**ARGUMENTS**

**PRO**

Vote YES to make sure we NEVER AGAIN face the blackouts and market manipulation caused by deregulation. Proposition 80 guarantees a stable and reliable electric system with ample supplies of clean, affordable power and increased use of renewable resources. Vote YES for lower rates, environmental protection, and no more deregulation.

**CON**

Proposition 80 is a high-risk, anticonsumer, anti-environmental approach to California's energy future. It limits green energy from solar and geothermal resources. This confusing measure won't lower electric bills, won't prevent blackouts, and eliminates consumer choice. Complex energy policy should be developed with public hearings, not through the initiative process.

**FOR ADDITIONAL INFORMATION**

**FOR**

Mindy Spatt  
The Utility Reform  
Network (TURN)  
711 Van Ness Avenue,  
Suite 350  
San Francisco, CA 94102  
(415) 929-8876  
[info@yesonproposition80.com](mailto:info@yesonproposition80.com)  
[www.yesonproposition80.com](http://www.yesonproposition80.com)

**AGAINST**

Bob Pence  
Californians for  
Reliable Electricity  
1717 I Street  
Sacramento, CA 95814  
(916) 551-2513  
[www.noprop80.com](http://www.noprop80.com)

# WAITING PERIOD AND PARENTAL NOTIFICATION BEFORE TERMINATION OF MINOR'S PREGNANCY. INITIATIVE CONSTITUTIONAL AMENDMENT.

## Official Title and Summary

*Prepared by the Attorney General*

### WAITING PERIOD AND PARENTAL NOTIFICATION BEFORE TERMINATION OF MINOR'S PREGNANCY. INITIATIVE CONSTITUTIONAL AMENDMENT.

- Amends California Constitution, prohibiting abortion for unemancipated minor until 48 hours after physician notifies minor's parent/legal guardian, except in medical emergency or with parental waiver.
- Defines abortion as causing "death of the unborn child, a child conceived but not yet born."
- Permits minor to obtain court order waiving notice based on clear, convincing evidence of minor's maturity or best interests.
- Mandates various reporting requirements.
- Authorizes monetary damages against physicians for violation.
- Requires minor's consent to abortion, with certain exceptions.
- Permits judicial relief if minor's consent coerced.

### SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- Potential unknown net state costs of several million dollars annually for health and social services programs, the courts, and state administration combined.

## ANALYSIS BY THE LEGISLATIVE ANALYST

### BACKGROUND

#### PRIOR STATE LEGISLATION

In 1953, a state law was enacted that allowed minors to receive, without parental consent or notification, the same types of medical care for a pregnancy that are available to an adult. Based on this law and later legal developments related to abortion, minors were able to obtain abortions without parental consent or notification.

In 1987, the Legislature amended this law to require minors to either obtain the consent of a parent or a court before obtaining an abortion. However, due to legal challenges, the law was never implemented, and the California Supreme Court ultimately struck it down in 1997. Consequently, minors in the state currently receive abortion services to the same extent as adults. This includes minors in various state health care programs, such as the Medi-Cal health care program for low-income individuals.

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)****PROPOSAL****NOTIFICATION REQUIREMENT**

This proposition amends the California Constitution to require, with certain exceptions, a physician (or his or her representative) to *notify* the parent or legal guardian of a pregnant minor at least 48 hours before performing an abortion involving that minor. (This measure does not require a physician or a minor to obtain the consent of a parent or guardian.) This measure applies only to cases involving an “unemancipated” minor. The proposition identifies an unemancipated minor as being a female under the age of 18 who has not entered into a valid marriage, is not on active duty in the armed services of the United States, and has not been declared free from her parents’ or guardians’ custody and control under state law.

A physician would provide the required notification in either of the following two ways:

- **Personal Written Notification.** Written notice could be provided to the parent or guardian personally—for example, when a parent accompanied the minor to an office examination or to obtain the abortion itself.
- **Mail Notification.** A parent or guardian could be sent a written notice by certified mail so long as a return receipt was requested by the physician and delivery of the notice was restricted to the parent or guardian who must be notified. An additional copy of the written notice would have to be sent at the same time to the parent or guardian by first-class mail. Under this method, notification would be presumed to have occurred as of noon on the second day after the written notice was mailed.

**EXCEPTIONS TO NOTIFICATION REQUIREMENTS**

The measure provides the following exceptions to the notification requirements:

**Medical Emergencies.** The notification requirements would not apply if the physician certifies in the minor’s medical record that the abortion is necessary to prevent the mother’s death or that a delay would “create serious risk of substantial and irreversible impairment of a major bodily function.”

**Waivers Approved by Parent or Guardian.** A minor’s parent or guardian could waive the notification requirements, including the waiting period, by submitting a signed, written waiver form to the physician.

**Waivers Approved by Courts.** The pregnant minor could ask a juvenile court to waive the notification requirements. A court could do so if it finds that the minor is sufficiently mature and well-informed to decide whether to have an abortion or that notification would not be in the minor’s best interest. If the waiver request is denied, the minor could appeal that decision to an appellate court.

A minor seeking a waiver would not have to pay court fees, would be appointed a temporary guardian and provided other assistance in the case by the court, and would be entitled to an attorney appointed by the court. The identity of the minor would be kept confidential. The court would generally have to hear and issue a ruling within three business days of receiving the waiver request. The appellate court would generally have to hear and decide any appeal within four business days.

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)**

The proposition also requires that, in any case in which the court finds evidence of physical, sexual, or emotional abuse by the parent or guardian, the court must refer the evidence to the county child protection agency.

**STATE REPORTING REQUIREMENT**

Physicians are required by this proposition to file a form reporting certain information to the state Department of Health Services (DHS) within one month after performing an abortion on a minor. The DHS form would include the identity of the physician, the date and place where the abortion was performed, the minor's month and year of birth, and certain other information about the circumstances under which the abortion was performed. The forms that physicians would file would not identify the minor or any parent or guardian by name. Based on these forms, DHS would compile certain statistical information relating to abortions performed on minors in an annual report that would be available to the public.

**PENALTIES**

Any person who performs an abortion on a minor and who fails to comply with the provisions of the measure would be liable for damages in a civil action brought by the minor, her legal representative, or by a parent or guardian wrongfully denied notification. Any person, other than the minor or her physician, who knowingly provides false information that notice of an abortion has been provided to a parent or guardian would be guilty of a misdemeanor punishable by a fine.

**RELIEF FROM COERCION**

The measure allows a minor to seek help from the juvenile court if anyone were to attempt to coerce her to have an abortion. A court would be required to consider such cases quickly and could take whatever action it finds necessary to prevent coercion.

**FISCAL EFFECTS**

The fiscal effects of this measure on state government would depend mainly upon how these new requirements affected the behavior of minors regarding abortion and childbearing. Studies of similar laws in other states suggest that the effect of this measure on the birthrate for California minors would be limited, if any. If it were to increase the birthrate for California minors, the net cost to the state would probably not exceed several million dollars annually for health and social services programs, the courts, and state administration combined. We discuss the potential major fiscal effects of the measure below.

**STATE HEALTH CARE PROGRAMS SAVINGS AND COSTS**

Studies of other states with laws similar to the one proposed in this measure suggest that it could result in a reduction in the number of abortions obtained by minors within California. This reduction in abortions performed in California might be offset to an unknown extent by an increase in the number of out-of-state abortions obtained by California minors. Some minors might also avoid pregnancy as a result of this measure, further reducing the number of abortions for this group. If, for either reason,

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)**

this proposition reduces the overall number of minors obtaining abortions in California, it is also likely that fewer abortions would be performed under the Medi-Cal Program and other state health care programs that provide medical services for minors. This would result in unknown state savings for these programs.

This measure could also result in some unknown additional costs for state health care programs. If this measure results in a decrease in minors' abortions and an increase in the birthrate of children in low-income families eligible for publicly funded health care, the state would incur additional costs. These could include costs for medical services provided during pregnancy, deliveries, and infant care.

The net fiscal effect of these cost and savings factors, if any, on the state would probably not exceed costs of a few million dollars annually. These costs would not be significant compared to total state spending for programs that provide health care services. The Medi-Cal Program alone is estimated to cost the state \$13.0 billion in 2005–06.

**STATE ADMINISTRATIVE COSTS**

The DHS would incur first-year state costs of up to \$350,000 to develop the new forms needed to implement this measure, establish the physician reporting system, and prepare the initial annual report containing statistical information on abortions obtained by minors. The ongoing state costs for DHS to implement this measure could be as much as \$150,000 annually.

**JUVENILE AND APPELLATE COURT COSTS**

The measure would result in increased state costs for the courts, primarily as a result of the provisions allowing minors to request a court waiver of the notification requirements. The magnitude of these costs is unknown but could reach several million dollars annually, depending primarily on the number of minors that sought waivers. These costs would not be significant compared to total state expenditures for the courts, which are estimated to be \$1.7 billion in 2005–06.

**SOCIAL SERVICES COSTS**

If this measure discourages some minors from obtaining abortions and increases the birthrate among low-income minors, expenditures for cash assistance and services to needy families would increase under the California Work Opportunity and Responsibility to Kids (CalWORKs) program. The magnitude of these costs, if any, would probably not exceed a few million dollars annually. The CalWORKs program is supported with both state and federal funds, but because all CalWORKs federal funds are currently committed, these additional costs would probably be borne by the state. These costs would not be significant compared to total state spending for CalWORKs, which is estimated to cost about \$5.1 billion in state and federal funds in 2005–06. Under these circumstances, there could also be a minor increase in child welfare and foster care costs for the state and counties.

## Argument in Favor of Proposition 73

IN CALIFORNIA, a daughter under 18 can't get an aspirin from the school nurse, get a flu shot, or have a tooth pulled without a parent knowing.

HOWEVER, surgical or chemical abortions can be secretly performed on minor girls—even *13 years old or younger—without parents' knowledge.*

PARENTS are then not prepared to help young daughters with any of the serious physical, emotional, or psychological complications which may result from an abortion or to protect their daughters from further sexual exploitation and pregnancies.

A study of over 46,000 pregnancies of school-age girls in California found that *over two-thirds* were impregnated by adult men whose mean age was 22.6 years.

Investigations have shown that secret abortions on minors in California are rarely reported to child protective services although these pregnancies are evidence of statutory rape and sexual abuse. This leaves these girls *vulnerable* to further sexual abuse, rapes, pregnancies, abortions, and sexually transmitted diseases.

That's why *more than ONE MILLION SIGNATURES* were submitted to allow Californians to *vote* on the "Parents' Right to Know and Child Protection" Proposition 73.

PROP. 73 will require that one parent or guardian be notified at least 48 hours before an abortion is performed on a minor daughter.

PARENTS AND DAUGHTERS in more than 30 other states have benefited for years from laws like Prop. 73. Many times, after such laws pass, there have been substantial reductions in pregnancies and abortions among minors.

When parents are involved and minors cannot anticipate secret access to free abortions they more often avoid the reckless behavior which leads to pregnancies. Older men, including Internet predators, are deterred from

impregnating minors when secret abortions are not available to conceal their crimes.

If she chooses, a minor may petition juvenile court to permit an abortion without notifying a parent. She can request a lawyer to help her. If the evidence shows she is mature enough to decide for herself or that notifying a parent is not in her best interests, the judge will grant her petition. The proceedings must be confidential, prompt, and free. She may also seek help from juvenile court if she is being coerced by anyone to consent to an abortion.

POLLS SHOW most people support parental notification laws. They know that a minor girl—pregnant, scared, and possibly abandoned or pressured by an older boyfriend—needs the advice and support of a *parent.*

PARENTS have invested more attention and love in raising their daughter, know her personal and medical history better, and care more about her future than strangers employed by abortion clinics profiting from performing many abortions on minors.

A minor still has a right to obtain or refuse an abortion, but a parent can help her understand all options, obtain competent care, and provide medical records and history.

An informed parent can also get prompt care for *hemorrhage, infections, and other possibly fatal complications.*

*Vote "YES" on PROP. 73 TO ALLOW PARENTS TO CARE FOR AND PROTECT THEIR MINOR DAUGHTERS!*

*www.YESon73.net*

**WILLIAM P. CLARK**, California Supreme Court Justice, 1973–1981

**MARY L. DAVENPORT, M.D.**, Fellow of the American College of Obstetricians and Gynecologists

**MARIA GUADALUPE GARCIA**, Organizing Director Parents' Right to Know and Child Protection/YES ON 73

## Rebuttal to Argument in Favor of Proposition 73

KEEPING TEENS SAFE IS A PRIMARY CONCERN TO PARENTS, BUT Prop. 73's proponents believe government can force teens to communicate with their parents. Who's kidding who? FAMILY COMMUNICATION CAN'T BE "REQUIRED" BY GOVERNMENT. Talking to our daughters about responsible sexual behavior when they're young is the best way to protect them.

In fact, MOST TEENS DO TALK TO THEIR PARENTS, BUT SOME JUST CAN'T SAFELY. Proponents are *wrong* when they say those teens can *easily go to court.* IT'S UNREASONABLE TO EXPECT VULNERABLE, SCARED TEENAGERS FROM ABUSIVE FAMILIES TO SIMPLY "GO TO COURT." California courthouses are crowded; these teens don't need to endure a court proceeding.

The proponents are *wrong* when they assert that Internet predators and statutory rapists will be deterred from their despicable actions by new laws like these. THAT'S PREPOSTEROUS—it's just included to scare voters.

What proponents don't tell you is this law FORCES DOCTORS TO REPORT these procedures TO THE GOVERNMENT—why does government need to know?

They've also slipped into their initiative language adding "unborn child, a child conceived but not born" to our Constitution. What does that have to do with notification? We don't know.

What we do know is that THE CALIFORNIA SUPREME COURT, looking at the experience of other states with similar laws, CONCLUDED THAT THE EVIDENCE "OVERWHELMINGLY" SHOWS THESE LAWS DO NOT SUPPORT FAMILIES, BUT IN FACT, PUT TEENAGERS IN DANGER.

California's League of Women Voters, medical experts, and millions of concerned parents urge you to VOTE NO.

Visit [www.NoOnProposition73.org](http://www.NoOnProposition73.org).

**DEBORAH BURGER, RN**, President California Nurses Association

**KATHY KNEER, CEO** Planned Parenthood Affiliates of California

**A. ERIC RAMOS, M.D.**, President California Academy of Family Physicians

## Argument Against Proposition 73

PARENTS RIGHTFULLY WANT TO BE INVOLVED IN THEIR TEENAGERS' LIVES and all parents want what is best for their children. BUT GOOD FAMILY COMMUNICATION CAN'T BE IMPOSED BY GOVERNMENT.

Parents care most about keeping their children safe. That means always safe, even if they feel they can't come to us and tell us everything.

Family communication must begin long before a teen faces an unplanned pregnancy. *The best way to protect our daughters is to begin talking about responsible, appropriate sexual behavior from the time they are young and fostering an atmosphere that assures them they can come to us.*

Even teenagers who have good relationships with their parents might be afraid to talk to them about something as sensitive as pregnancy.

And sadly, some teens live in troubled homes. The family might be having serious problems, or parents might be abusive, or a relative may even have caused the pregnancy.

**THIS LAW PUTS THOSE VULNERABLE TEENAGERS—THOSE WHO MOST NEED PROTECTION—IN HARM'S WAY, OR FORCES THEM TO GO TO COURT.** Think about it: the girl is already terrified, she's pregnant, her family is abusive or worse. She's not going to be marching up to a judge in a crowded courthouse. *She doesn't need a judge, she needs a counselor.*

Mandatory notification laws make scared, pregnant teens who can't go to their parents do scary things, instead of going to the doctor to get the medical help they need. In other states, when parental notification laws make teenagers choose between talking with parents or having illegal or unsafe abortions, some teens choose the illegal abortion—even though it is dangerous. Sometimes teenagers are just teenagers.

And if, in desperation, teenagers turn to illegal, self-induced or back-alley abortions many will suffer serious injuries and some will die.

The CALIFORNIA NURSES ASSOCIATION, CALIFORNIA ACADEMY OF FAMILY PHYSICIANS, AND THE CALIFORNIA MEDICAL ASSOCIATION ALL OPPOSE Proposition 73. Mandatory notification laws may sound good, but, in the real world, they just put teenagers in real danger.

**THE REAL ANSWER TO TEEN PREGNANCY IS PREVENTION, AND STRONG, CARING FAMILIES—NOT NEW LAWS THAT ENDANGER OUR DAUGHTERS.**

California's teen pregnancy rate dropped significantly over the last decade without constitutional amendments or forced notification laws. That's because doctors, nurses, parents, teachers, and counselors are teaching teenagers about responsibility, abstinence, and birth control. These programs will help keep our daughters safe and out of trouble.

*Talking to our daughters when they are young and fostering a place where they can freely communicate is the best solution.*

**BUT IF—FOR WHATEVER REASON—OUR DAUGHTERS CAN'T OR THEY WON'T COME TO US, WE MUST MAKE SURE THEY GET SAFE, PROFESSIONAL MEDICAL ATTENTION AND QUALITY COUNSELING FROM CARING DOCTORS AND NURSES.**

As parents, we want to know when our daughters face a decision like this so we can be helpful and supportive. But also, as parents, our daughters' safety is more important than our desire to be informed.

Please join us in voting NO on Proposition 73.

**ROBERT L. BLACK, M.D., FAAP**, Officer of the Board American Academy of Pediatrics, California District

**RUTH E. HASKINS, M.D.**, Chair Committee on Legislation, American College of Obstetricians and Gynecologists, District IX California

**DEBORAH BURGER, RN**, President California Nurses Association

## Rebuttal to Argument Against Proposition 73

**THE OPPONENTS JUST DON'T UNDERSTAND:**

1. How parental notification laws work.
2. How the juvenile court system works.
3. How the abortion industry works.

Opponents say that "in the real world" notification laws "just put teenagers in real danger." But **OVER THIRTY STATES already have such laws, and THEIR REAL WORLD EXPERIENCE SHOWS THESE LAWS REDUCE MINORS' PREGNANCY AND ABORTION RATES WITHOUT DANGER AND HARM TO MINORS.**

If an abused minor does not want a parent notified, Prop. 73 requires strict confidentiality and an appointed guardian to assist her in juvenile court proceedings, usually informal and in judges' private chambers. The judge will decide whether it is in the girl's best interest to involve a parent, or whether she is mature and well-informed to decide—and will report evidence of abuse to a child protective agency so abuse problems will be addressed. The opponents' solution allows a secret abortion and return to the abuse.

Opponents say that parents "must make sure" their daughters "get safe professional medical attention" from "caring doctors."

**BUT HOW? PARENTS WHO ARE KEPT IN THE DARK CAN'T ENSURE ANYTHING FOR THEIR DAUGHTERS.**

Minors getting secret abortions don't seek out "quality counseling" and "caring doctors." They are shuttled through abortion clinics where no one knows them or has their medical records or history.

**THE LOS ANGELES TIMES REPORTED MANY ABORTION BUSINESSES ARE "CHOP SHOPS" WHERE SUBSTANDARD CARE RESULTS IN INJURIES AND DEATH. PARENTAL NOTIFICATION WORKS.**

**FOR OUR DAUGHTERS' SAFETY, HEALTH, AND PROTECTION, VOTE YES on 73!**

**PROFESSOR TERESA STANTON COLLETT, J.D.** National Authority on Parental Notification and Involvement Laws

**JANE E. ANDERSON, M.D., FAAP**, Clinical Professor of Pediatrics, University of California, San Francisco, School of Medicine

**KATHERINE R. DOWLING, M.D., FAAP, FAAFP** Associate Professor Emeritus, Family Medicine University of Southern California, School of Medicine

**PUBLIC SCHOOL TEACHERS. WAITING PERIOD FOR PERMANENT STATUS. DISMISSAL. INITIATIVE STATUTE.**

**Official Title and Summary**

*Prepared by the Attorney General*

**PUBLIC SCHOOL TEACHERS. WAITING PERIOD FOR PERMANENT STATUS. DISMISSAL. INITIATIVE STATUTE.**

- Increases length of time required before a teacher may become a permanent employee from two complete consecutive school years to five complete consecutive school years.
- Measure applies to teachers whose probationary period commenced during or after the 2003–2004 fiscal year.
- Modifies the process by which school boards can dismiss a permanent teaching employee who receives two consecutive unsatisfactory performance evaluations.

**SUMMARY OF LEGISLATIVE ANALYST’S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:**

- Unknown net effect on school districts’ costs for teacher compensation, performance evaluations, and other activities. The impact would vary significantly by district and depend largely on future personnel actions by individual school districts.

**ANALYSIS BY THE LEGISLATIVE ANALYST**

**BACKGROUND**

Most of the employees of K–12 school districts are referred to as “certificated” employees. These consist mainly of teachers but also include instructional specialists, counselors, and librarians.

All of these employees must have some type of license (or certificate) prior to being employed by a district to show basic qualifications in their job area.

***Job Status of Certificated Employees.*** Under current state law, certificated employees serve a *probationary* period during their first two years of service

LENGTH OF STATES’ PROBATIONARY PERIOD FOR K–12 TEACHERS						
ONE YEAR	TWO YEARS	THREE YEARS			FOUR YEARS	FIVE YEARS
Connecticut	<b>California</b>	Alaska	Kansas	Oregon	Kentucky	Indiana
North Dakota	Illinois	Alabama	Louisiana	Pennsylvania	Michigan	Missouri
South Carolina	Maine	Arizona	Massachusetts	Rhode Island	North Carolina	
	Maryland	Arkansas	Minnesota	South Dakota		
	Mississippi	Colorado	Montana	Tennessee		
	Nevada	Delaware	Nebraska	Texas		
	New Hampshire	Florida	New Jersey	Utah		
	Vermont	Georgia	New Mexico	Virginia		
	Washington	Hawaii	New York	West Virginia		
		Idaho	Ohio	Wisconsin		
		Iowa	Oklahoma	Wyoming		

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)**

with a school district. During the probationary period, state law currently requires certificated employees to be evaluated at least once a year. At the end of the employees' first or second year, school districts may choose not to rehire them without offering specific reasons. If not rehired, probationary employees do not have the right to challenge the decision. At the start of their third year, certificated employees are considered *permanent* (or tenured). (See the nearby boxes for some additional information related to California's probationary policies for certificated employees, primarily teachers.)

***Dismissal Process for Permanent Employees.***

Under current state law, permanent certificated employees may be dismissed for unsatisfactory performance as well as a variety of other reasons (such as dishonesty and unprofessional conduct). Most permanent employees must be evaluated at least once every two years. If, however, they receive an unsatisfactory evaluation, they must be assessed annually until they achieve a satisfactory evaluation or are dismissed. Regardless of the reason for a dismissal, the dismissal process (also set forth in state law) consists of about a dozen stages. The process begins with a school district specifying reasons for dismissal and providing a 30-day notice of its intent to dismiss. If requested by the employee, the process includes a formal administrative hearing and the right to appeal to a Superior Court and then a Court of Appeal. Before being dismissed for unsatisfactory performance, the school district must first provide

employees a 90-day period to allow them an opportunity to improve their performance.

**PROPOSAL**

Proposition 74 would change existing state law in the following ways.

***Extends Probationary Period to Five Years.***

The proposition extends from two to five years the probationary period for new certificated employees.

***Modifies Dismissal Process for Permanent Employees.***

The proposition states that two consecutive unsatisfactory performance evaluations constitute unsatisfactory performance for the purposes of dismissing permanent employees. In these cases, the school board would have the discretion to dismiss the employee and the board would *not* have to:

- Provide the 90-day period currently given to permanent employees to allow them to improve their performance.
- Provide as much initial documentation identifying specific instances of unsatisfactory performance (beyond that included in the evaluations themselves).

The effect of these changes would be to reduce requirements in the initial stages of the dismissal process and potentially place greater focus on the evaluation process. Although these changes would apply to all certificated employees, their primary effect would be on teachers.

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)**

**BRIEF HISTORY OF CALIFORNIA'S PROBATIONARY POLICIES**

From 1927 to 1982, California had a three-year probationary period. Over this time, probationary employees typically had at least limited legal rights to challenge dismissal decisions.

The most recent major change to the state's probationary policies occurred in 1983 when the probationary period was shortened from three to two years. In addition, certain legal protections then afforded to probationary employees were removed. These policies remain in effect today.

- Given the longer probationary period, districts could dismiss more teachers during their first five years. This could result in salary savings by replacing higher salaried teachers toward the end of their probationary period with lower salaried teachers just beginning their probationary period.
- Similarly, due to the proposition's modifications to the dismissal process, school districts might experience greater turnover among permanent teachers. This too would result in teacher-related savings from replacing higher salaried veteran teachers with lower salaried, less experienced teachers.

In contrast, districts would experience *increased* teacher costs in the following instances:

- The supply of teachers could be reduced because the longer probationary period and modified dismissal process might be perceived as increasing job insecurity. This would have the effect of putting upward pressure on teacher compensation costs.
- The longer probationary period could lead districts to retain some struggling new teachers beyond the current two-year period to give them additional chances to succeed. By retaining these teachers—instead of replacing them with lower-cost entry level teachers—this would have the effect of increasing teacher salary costs above what they otherwise would have been.

As noted above, the net impact on a school district could vary significantly, depending on such factors as the local labor market, the perceived desirability of working in the district, and district actions in response to the measure.

**FISCAL EFFECTS**

The proposition would affect costs relating to teacher compensation, performance evaluations, and other activities.

**EFFECT ON TEACHER COMPENSATION COSTS**

The proposition would affect school district teacher costs in a variety of ways. The net impact would depend on future district actions, and these effects would vary significantly by district. For example, districts would experience *reduced* teacher costs in the following cases:

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)****EFFECT ON EVALUATION COSTS**

The proposition would increase teacher performance evaluation costs. Under current law, employees must receive at least three evaluations over their first five years. Under the proposition, they would need to receive five evaluations over this same period. That is, districts would need to conduct up to two additional evaluations for probationary employees. In addition, given the higher stakes involved with unsatisfactory evaluations, school districts might spend more time documenting these assessments.

These costs would also vary significantly from district to district. The costs could range from minor (for districts meeting these additional tasks with existing administrative staff) to more significant (for those adding additional staff to meet these responsibilities). Depending on how districts respond, the statewide costs could range from relatively minor to the low tens of millions of dollars annually.

**OTHER FISCAL IMPACTS**

The measure would have other potential impacts on the state and school districts.

**Administrative and Legal Costs.** The proposition's effect on school district administrative and legal costs is unknown. On the one hand, the

proposition simplifies the dismissal process by requiring slightly less documentation and eliminating the special 90-day notice required for dismissals due to unsatisfactory performance. This would likely result in some administrative savings. On the other hand, given the somewhat simplified dismissal process, teacher dismissals might become more frequent. As a result, the number of teacher requests for administrative hearings and appeals, and their associated costs, could increase.

**Bargaining Costs.** Collective bargaining costs could increase as a result of the proposition. Evaluation procedures are subject to collective bargaining and are commonly found in teacher contracts. To the extent the evaluation process became higher stakes, related negotiations might take longer and be more costly. These costs would be associated with revising the evaluation process, refining evaluation standards, and/or defining unsatisfactory performance. The state would pay any additional costs, as it currently reimburses local school districts for their collective bargaining expenses.

**Recruitment and Training.** To the extent that districts have more or less teacher turnover as a result of this measure, their recruitment and training costs would be affected accordingly.

## Argument in Favor of Proposition 74

PROPOSITION 74 IS ONE OF THE BIPARTISAN REFORMS WE NEED TO GET CALIFORNIA BACK ON TRACK!

*Prop. 74 is Real Education Reform*

California schools used to be among the best in the nation.

Unfortunately, we've gotten off track *despite the fact that public school spending increased by \$3 billion this year and represents almost 50% of our overall state budget.*

Instead of just throwing more of our hard-earned tax dollars at the problem, we need to *get more money into the classroom and reward high-quality teachers* instead of wasting money on problem teachers.

Unfortunately, California is one of a handful of states with an outdated "tenure" law that makes it almost impossible and extremely expensive to replace poor-performing teachers.

*According to the California Journal (05-01-99), one school district spent more than \$100,000 in legal fees and ultimately paid a teacher \$25,000 to resign. Another district spent eight years and more than \$300,000 to dismiss an unfit teacher.*

*Fighting the rules, regulations, and bureaucracy that protects unfit teachers squanders money that should be going to the classroom!*

*Today, even problem teachers are virtually guaranteed "employment for life."*

*Prop. 74 Is About Making Sure Our Students Have the Best Possible Teachers:*

- Requires teachers to perform well for five years instead of just two before they become eligible for permanent "guaranteed" employment.
- With a five-year waiting period, teachers have more opportunity to demonstrate expertise and that they deserve tenure. Principals have more time to evaluate teachers.

- Makes it easier to remove a tenured teacher after two consecutive unsatisfactory evaluations.
- Improves the quality of our teachers by rewarding the best teachers and weeding out problem teachers.

*Unfortunately, Opponents of Prop. 74 Don't Want Reform:*

- Union bosses have blocked many education reforms and just want voters to throw more tax money at education with no reform!

- They will stop at nothing to defeat Prop. 74 and have spent millions for television ads to confuse voters on the reforms we need to get California back on track.

*Don't Be Mislead by Their Deceitful Tactics. Classroom Teachers Say "YES" on Prop. 74:*

*"I've been an elementary teacher for 17 years. Good teachers don't need a guaranteed job for life. I want to be re-hired and promoted based on the job I do, not just how long I've been on the job. Yes on Prop. 74 will improve the quality of teachers and the quality of our schools."*

*Susan Barkdoll, San Bernardino City Unified School District*

*"Most teachers are hardworking, care about their students, and go the extra mile. Regrettably, some teachers don't. I've known teachers who are an embarrassment to the profession. Our children deserve better. They deserve teachers who will motivate and challenge them to achieve at their highest potential, and principals need the ability to remove non-performing teachers from the classroom."*

*Jacqueline Watson, Placentia-Yorba Linda Unified School District*

*"YES" on Prop. 74—Make Sure Our Students Have the Best Possible Teachers!*

**GOVERNOR ARNOLD SCHWARZENEGGER**

**GEORGE SCHULZ**, Chair

Governor's Council of Economic Advisors

**KARLA JONES**

2004 Educator of the Year, Orange County

## Rebuttal to Argument in Favor of Proposition 74

PROP. 74 IS DESIGNED TO PUNISH HARDWORKING TEACHERS—THAT'S NOT REAL EDUCATION REFORM

PROP. 74 DOES NOTHING TO DEAL WITH THE REAL PROBLEMS IN OUR SCHOOLS: It won't reduce class sizes, buy a textbook for every child, or make our schools clean and safe. Instead, it will discourage recruitment of the quality teachers we so desperately need. California already has a hard time finding and keeping our hardworking teachers.

SUPPORTERS OF 74 MISSTATE THE LAW: Today, teachers don't have a guaranteed job for life. Under current law teachers can be, and are fired. Prop. 74 will force school districts to divert tens of millions of dollars out of the classroom for administrative expenses.

READ PROP. 74. ABSOLUTELY NOTHING IN IT WILL "REWARD HIGH QUALITY TEACHERS." There was a program that evaluated teachers and rewarded high quality teachers with a \$10,000 bonus, but Governor Schwarzenegger cut the funding for it this year.

HOW DID THEY ARRIVE AT 5 YEARS PROBATION INSTEAD OF THE CURRENT TWO? There are no facts to prove that five years means better student performance or more qualified teachers.

Prop. 74 contains no mentoring or evaluation systems or any other support services to assist newer teachers to do their difficult jobs better.

Scapegoating teachers may be politically expedient, but it doesn't constitute the real reform agenda our schools need.

Prop. 74 is "a classic case of a solution in search of a problem." *San Francisco Chronicle*, July 11, 2005.

VOTE NO ON PROP. 74.

**MARY BERGAN**, President  
California Federation of Teachers

**MONICA MASINO**, President  
Student CTA

**MANUEL "MANNY" HERNANDEZ**, Vice President  
Sacramento City Unified School District

## Argument Against Proposition 74

PROPOSITION 74 IS DECEPTIVE, UNNECESSARY, AND UNFAIR. It won't improve student achievement and it won't help reform public education in any meaningful way. Furthermore, it will cost school districts tens of millions of dollars to implement.

Proposition 74 doesn't reduce class size or provide new textbooks, computers, or other urgently needed learning materials. It doesn't improve teacher training or campus safety. Nor does it increase educational funding or fix one leaking school roof.

PROPOSITION 74 IS DECEPTIVE BECAUSE IT MISLEADS PEOPLE ABOUT HOW TEACHER EMPLOYMENT REALLY WORKS. California teachers are not guaranteed a job for life, which means they don't have tenure. All teachers receive after a two-year probationary period is the right to a hearing before they are dismissed.

VOTE NO ON PROPOSITION 74.

Existing state law already gives school districts the authority to dismiss teachers for unsatisfactory performance, unprofessional conduct, criminal acts, dishonesty, or other activities not appropriate to teaching—no matter how long a teacher has been on the job.

PROPOSITION 74 IS UNFAIR TO TEACHERS BECAUSE IT TAKES AWAY THEIR RIGHT TO A HEARING BEFORE THEY ARE FIRED. We give criminals the right to due process, and our teachers deserve those fundamental rights, as well.

Over the next 10 years, we will need 100,000 new teachers. Proposition 74 hurts our ability to recruit and retain quality teachers while doing absolutely nothing to improve either teacher performance or student

achievement. Proposition 74 hurts young teachers most. It will discourage young people from entering the teaching profession at this critical time.

THIS UNNECESSARY ANTI-TEACHER INITIATIVE WAS PUT ON THE BALLOT FOR ONLY ONE REASON—to punish teachers for speaking out against the governor's poor record on education and criticizing him for breaking his promise to fully fund our schools.

The governor says that Proposition 74 is needed. But university researchers say that they know of no evidence to support the claim that lengthening the teacher probation period improves teacher performance or student achievement. Good teaching comes from mentoring, training, and support—not from the kind of negative, punitive approach imposed by Proposition 74.

VOTE NO ON 74. Proposition 74 is designed to divert attention away from the governor's failure on education. California schools lost \$3.1 billion when he broke his much-publicized promise to repay the money he took from the state's education budget last year. Now he has a plan that budget experts and educators warn will cut educational funding by another \$4 billion.

Rather than punishing teachers, we should give them our thanks for making a huge difference in the lives of our children—and for speaking up for what California schools and the students need to be successful.

PLEASE JOIN US IN VOTING "NO" ON PROPOSITION 74.

**BARBARA KERR**, President  
California Teachers Association

**JACK O'CONNELL**, State Superintendent of Public Instruction

**NAM NGUYEN**, Student Teacher

## Rebuttal to Argument Against Proposition 74

Don't be misled by opponents of 74. They don't want real education reform. Their solution is to *keep throwing billions of new tax dollars every year at a system that is rife with waste and bureaucratic regulations.*

We need to put more money into our classrooms, instead of wasting it on poor performing teachers, outrageous legal costs, and bureaucratic rules and regulations.

*Today, it's almost impossible to replace poor performing teachers who have what amounts to "guaranteed employment for life"—an antiquated system that wastes taxpayer money and ultimately hurts our children:*

*The Riverside Press Enterprise reported several years ago on a case where a teacher called her students derogatory names, swore at them, showed R-rated movies, and once even sent a 4th grade student to her car to retrieve a butcher knife. Was she fired? No! She was paid \$25,000 to quit.*

*Rather than pay hundreds of thousands of dollars to lawyers and conduct lengthy and useless dismissal proceedings, school districts are forced to actually pay teachers to resign because of outdated tenure laws.*

*Prop. 74 protects and rewards good teachers, but makes it possible to replace poor-performing teachers in a responsible and objective manner:*

- Requires teachers perform well on the job for five years instead of two before becoming eligible for tenure.
- Makes it possible and less expensive to remove a poor-performing teacher after two unsatisfactory evaluations.

*Vote "YES on 74"—Responsible reforms to improve our public schools.*

*[www.JoinArnold.com](http://www.JoinArnold.com)*

**DR. PETER G. MEHAS**, Superintendent  
Fresno County Office of Education

**HUGH MOONEY**, Teacher  
Galt Union High School District

**LILLIAN PERRY**, Teacher  
Fontana Unified School District

## Official Title and Summary

*Prepared by the Attorney General*

### PUBLIC EMPLOYEE UNION DUES. RESTRICTIONS ON POLITICAL CONTRIBUTIONS. EMPLOYEE CONSENT REQUIREMENT. INITIATIVE STATUTE.

- Prohibits the use by public employee labor organizations of public employee dues or fees for political contributions except with the prior consent of individual public employees each year on a specified written form.
- Restriction does not apply to dues or fees collected for charitable organizations, health care insurance, or other purposes directly benefitting the public employee.
- Requires public employee labor organizations to maintain and submit records to Fair Political Practices Commission concerning individual public employees' and organizations' political contributions.
- These records are not subject to public disclosure.

### SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- Probably minor state and local government implementation costs, potentially offset in part by revenues from fines and/or fees.
-

## ANALYSIS BY THE LEGISLATIVE ANALYST

### BACKGROUND

***Unions for Government Employees.*** Groups of government employees—like employees in the private sector—can choose to have a union represent them in negotiations with their employers over salaries, benefits, and other conditions of employment. Individual government employees may choose whether or not to join the union that represents their group of employees. A union’s negotiations affect all employees in the group—both members and nonmembers of the union. As a result, members of the group—whether they join a union or not—typically pay a certain level of dues and/or fees to a union for these bargaining and representation services.

***Use of Union Dues or Fees for Political Purposes.*** A union of government employees may engage in other types of activities unrelated to bargaining and representation. For instance, public employee unions may decide to charge additional dues for various political purposes, including supporting and opposing political candidates and issues. Any fees collected from a nonmember of a union cannot be used

for these types of political purposes if the nonmember objects. Each year, unions must publicly report what share of their expenditures was for political purposes.

### PROPOSAL

This measure amends state statutes to require public employee unions to get annual, written consent from a government employee in order to charge and use that employee’s dues or fees for political purposes. This requirement would apply to both members and nonmembers of a union. The measure would also require unions to keep certain records, including copies of any consent forms.

### FISCAL EFFECTS

The state and local governments could experience some increased costs to implement and enforce the consent requirements of the measure. The amount of these costs is probably minor. Some of these costs could be partially offset by increased fines for not complying with the measure’s provisions and/or fees charged by government agencies to cover the costs of processing payroll deductions for union dues and fees.

## Argument in Favor of Proposition 75

PROPOSITION 75 PROTECTS PUBLIC EMPLOYEES FROM HAVING POLITICAL CONTRIBUTIONS TAKEN AND USED WITHOUT THEIR PERMISSION.

There's a FUNDAMENTAL UNFAIRNESS IN CALIFORNIA:

- Hundreds of thousands of public employee union members are *forced to contribute* their hard earned money to political candidates or issues they may oppose.
- Powerful and politically connected union leaders—a small handful of people—can make unilateral decisions with these “forced contributions” to fund political campaigns *without their members' consent*. The workers have no choice—money is automatically deducted from their dues.

Firefighters, police officers, teachers, and other public employees work hard for the people of California and we owe them a huge debt for the work they do on our behalf. *That's why it's only fair that public employees give their permission before their hard earned dollars are taken and given to politicians and political campaigns.*

Many public employee union members don't support the political agenda of the union bosses and it's not right that they are forced to contribute to political candidates and campaigns they oppose:

- Campaign finance records document that several public employee unions have spent more than \$2 million to qualify a ballot measure that would raise property taxes by billions of dollars—rolling back Proposition 13 protections.
- Many members of these unions may oppose this, but the union leaders just take the money and spend it even though individual union members may disagree.

That's not right and it's not fair.

HERE'S WHAT ACTUAL UNION MEMBERS SAY:

“I've been a public school teacher for 20 years. I joined the union when I started teaching because of the benefits it provided and I've always been a proud member.

However, despite the many good things the union does, it . . . contribute[s] a portion of my dues to political . . . campaigns I often disagree with. *That's simply unfair.* I want to be a member of the teachers union, but I don't want to be forced to contribute my money to the union leaders' political agenda.”

*Diane Lenning, Huntington Beach*

“I'm a member of the largest state employee union. I believe in the union and what it does. It supports me in many ways, but I don't need it spending a portion of my dues for political purposes. If I want to make a political contribution to a candidate it should be voluntary, not mandatory.”

*Jim Prunty, Glendora*

PROPOSITION 75—IT'S COMMON SENSE.

Here's what it'll do:

- Give public employees the same choices we all have.
- Require public employee unions to obtain annual written consent from members before their dues are taken for political purposes.
- Allow government employees to decide when, how, and if their hard earned wages are spent to support political candidates or campaigns.

Proposition 75 will NOT prevent unions from collecting political contributions, but those contributions will be CLEARLY VOLUNTARY.

Vote YES on Proposition 75.

Give California workers the *freedom* and *choice* we all deserve and help restore union members' political rights.

Learn more, visit [www.caforpaycheckprotection.com](http://www.caforpaycheckprotection.com).

**MILTON FRIEDMAN**, Nobel Prize Winner

**LEWIS UHLER**, President

National Taxpayer Limitation Committee

**ALLAN MANSOOR**, Member of Association of Orange

County Deputy Sheriffs

## Rebuttal to Argument in Favor of Proposition 75

PROPONENTS ARE ONLY *PRETENDING* TO PROTECT WORKERS.

Prop. 75's sponsor, Lewis Uhler, told the *San Francisco Chronicle* on June 8th that he designed 75 to target public employees because of their “greed” and “arrogance.” Uhler and the big corporations funding 75 aren't trying to protect workers—they're trying to silence them.

WORKERS ALREADY ARE PROTECTED

The U.S. Supreme Court says no public employee can be forced to join a union and contribute dues to politics. Union members already elect their own leaders and participate in internal decisions. Of course, not every member agrees with every decision of the group. That's democracy.

PROP. 75 IS NOT ABOUT FAIRNESS

“This year, our kids' schools have been under attack by initiatives paid for by big corporations. Some would permanently cut annual school funding by \$4 billion.

“Prop. 75 would limit teachers' ability to fight such harmful proposals in future elections through our

unions, but does nothing to limit the big developers and banks behind this attempt to cut school funding.

“Prop. 75 is designed to make us spend time and money on a government-imposed bureaucratic process instead of fighting for our schools and our kids.”

*Heidi Chipman, Teacher, Kraemer Middle School*

Others will lose. Nurses fighting for hospital staffing protection . . . Police and Firefighters fighting against elimination of survivor benefits for those who die in the line of duty. *Their labor unions are restricted under Prop. 75, but their opponents are not.*

Please stop this unfair attack on teachers, nurses, police, and firefighters. Vote NO on Prop. 75.

Visit [www.prop75NO.com](http://www.prop75NO.com).

**LIEUTENANT RON COTTINGHAM**, President  
Peace Officer's Research Association of California

**MARY BERGAN**, President  
California Federation of Teachers

**DEBORAH BURGER**, President  
California Nurses Association

## Argument Against Proposition 75

Prop. 75 is unnecessary and unfair. Its hidden agenda is to weaken public employees and strengthen the political influence of big corporations.

Prop. 75 does *not* protect the rights of teachers, nurses, police, and firefighters. Instead it's designed to reduce their ability to respond when politicians would harm education, health care, and public safety.

In 1998, voters rejected a similar proposition and union members voted NO overwhelmingly.

**TARGETS TEACHERS, NURSES, FIREFIGHTERS, AND POLICE**

Why does 75 target people who take care of all of us?

Recently, teachers fought to restore funding the state borrowed from our public schools, but never repaid. Nurses battled against reductions in hospital staffing to protect patients. Police and firefighters fought against elimination of survivor's benefits for families of those who die in the line of duty.

Prop. 75 is an unfair attempt to diminish the voice of teachers, nurses, firefighters, and police at a time when we need to hear them most.

Prop. 75 *only* restricts public employees. It does *not* restrict corporations—even though corporations spend shareholders' money on politics. The nonpartisan Center for Responsive Politics says corporations already outspend unions in politics nationally by 24 to 1. Prop. 75 will make this imbalance even worse.

**CURRENT LAW ALREADY PROTECTS WORKERS**

No public employee in California can be forced to become a member of a union. Non-members pay fees to the union for collective bargaining services, but the U.S. Supreme Court has consistently ruled that unions cannot use these fees for political purposes. The union must send financial statements to the worker to ensure that no unauthorized fees are used for politics. Today, 25% of state employees contribute no money to their union's political activities.

Union members already have the right to democratically vote their leaders into and out of office and to establish their own internal rules concerning political contributions. *Prop. 75 takes away union members' right to make their own decisions and substitutes a government-imposed bureaucratic process.*

**VIOLATES EMPLOYEES' PRIVACY**

Prop. 75 requires members who want to participate to sign a government-imposed personal disclosure form that could be circulated in the workplace. This form, with information about individual employees and their political contributions, could be accessed by a state agency—an invasion of individual privacy which could raise the possibility of intimidation and retaliation against employees on the job.

**WHO'S BEHIND PROP. 75?**

Its lead sponsor is Lewis Uhler, a former John Birch Society activist, who campaigned for Bush's Social Security privatization plan.

It's funded by the deceptively named Small Business Action Committee, which is financed by large corporations.

Backers of 75 say they want to protect workers' rights, but *that's not true*. They're *against* the minimum wage, *against* protecting employee health care, *against* the 8-hour day. Backers of 75 aren't for working people, they want to silence working people who stand against them.

**VOTE NO ON 75**

Please help stop this unfair attempt to apply restrictions to unions of public employees, such as teachers, nurses, firefighters, police, and sheriffs that would apply to no one else.

**LOU PAULSON**, President  
California Professional Firefighters

**BARBARA KERR**, President  
California Teachers Association

**SANDRA MARQUES, RN**, Local President  
United Nurses Associations of California

## Rebuttal to Argument Against Proposition 75

Despite what union leaders would like you to believe, public opinion surveys show that nearly 60% of union households SUPPORT PROPOSITION 75.

Proposition 75 is NOT about the political influence of unions or corporations—it's simply about INDIVIDUAL CHOICE.

A nonpartisan employee rights group measured the results of a *Paycheck Protection* measure in Washington State. Its findings showed that *85% of teachers chose NOT to participate in their union's political activities.*

Consider the recent actions by the prison guard union and teacher union—is this fair?

Despite opposition from more than 4,000 prison guards, their union increased dues by \$18 million over two years to pay for political campaigns and to give to politicians.

WITHOUT A VOTE OF THE MEMBERSHIP, the teachers union recently increased dues by \$50 million over three years in order to fund political campaigns.

This is NOT a fair choice—it's not what our teachers, police officers, firefighters, and other public employees deserve.

YES ON 75 will simply ask public employee union members for their approval before automatically using dues for political purposes.

Proposition 75 will NOT prevent unions from collecting political contributions, but those contributions will be CLEARLY VOLUNTARY. It will hold public employee union leaders more ACCOUNTABLE to their membership.

There are no hidden agendas. No power grabs. Just protecting workers' rights. *Read the official Title and Summary for yourself—it's really that simple.*

VOTE YES ON 75—let individuals, not union leaders, decide whether their dues should be spent on politics.

**JAMES GALLEY**, Past Vice President  
AFSCME/AFL-CIO, Local 127

**ARCHIE CAUGHELL**, Member  
Service Employees International Union

**PAMELA SMITH**, Member  
California Teachers Association

**Official Title and Summary**

*Prepared by the Attorney General*

**STATE SPENDING AND SCHOOL FUNDING LIMITS.  
INITIATIVE CONSTITUTIONAL AMENDMENT.**

- Limits state spending to prior year’s level plus three previous years’ average revenue growth.
- Changes state minimum school funding requirements (Proposition 98); eliminates repayment requirement when minimum funding suspended.
- Excludes appropriations above the minimum from schools’ funding base.
- Directs excess General Fund revenues, currently directed to schools/tax relief, to budget reserve, specified construction, debt repayment.
- Permits Governor, under specified circumstances, to reduce appropriations of Governor’s choosing, including employee compensation/state contracts.
- Continues prior year appropriations if state budget delayed.
- Prohibits state special funds borrowing.
- Requires payment of local government mandates.

**SUMMARY OF LEGISLATIVE ANALYST’S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:**

- The provisions creating an additional state spending limit and granting the Governor new power to reduce spending in most program areas would likely reduce expenditures relative to current law. These reductions also could apply to schools and shift costs to other local governments.
- The new spending limit could result in a smoother pattern of state expenditures over time, especially to the extent that reserves are set aside in good times and available in bad times.
- The provisions changing school funding formulas would make school and community college funding more subject to annual decisions of state policymakers and less affected by a constitutional funding guarantee.
- Relative to current law, the measure could result in a change in the mix of state spending—that is, some programs could receive a larger share and others a smaller share of the total budget.

**ANALYSIS BY THE LEGISLATIVE ANALYST**

**SUMMARY**

This measure makes major changes to California’s Constitution relating to the state budget. As shown in Figure 1, the measure creates an additional state spending limit, grants the Governor substantial new power to unilaterally reduce state spending, and revises key provisions in the California Constitution relating to school and community college funding.

The combined effects of these provisions on state spending are shown in Figure 2. The main impact is a likely reduction in spending over time relative to current law. In addition, the measure could result in a smoother pattern of state spending and a different mix of state expenditures.

Each of the measure’s key provisions is discussed in more detail below.

**BACKGROUND**

**CALIFORNIA’S STATE BUDGET**

California will spend about \$113 billion to provide public services through its state budget this year.

**FIGURE 1**

**PROPOSITION 76: MAIN PROVISIONS**

- ✓ **An Additional State Spending Limit**
  - Places a second limit on state expenditures, which would be based on an average of revenue growth in the three prior years.
- ✓ **Expanded Powers for Governor**
  - Grants the Governor substantial new authority to unilaterally reduce state spending during certain fiscal situations.
- ✓ **School Funding Changes**
  - Changes several key provisions in the State Constitution relating to the minimum funding guarantee for K–12 schools and community colleges.
- ✓ **Other Changes**
  - Makes a number of other changes relating to transportation funding; loans between state funds; and payments to schools, local governments, and special funds.

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

FIGURE 2

PROPOSITION 76: KEY FISCAL EFFECTS

✓ Effects on Spending

- The additional spending limit and new powers granted to the Governor would likely reduce state spending over time relative to current law. These reductions also could shift costs to local governments (primarily counties).
- The new limit could also “smooth out” state spending over time, especially to the extent reserves set aside in good times are available in bad times.
- The new spending-reduction authority given to the Governor and other provisions of the measure could result in a different mix of state spending. That is, some programs’ share of total spending would rise and others would fall relative to current law.

✓ Effects on Schools

- The provisions changing school funding formulas would make school funding more subject to annual decisions of state policymakers and less affected by a constitutional funding guarantee.
- Budget reductions resulting from the spending limit or Governor’s new authority could apply to schools.

About four-fifths of this total—around \$90 billion—will come from the state’s General Fund for such major programs as elementary and secondary (K–12) education, higher education, health and social services, and criminal justice. The money to support General Fund spending is raised largely from the state’s three major taxes—personal income tax, sales and use tax, and corporation tax.

The remaining one-fifth of total state spending is from hundreds of special funds—that is, funds in which specific revenues (such as excise taxes on gasoline or cigarettes) are dedicated to specific purposes (such as transportation or health care).

State and local government finances are closely related to one another in California. For example, most state spending for K–12 education, health, and social services is allocated to programs that are administered by local agencies. In some cases, program costs are shared between the state and local governments.

STATE’S FISCAL SITUATION

California has faced large annual shortfalls in its General Fund state budget since 2001–02. These shortfalls developed following the stock market plunge and the economic downturn that took place in 2001, which caused state revenues to fall sharply below the level needed to fund all of the state’s spending commitments. Although revenues are growing again and the state has made progress toward resolving its budget problems, policymakers will need to take additional actions to address a likely state budget shortfall in 2006–07.

AN ADDITIONAL STATE SPENDING LIMIT

CURRENT LAW

Since 1979, California has imposed annual spending limits on the state and its thousands of individual local governments. The annual limit for each jurisdiction is based on its spending in 1978–79 (the base year), adjusted each year for growth in population and the economy. State government spending is currently about \$11 billion below its spending limit, meaning that the present limit is not currently constraining spending. The large gap between the limit and actual expenditures opened up in 2001–02 following the steep revenue downturn in that year.

PROPOSAL

This measure adds a *second* limit on the annual growth in *state* expenditures. Beginning in 2006–07, combined expenditures from the state’s General Fund and special funds would be limited to the prior-year level of expenditures, adjusted by the *average* of the growth rates in combined General Fund and special fund revenues over the prior three years.

In years in which actual spending falls below the limit, the spending limit for the subsequent year would be based on the reduced level of actual expenditures. Spending could temporarily exceed the limit in the event of a natural disaster (for example, fire, floods, or earthquakes) or an attack by an enemy of the United States.

*What Happens If Revenues Exceed the Limit?* If revenues exceed the limit, the excess amount would be divided proportionally among the General Fund and each of the state’s special funds. The exact way in

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)**

which this allocation would occur is not specified in the measure. The portion of the excess revenues that is allocated to special funds would be held in reserve for expenditure in a subsequent year. In the case of the General Fund, its share of the excess revenues would be allocated as follows:

- **25 percent**—the state’s reserve fund.
- **50 percent**—allocated through annual budget acts to repay any of the following: (1) the Proposition 98 maintenance factor outstanding (see below) at a rate of no more than one-fifteenth of the amount per year; (2) state-issued deficit-financing bonds; and (3) loans made from the Transportation Investment Fund in 2003–04 through 2006–07, with annual amounts not to exceed one-fifteenth of the amount outstanding as of June 30, 2007.
- **25 percent**—for road, highway, and school construction projects.

Funds allocated for the above purposes would not be counted as expenditures for purposes of calculating the following year’s spending limit.

**FISCAL EFFECT**

Based on budget actions taken in 2005 and the recent strong revenue growth trend, the new spending limit is unlikely to constrain state expenditures in 2006–07—its first year of implementation. This is because the limit would likely exceed projected revenues and expenditures under current law.

Over the longer term, however, we believe that the spending limit could have significant impacts on annual state spending. This is because of the way in which the new spending limit would interact with changes in the economy and state revenues over time. California’s revenues are highly sensitive to economic changes. That is, they tend to grow fast during the upside of business cycles when the economy is expanding, and slow—or fall—when the economy is on the downside of business cycles. As a result, the new spending limit—which is based on a rolling average of past revenue growth—would grow more *slowly* than actual revenues when the economy is accelerating, and grow *faster* than actual revenues when the economy is in recession. This is illustrated in Figure 3, which shows the relationship between annual revenues and the proposed spending limit during periods of strong and weak revenues.

The *net* impact of this measure on expenditures over time would depend on whether the state were able to “set aside” enough reserve funds during revenue expansions to maintain spending during periods of revenue softness.

- If it *were* able to set aside sufficient funds, the main impact of the spending limit would be to *smooth out* spending over time—restraining spending during economic expansions and permitting additional spending (supported from its reserves) during revenue downturns. In terms of Figure 3, this means that enough reserves would need to be set aside during the “excess revenues” period to maintain spending at the limit during the “low revenues” period.
- However, if the state *were not* able to accumulate large reserves, the limit would likely result in *less* spending over time. This is because the state would not have enough reserves available to cushion the decline in revenues during bad times. When this occurred, the reduced level of actual spending during periods of low revenues would then become the new, lower, “starting point” from which the next year’s spending limit is calculated. This could cause the spending limit to ratchet down over time.

**Effects on Ability to Raise Taxes.** The impact of the limit on the state’s ability to raise taxes to fund spending would depend on the specific situation:

- The state *would* be able to raise taxes or fees and immediately use the proceeds during periods of revenue weakness, when total receipts would likely be below the spending limit.
- The state *would not*, however, be able to raise revenues and *immediately* use the proceeds if spending was already at the limit. It would, however, *eventually* be able to use new tax proceeds as the impact of the tax increase worked its way into the new spending limit’s adjustment factors over several years.

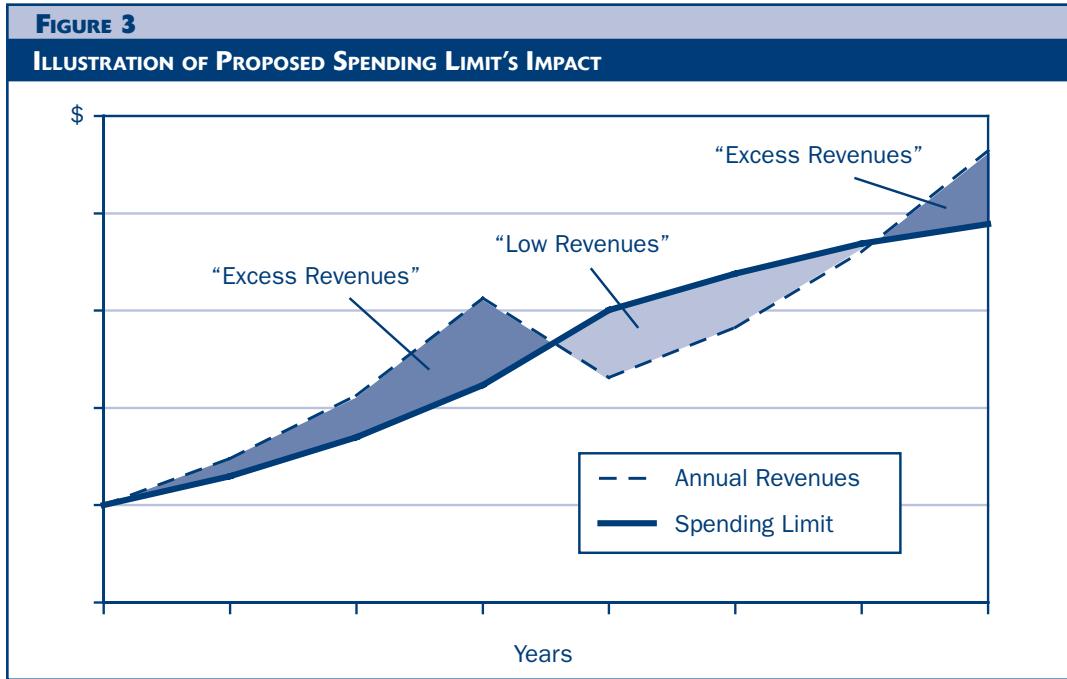
The latter situation would be relevant if the state were considering tax or fee increases either (1) to support new or expanded services or (2) when the state was attempting to eliminate an *ongoing* budget shortfall.

Over time, we believe the operation of this limit would likely reduce state expenditures relative to current law.

**EXPANDED POWERS FOR GOVERNOR****CURRENT LAW**

**Basic Provisions.** The State Constitution requires that the Governor propose a budget by January 10 for the next fiscal year (which begins each July 1), and that the

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)



Legislature pass a budget by June 15. The Governor may then either sign or veto the resulting budget bill. The Governor may also reduce spending in most areas of the budget before signing the measure. However, this line item veto authority cannot be applied to programs where expenditures are governed by separate laws. The vetoes can also be overridden by a two-thirds vote of each house of the Legislature. Once the budget is signed, the Governor may not unilaterally reduce program funding.

**Balanced Budget Requirements.** Proposition 58 (approved by the voters in March 2004) requires that budgets passed by the Legislature and ultimately signed into law be balanced. This means that expenditures cannot exceed available revenues.

**Late Budgets.** When a fiscal year begins without a state budget, most expenses do not have authorization to continue. However, a number of court decisions and legal interpretations of the Constitution have identified certain types of payments that may continue to be made when a state budget has not been enacted. Thus, when there is not a state budget, payments continue for: a portion of state employees' pay; principal and interest payments on bonds; and various other expenditures (such as general purpose funds for K-12 schools) specifically authorized by state law or federal requirements.

**Midyear Adjustments.** Under Proposition 58, after a budget is signed into law but falls out of balance, the Governor may declare a fiscal emergency and call the Legislature into special session to consider proposals to deal with the fiscal imbalance. If the Legislature fails to pass and send to the Governor legislation to address the budget problem within 45 days after being called into special session, it is prohibited from acting on other bills or adjourning in joint recess.

**PROPOSAL**

This measure makes changes relating to late budgets and grants expanded powers to the Governor.

**Late Budgets.** If a budget is not enacted prior to the beginning of a new fiscal year, this measure requires that the spending levels authorized in the prior-year's budget act remain in effect until a new budget is enacted. Thus, funding would continue for all state programs that had received budget act appropriations in the prior year.

**Fiscal Emergency.** The measure grants the Governor new powers to (1) declare a fiscal emergency based on his or her administration's fiscal estimates, and (2) unilaterally reduce spending when an agreement cannot be reached on how to address the emergency.

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)**

Specifically, the measure permits the Governor to issue a proclamation of a fiscal emergency when his or her administration finds either of the following two conditions:

- General Fund revenues have fallen by at least 1.5 percent below the administration's estimates.
- The balance of the state's reserve fund will decline by more than one-half between the beginning and the end of the fiscal year.

Once the emergency is declared by the Governor, the Legislature would be called into special session and then have 45 days (30 days in the case of a late budget) to enact legislation which addresses the shortfall. If such legislation is not enacted, the measure grants the Governor new powers to reduce state spending (with the exception of the items discussed below)—at his or her discretion—to eliminate the shortfall. The Legislature could not override these reductions.

**Application of Reductions.** The reductions may apply to *all* General Fund spending except for (1) expenditures necessary to comply with federal laws and regulations, (2) appropriations where the reduction would violate contracts to which the state is already a party, and (3) payment of principal and interest that is due on outstanding debt. Any General Fund spending related to contracts, collective bargaining agreements, or entitlements for which payment obligations arise after the effective date of this measure would be subject to these reductions.

**Impact on Entitlement Spending.** A significant portion of state General Fund spending is for entitlements. These are programs where individuals who meet specific eligibility criteria—involving, for example, age, income levels, or certain disabilities—have a right to receive the service. Major entitlements include, for example, various health and social services programs for low-income individuals. Most of these programs are administered by local agencies.

This measure gives the Governor the authority to reduce the amount of money available to fund an entitlement program. However, it does not give the Governor authority to modify specific laws that govern, for example, who is eligible to receive the service, the amount of a grant, or the scope of services provided under the program. Absent changes to these underlying laws by the Legislature, it would appear that the entitlement programs would continue to be administered in accordance with the laws that were in effect at the time of the Governor's reductions.

When the funding remaining after the reductions was exhausted, the state would no longer have the obligation to fund the entitlement for the remainder of the fiscal year.

**FISCAL EFFECT**

This measure would grant new authority to the Governor to make reductions in almost all state spending. The fiscal effect of this change in individual years would depend on budget-related priorities of Governors and Legislatures. Over time, however, this grant of authority to the Governor to reduce spending would likely result in less state spending relative to current law. It could also result in a different mix of expenditures. That is, some programs' share of total spending would rise and others would fall relative to current law.

**Effect on Local Governments.** California counties administer most state health and social services entitlement programs. Also, counties fund other health and social services programs for low-income people who do not qualify for such state services. If the Governor reduced state funding for entitlement programs, some costs to pay for certain programs could shift to counties and there could be increased demand for locally funded health care and social services programs. The Governor also could reduce other state funding provided to local governments.

**SCHOOL FUNDING CHANGES****CURRENT LAW**

Proposition 98 is a measure passed by the voters in 1988 which established in the State Constitution a "minimum funding guarantee" for K–12 schools and community colleges (K–14 education). The intent of Proposition 98 is for K–14 funding to grow with student attendance and the state economy. California currently devotes about \$50 billion in Proposition 98 funds to K–14 education annually. Of this total, about \$37 billion is from the state's General Fund, and the other \$13 billion is from local property tax revenues. Each year, the minimum guarantee is calculated based on a set of funding formulas. Under the main funding formula (referred to as "Test 2"), the guarantee increases each year roughly in line with school attendance and the state's economy. Figure 4 summarizes how Proposition 98 works and how this measure would change it.

Proposition 98 also has an alternative—and less generous—funding formula (called "Test 3") that generally takes effect when the state is experiencing slow growth or declines in its revenues. Funding

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

FIGURE 4
HOW THE MEASURE WOULD CHANGE SCHOOL SPENDING GUARANTEE FOR K–12 AND COMMUNITY COLLEGES
How Current Guarantee Works
<ul style="list-style-type: none"> <li>✓ <b>Proposition 98 Minimum Guarantee.</b> Is based on the operation of three formulas (“tests”). The operative test depends on how the economy and General Fund revenues grow from year to year.               <ul style="list-style-type: none"> <li>• <b>Test 1—Share of General Fund.</b> Provides 39 percent of General Fund revenues. This test has not been operative since 1988–89.</li> <li>• <b>Test 2—Growth in Per Capita Personal Income.</b> Increases prior-year funding by growth in attendance and per capita personal income. This test is generally operative in years with normal-to-strong General Fund revenue growth.</li> <li>• <b>Test 3—Growth in General Fund Revenues.</b> Increases prior-year funding by growth in attendance and per capita General Fund revenues. Generally, this test is operative when General Fund revenues fall or grow slowly.</li> </ul> </li> <li>✓ <b>Suspension of Proposition 98.</b> This can occur through the enactment of legislation passed with a two-thirds vote of each house of the Legislature, and funding can be set at any level.</li> <li>✓ <b>Long-Term Target Funding Level.</b> This would be the K–14 education funding level if it were always funded according to the provisions of Test 2. Whenever Proposition 98 funding falls below that year’s Test 2 level, either because of suspension of the guarantee or the operation of Test 3, the Test 2 level is “tracked” and serves as a target level to which K–14 education funding will be restored when revenues improve.</li> <li>✓ <b>Maintenance Factor.</b> This is created whenever actual funding falls below the Test 2 level. The maintenance factor is equal to the difference between actual funding and the long-term target amount. Currently, the K–14 funding level is \$3.8 billion less than the long-term target funding level—that is, the current outstanding maintenance factor is \$3.8 billion.</li> <li>✓ <b>Restoration of Maintenance Factor.</b> This occurs when school funding rises back up toward the long-term target funding level. Restoration can occur either through a formula that requires higher K–14 education funding in years with strong General Fund revenue growth, or through legislative appropriations above the minimum guarantee.</li> </ul>
What This Measure Does
<ul style="list-style-type: none"> <li>✓ <b>Eliminates Future Operation of Test 3.</b> In low-revenue years, the Proposition 98 minimum guarantee would no longer automatically fall below the Test 2 level.</li> <li>✓ <b>Eliminates Future Creation of Maintenance Factor.</b> If in any given year K–14 education was funded at a level less than that required by Test 2 (through suspension or Governor’s reductions), there would no longer be a future obligation to restore that funding shortfall to the long-term target. These reductions would permanently “ratchet down” the Proposition 98 minimum guarantee.</li> <li>✓ <b>Converts Outstanding Maintenance Factor to One-Time Obligation.</b> The measure converts the outstanding maintenance factor (estimated to be \$3.8 billion) to a <i>one-time</i> obligation. Payments to fulfill this obligation would be made over the next 15 years. These payments would <i>not</i> raise the future Proposition 98 minimum guarantee (in contrast to existing law).</li> <li>✓ <b>Counts Future Appropriations Above the Minimum Guarantee as One-Time Payments.</b> Spending above the minimum guarantee would not raise the base from which future guarantees are calculated.</li> </ul>

for schools also can be reduced directly through a two-thirds vote of the Legislature. This is referred to as “suspension” of the guarantee. When Test 3 or suspension occurs, the state generally provides *less* in K–14 funding. The state is required to keep track of this funding gap, which is referred to as the

“maintenance factor.” Under current law, the state would end the 2005–06 fiscal year with a \$3.8 billion maintenance factor created in prior years.

As state revenues improve, Proposition 98 requires the state to spend more on schools to catch up with its long-term target funding level by making

## ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

maintenance factor payments. When this occurs, the maintenance factor is said to be “restored.” These restorations become part of the base for the next year’s Proposition 98 calculation.

The formulas allowing for less generous K–14 funding during weak revenue periods (Test 3) and more generous funding during subsequent strong revenue periods (maintenance factor restoration) were added by Proposition 111, which was approved by the voters in 1990. These modifications to the original version of Proposition 98 were made to allow the guarantee to automatically slow down during “bad” economic times and rise again during “good” economic times.

## PROPOSAL

**Test 3 and Maintenance Factor Eliminated.** This measure eliminates Test 3 and maintenance factor, undoing the changes made by Proposition 111. Thus, the Constitution would no longer allow for automatic reductions in the minimum funding guarantee in difficult times nor would it automatically restore funding in good times. The Legislature would retain the authority to suspend Proposition 98; however, the nature of suspension would change. Since the maintenance factor would no longer exist, a suspension would result in a permanent downward adjustment to the minimum guarantee. Similarly, if the Governor unilaterally reduced Proposition 98 funding during a fiscal emergency, these reductions would also permanently lower the minimum guarantee.

**Outstanding Maintenance Factor Converted to One-Time Obligation.** The measure also converts the outstanding maintenance factor (estimated to be \$3.8 billion) to a *one-time* obligation. Payments to fulfill this obligation would be made over the next 15 years. These payments would not raise the future Proposition 98 minimum guarantee (in contrast to existing law).

**Future Spending Above the Minimum Guarantee Would Not Permanently Raise the Guarantee.** Under current law, if the Governor and Legislature spend more money on K–14 education than is required by the minimum guarantee in a given year, the higher spending level generally becomes the “base” from which the next year’s minimum funding guarantee is calculated. In this regard, a higher-than-required appropriation in one year typically raises the K–14 education minimum funding levels in subsequent years. Under this measure, future spending above the guarantee would be counted as *one-time* funding and would no longer raise future Proposition 98 minimum guarantee amounts.

**Outstanding Settle-Up Obligations Would Be Paid Within 15 Years.** The estimate of the minimum Proposition 98 funding guarantee for a particular fiscal year will usually change after the budget’s enactment. If these changes result in a higher guarantee calculation, the difference between the guarantee and the actual level of appropriations becomes an additional K–14 education expense. This is referred to as “settle up.” Existing settle-up obligations for past fiscal years currently total over \$1 billion. Under current statutes, these will be paid at roughly \$150 million per year beginning in 2006–07. This measure would require that these settle-up obligations be fully paid within 15 years.

## FISCAL EFFECT

Given the uncertainty about future economic growth and budgetary circumstances, it is not possible to predict how the measure’s changes would affect actual state spending for K–14 education and other programs. In general, the elimination of Test 3 and future maintenance factors means that year-to-year changes in the minimum guarantee would be less volatile than in the past—absent a suspension or a reduction by the Governor.

**Decreases Minimum Guarantee Over Long Term.** Over time, however, the net impact of the Proposition 98 changes and related changes in the measure would be to *lower* the minimum guarantee for K–14 education, as discussed below:

- Since K–14 education accounts for almost 45 percent of the state’s General Fund budget, it is likely that policymakers would need to consider reductions in this area whenever the budget fell significantly out of balance. Whenever such spending was reduced—either through suspension or through Governor’s reductions—the state would no longer be required to restore that reduction in the minimum funding guarantee in subsequent years.
- The provision making future appropriations over the minimum guarantee one-time in nature would also hold down the minimum guarantee relative to current law. For example, if this provision applied to 2005–06, it would convert an estimated \$740 million in appropriations above the guarantee in the 2005–06 budget to one-time spending. This would lower the minimum guarantee for 2006–07 by a similar amount compared to current law.
- By converting the \$3.8 billion outstanding maintenance factor to a one-time obligation, the measure eliminates the requirement for \$3.8 billion to be restored into the annual base funding over time.

## ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

Combined, these changes would result in a lower minimum guarantee over time compared to current law.

**Unknown Impact on K–14 Spending.** A lower guarantee, however, *does not* mean that *actual* spending for schools would necessarily be lower. Policymakers would still be free to spend more than required by the minimum guarantee in any given year. Since spending above the guarantee for K–14 education would no longer permanently ratchet up the guarantee, future Legislatures and Governors might be more likely to spend above the minimum guarantee in a given year. Overall, the measure’s Proposition 98-related changes would result in the annual budgets for K–14 education being more subject to annual funding decisions by state policymakers and less affected by the minimum guarantee.

**Interactions with Other Provisions of the Measure.** While the Proposition 98-related changes, by themselves, would not necessarily reduce K–14 education spending, other provisions of the measure might have that effect. To the extent, for example, that the measure constrains overall spending, budget reductions resulting from the spending limit or Governor’s new authority could apply to schools.

### OTHER CHANGES

#### PROPOSITION 42 TRANSFERS

**Current Law.** In 2002, the voters approved Proposition 42. This measure requires that sales taxes on motor vehicle fuel be transferred from the General Fund to a special fund for transportation. This special fund, called the Transportation Investment Fund (TIF), supports capital improvements and repairs of highways, roads, and public transit.

Proposition 42 includes a provision allowing for its suspension when the Governor finds (and the Legislature concurs) that the transfer will have a significant negative fiscal effect on General Fund programs. To help address the state’s major budget shortfalls, the Governor and Legislature partially suspended the Proposition 42 transfer in 2003–04 (\$868 million) and fully suspended the transfer in 2004–05 (\$1.2 billion). Legislation passed with the 2003–04 and 2004–05 budgets designated the suspensions as “loans” from the TIF, to be repaid by the General Fund in 2007–08 and 2008–09.

**Proposal.** This measure prohibits the suspension of Proposition 42 transfers after 2006–07. The total amount of transfers that were suspended through June 30, 2007, would be paid within 15 years, at an annual rate of no less than one-fifteenth of the cumulative amount owed. The measure also permits

the Legislature to authorize the issuance of bonds by the state or local agencies that are secured by the anticipated repayments of suspended Proposition 42 transfers.

**Fiscal Effect.** The inability to suspend Proposition 42 would result in a more stable funding stream for transportation.

#### LOANS FROM SPECIAL FUNDS

**Current Law.** In addition to the Proposition 42 loans discussed above, the Governor and Legislature have borrowed available balances from other special funds in the past to cover General Fund shortfalls. The amount of these loans outstanding at the conclusion of 2005–06 is expected to be roughly \$1 billion. Some of the loans have specified repayment dates. In other cases, budget language requires that the loans be repaid when the funds are needed to carry out the operations of the particular special fund.

**Proposal.** Under this measure, such loans would be prohibited beginning in 2006–07 (except for short-term cash-flow borrowing purposes). Outstanding loans from special funds as of July 1, 2006, would be repaid within 15 years.

**Fiscal Effect.** Taken together, these provisions would result in more stable funding for some special fund programs.

#### PAYMENT OF MANDATE CLAIMS

The State Constitution requires the state to pay local governments for new or expanded programs which it imposes on local governments. In past years, the Governor and Legislature have deferred payments for mandate claims filed by school and community college districts and noneducation local governments (counties, cities, and special districts). Current law requires the state to pay within fifteen years any unpaid noneducation mandate claims incurred before 2004–05. There is no specific time frame for payment of unpaid education claims. This measure (1) shortens to five years the period in which the state must pay overdue noneducation mandate claims and (2) sets a 15-year deadline on payment of overdue education mandate claims. The measure also states that Proposition 98 funds allocated to schools “shall first be expended . . . to pay the costs for state mandates incurred during that year.” This would change the state’s current practice of providing specific funding to reimburse each school and community college district for its state-mandated activities.

**Fiscal Effect.** These provisions would have the effect of increasing state costs over the next five years with a comparable reduction over the subsequent ten years.

**Argument in Favor of Proposition 76**

*PROPOSITION 76 IS ONE OF THE CRITICAL REFORMS WE NEED TO CLEAN UP THE MESS IN SACRAMENTO!*

*YES on Prop. 76: Control State Spending*

California’s budget system is broken. We have record deficits, unbalanced budgets, and out-of-control spending.

The politicians can’t say “no” to more spending. Since 1999–2000, the state has increased spending by twice as much as it has increased its revenue.

*“California faces a budget crisis that needs to be resolved this year. The Governor’s reforms . . . can go a long way toward establishing and maintaining fiscal responsibility in the state.”*

*Contra Costa Times, April 3, 2005*

*Budget experts project next year’s budget deficit at \$6 billion and annual deficits after that of \$4–\$5 billion. At that pace, the State will accumulate \$22 to \$26 billion in deficits over the next five fiscal years.*

The choice is simple: *Pass Prop. 76 or face higher taxes such as the car tax, income tax, sales tax, and even property taxes.*

**PROP. 76 IS THE BIPARTISAN SOLUTION THAT FORCES THE STATE TO LIVE WITHIN ITS MEANS:**

- *Limits spending to the average rate of tax growth of the past three years, so we don’t overspend in good times followed by huge deficits in bad times.*
- *Establishes “checks and balances” to encourage the Governor and Legislature to work together.*  
When tax revenue slows, the Legislature can cut wasteful spending to balance the budget. If the Legislature doesn’t act, the Governor can then cut wasteful spending, while protecting funding for education, public safety, and roads.
- *Stabilizes K–14 education spending. By cutting wasteful spending and balancing the budget, we’ll have more funds to spend on what the state needs, without raising taxes.*

- *Stops the autopilot spending binge and holds the politicians accountable.*
- *Guarantees that taxes dedicated for highways and roads are spent on those projects and never again raided to balance the budget.*

*Unfortunately, Opponents of Prop. 76 Don’t Want Reform:*

- *They think deficits and gridlock are just fine in Sacramento.*
- *They will stop at nothing to defeat Prop. 76 and have spent millions for television ads to confuse voters.*
- *They use scare tactics, inaccurate statements, and outright deceit, like their claims that it will cut funds for law enforcement. It’s not true.*

*“Prop. 76 requires repayment of previously borrowed funds so we can build new roads and repair existing roads and it doesn’t reduce dedicated tax spending on local law enforcement.”*

*Alan Autry, Mayor of Fresno*

*“YES” on Prop. 76:*

- *Balance our budget without raising taxes.*
- *Promote bipartisan cooperation between the Legislature and the Governor.*
- *Eliminate wasteful spending and provide more money for roads, health care, law enforcement, and other important programs without raising taxes.*

**PLEASE VOTE “YES ON PROP. 76”—TO CLEAN UP THE BUDGET MESS IN SACRAMENTO.**

**GOVERNOR ARNOLD SCHWARZENEGGER**

**TOM CAMPBELL**, Director  
California Department of Finance

**SANDRA L. McBRAYER**  
Former National Teacher of the Year

**Rebuttal to Argument in Favor of Proposition 76**

According to an analysis by two recent California Finance Directors: “Proposition 76 makes a mess of the state’s budget process and destroys our system of checks and balances. It slashes school funding, could force deep cuts in local services like health care and public safety, and gives the governor unchecked power over the budget—without oversight or accountability.”

Prop. 76 wasn’t written by budget experts or taxpayer advocates. It was written by the president of a big business group that lobbies for tobacco, oil, insurance, and other special interests.

**PROP. 76 DOESN’T “STABILIZE” SCHOOL FUNDING.** It will cut school funding by over \$4 billion a year and eliminate voter-approved school funding guarantees.

**PROP. 76 DOESN’T STOP NEW TAXES.** Even the president of the California Republican Assembly says Prop. 76 “actually encourages tax increases.”

**PROP. 76 DOESN’T HOLD POLITICIANS ACCOUNTABLE OR ENCOURAGE BIPARTISAN COOPERATION.** It destroys our system of checks and balances by giving the Governor unlimited power over budget decisions. He will be accountable to no one.

**PROP. 76 DOESN’T END WASTEFUL SPENDING.** The *Orange County Register* calls its spending controls “phony.” While forcing cuts in education and public safety, Prop. 76 actually prevents cuts in programs like the California Dried Plum Board.

**“PROPOSITION 76’S IMPACT ON PUBLIC SAFETY WILL BE DEVASTATING,”** warns Ron Cottingham, president of the Peace Officers Research Association of California. “It strips local government of the funding needed for police and fire, health care, and other essential services.”

**PROPOSITION 76 IS “PHONY” AND A “BAD IDEA.” VOTE NO.**

**BARBARA KERR**, President  
California Teachers Association

**DEBORAH BURGER**, President  
California Nurses Association

**LOU PAULSON**, President  
California Professional Firefighters

## Argument Against Proposition 76

PROPOSITION 76 WILL CUT FUNDING FOR SCHOOLS, HEALTH CARE, POLICE, AND FIRE. It undermines our democratic system of checks and balances by giving the governor awesome new powers without any oversight. And it opens the door to higher taxes.

PROPOSITION 76 OVERTURNS THE MINIMUM SCHOOL FUNDING PROTECTIONS APPROVED BY CALIFORNIA VOTERS WHEN THEY PASSED PROPOSITION 98. Proposition 76 allows the Governor to permanently reduce school funding without a vote of the people.

Our students and schools lost three billion dollars when Governor Schwarzenegger broke his promise to repay the money he took from education. Proposition 76 “terminates the repayment requirement,” meaning the Governor will never have to return this money to our schools’ minimum guarantee.

Proposition 76 will permanently reduce the money schools will get by over \$4 billion—\$600 per student. That means teacher layoffs, larger classes, fewer textbooks, less classroom materials, poorly paid teachers, and overcrowded schools. Proposition 76 keeps California behind states like West Virginia and Kentucky in per pupil education funding.

PROPOSITION 76 DEPRIVES CITIES AND COUNTIES OF HUNDREDS OF MILLIONS OF DOLLARS IN STATE FUNDING NEEDED FOR POLICE, FIRE, AND HEALTH CARE. Incredibly, if a “fiscal emergency” is declared, this initiative requires funding be cut for vital services like education, health care, fire, and police, but actually prevents cutting “pork barrel” road projects.

PROPOSITION 76 ATTACKS CALIFORNIA’S SYSTEM OF CHECKS AND BALANCES BY PLACING TOO MUCH POWER IN THE HANDS OF ONE PERSON—THE GOVERNOR. Even if you trust this Governor, who knows what future Governors might do with this unlimited new power.

Under Proposition 76, any Governor could declare a “fiscal emergency” simply by having his own staff overestimate state revenues. Once a fiscal emergency is declared, the Governor would be free to cut vital programs without voter approval and without oversight.

Under Proposition 76, “The Governor could exercise any whim or impose any political vendetta,” warns the *Los Angeles Times*, which calls Proposition 76 “a really bad idea.”

THIS INITIATIVE ALSO GIVES STATE LEGISLATORS NEW POWER TO MAKE MISCHIEF. Just 14 of 120 legislators could block passage of the budget indefinitely, putting government spending on autopilot. This could allow the Governor to declare a “fiscal emergency,” giving the Governor sweeping new powers to make state spending and budget decisions “at his discretion,” with absolutely no oversight or accountability.

CLAIMS THAT PROPOSITION 76 PREVENTS NEW TAXES ARE ABSOLUTELY UNTRUE. This initiative does nothing to prevent higher taxes. If it passes, the Governor and Legislature can raise car taxes, income taxes, or sales taxes without voter approval. Even the President of the California Republican Assembly says that Proposition 76 “actually encourages tax increases.”

CALIFORNIANS CAN’T AFFORD PROPOSITION 76. It will cut education, health care, fire, and police. It attacks our system of checks and balances. And it opens the door to higher taxes. Vote NO.

**BRENDA J. DAVIS**, President  
California State PTA

**HENRY L. “HANK” LACAYO**, State President  
Congress of California Seniors

**WAYNE QUINT, JR.**, President  
California Coalition of Law Enforcement Associations

## Rebuttal to Argument Against Proposition 76

Opponents of Prop. 76—The Live Within Our Means Act—have a solution to California’s budget crisis:

*Spend wildly, incur huge debt, and raise taxes to cover the deficits!*

That’s how California ended up \$22 billion in debt. California doesn’t have a revenue problem—it has a spending problem. We need Prop. 76 to fix our broken budget system.

Don’t be misled by outrageous claims that Prop. 76 will gut education spending or harm police and fire protection.

*Education funding increased by a record \$3 billion this year and now accounts for more than 50% of our general fund spending! Prop. 76 upholds existing state law that mandates education is the state’s #1 funding priority.*

*Prop. 76 will protect dedicated funds for highway and road construction.*

*“Prop. 76 will permanently protect law enforcement special funds so politicians cannot cut police and emergency services.”*

*David W. Paulson, Solano County District Attorney*

Proposition 76 is real reform to ensure our state lives by the basic rule California families live by: Don’t spend more money than you bring in:

- *Controls state budget growth* by limiting annual state spending increases to average growth in revenue for the past 3 fiscal years.
- *Stops autopilot spending* that threatens our economic health.
- *Establishes “checks and balances”* for budget decisions. If the Legislature doesn’t cut wasteful spending when revenues drop, the Governor can—a similar provision to what previous California governors had for decades. “YES on 76”—Balance the Budget Responsibly. [www.JoinArnold.com](http://www.JoinArnold.com)

**SEBASTIAN EDWARDS, Ph.D.**, Professor of Economics  
University of California, Los Angeles

**ALAN BERSIN**, Secretary of Education  
State of California

**JON COUPAL**, President  
Howard Jarvis Taxpayers Association

## Official Title and Summary

Prepared by the Attorney General

### REDISTRICTING. INITIATIVE CONSTITUTIONAL AMENDMENT.

- Amends process for redistricting California’s Senate, Assembly, Congressional and Board of Equalization districts.
- Requires panel of three retired judges, selected by legislative leaders, to adopt new redistricting plan if measure passes and after each national census.
- Panel must consider legislative, public comments/hold public hearings.
- Redistricting plan effective when adopted by panel and filed with Secretary of State; governs next statewide primary/general elections even if voters reject plan.
- If voters reject redistricting plan, process repeats, but officials elected under rejected plan serve full terms.
- Allows 45 days to seek judicial review of adopted redistricting plan.

### SUMMARY OF LEGISLATIVE ANALYST’S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- One-time costs for a redistricting plan. State costs totaling no more than \$1.5 million and county costs in the range of \$1 million.
- Potential reduction in costs for each redistricting effort after 2010, but net impact would depend on decisions by voters.

## ANALYSIS BY THE LEGISLATIVE ANALYST

### BACKGROUND

Every ten years, the federal census counts the number of people living in California. The California Constitution requires the Legislature after each census to adjust the boundaries of the districts used to elect public officials. This process is called “redistricting” (or sometimes “reapportionment”). The primary purpose of redistricting is to establish districts which are “reasonably equal” in population. Redistricting affects districts for the state Legislature (Assembly and Senate), Board of Equalization (BOE), and the U.S. House of Representatives.

Typically, redistricting plans are included in legislation and become law after passage of the bill by the Legislature and signature by the Governor. In the past, when the Legislature and Governor have been unable to agree on redistricting plans, the California Supreme Court oversaw the redistricting.

### PROPOSAL

This measure amends the California Constitution to change the redistricting process for the state Legislature, BOE, and California members of the U.S. House of Representatives.

**Panel of Retired Judges.** This measure requires that a three-member panel of retired federal and/or state judges (“special masters”) develop redistricting plans. The measure requires that the judges meet a number of criteria, including that they have never held partisan political office. (The nearby box provides more detail on the selection process for the special masters.)

**Requirements of District Boundaries.** The measure adds new requirements regarding the drawing of district boundaries. Among these requirements are:

- For the Legislature and BOE, population differences among districts cannot exceed 1 percent.
- Senate districts must be comprised of two adjacent Assembly districts, and BOE districts must be comprised of ten adjacent Senate districts.
- The plan must minimize the splitting of counties and cities into multiple districts.

In addition, when drawing boundaries, the panel could not consider information related to political party affiliations and other specified matters.

**Schedule.** A panel would be required to develop a redistricting plan for use at the next primary and general elections following the measure’s approval and then following each future federal census.

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)**

**Approval Process.** In developing a plan, the panel would have to hold public hearings and could receive suggested plans from the public and the Legislature. Once the panel unanimously approves a redistricting plan, the plan would be used for the next primary and general elections. The Secretary of State would place the plan on the general election ballot for the voters to consider. If the voters approve the plan, it would be used until the next redistricting is required. If the voters reject the plan, another panel would be appointed to prepare a new plan for the next primary and general elections.

**Funding.** The measure specifies that the Legislature must make funding available from the Legislature’s budget (which is limited under the State Constitution) to support the work of the panel.

This could include employment of legal and other experts in the field of redistricting and computer technology. Funding for the panel would be limited to a maximum of one-half of the amount spent by the Legislature on redistricting in 2001 (adjusted for inflation beginning after the 2010 federal census). For the first redistricting plan under the measure (to be developed for use at the next primary and general elections following the measure’s approval), the funding would be provided from the state General Fund.

**FISCAL EFFECTS**

**Panel Allowable Costs.** The Legislature spent about \$3 million in 2001 on redistricting. This measure would limit panel costs for future redistricting efforts to half of this amount, adjusted for inflation. Therefore, the maximum amount allowable under the measure for each future panel would be about \$1.5 million.

**One-Time Redistricting Costs.** Under existing law, the next redistricting plan would not be developed until after the 2010 federal census. The measure, however, requires that a redistricting plan be developed for use at the next primary election following the measure’s approval. This additional redistricting plan would result in one-time state costs, which would total no more than \$1.5 million for the panel’s work. In addition, counties would experience some added one-time costs to implement the new district boundaries. These costs could be in the range of \$1 million.

**Impact on Future Redistricting Costs.** The preparation of future redistricting plans (after 2010) under the measure would be on the same schedule as existing law. Due to the measure’s limit on a panel’s redistricting costs, there could be a reduction in the total amount the state spent for each redistricting effort. Any such savings would be available for other legislative expenses under the existing cap. If, however, voters rejected any redistricting plan, there would be some additional state and county costs for a new plan to be developed and implemented. Thus, the net impact on future redistricting costs in any decade would depend on decisions by voters.

**Election Costs.** Because the measure requires the redistricting plans to be approved by voters, it would result in costs to the state and counties each time a plan was placed on the ballot. These costs primarily would be related to preparing and mailing election-related materials. Since the approval of the plans could be consolidated with existing elections, the increased costs of the measure would probably be minor.

MAJOR STEPS TO SELECT REDISTRICTING PANEL UNDER PROPOSITION 77	
1.	Judicial Council (an administrative body of the court system) collects list of retired judges willing to serve on a panel. The judges must not have: <ul style="list-style-type: none"> <li>• Held partisan political office.</li> <li>• Changed their party affiliation since their judicial appointment.</li> <li>• Received income over the past year from specified political sources.</li> </ul>
2.	Judicial Council randomly selects a pool of 24 judges from the list of volunteers. The two largest political parties must have equal representation.
3.	The four legislative leaders (two each from the majority and minority parties) nominate a total of 12 judges from the pool. The leaders each nominate three judges with party affiliations different than their own. Each leader is then able to eliminate one of the nominated judges.
4.	From the nominated judges remaining on the list, three judges are selected at random to serve as the panel. Each of the two largest political parties must have at least one representative.
5.	The selected judges pledge, in writing, to not run for offices affected by the districts they draw or accept public jobs (other than judicial or teaching) for the next five years.

**Argument in Favor of Proposition 77**

THE TIME FOR ACCOUNTABILITY IS NOW!

PROPOSITION 77: “THE VOTER EMPOWERMENT ACT” WILL FINALLY MAKE POLITICIANS ACCOUNTABLE TO THE PEOPLE.

- Guarantee fair election districts for Californians.
  - Give voters the final say in the process.
  - Reduce special interest influence and money in politics.
- YES on Prop. 77: Let the Voters Decide.

The Problem: California’s flawed election system allows partisan politicians to draw the boundary lines of their own districts—splitting up towns and even neighborhoods for personal gain. The result: there is no accountability because the incumbents rig the districts to ensure they have NO serious competition, guaranteed re-election, and are NOT accountable to voters.

It used to be that voters picked their politicians—now politicians pick their voters. And that’s NOT FAIR.

“California lawmakers are so adept at designing their own districts that of the 153 seats—80 Assembly, 20 state Senate, 53 Congressional—theoretically up for grabs last November (2004), not a single one switched parties.”

*Wall Street Journal, March 11, 2005*

When politicians are not accountable to voters, they become accountable only to their special interest campaign contributors.

That’s why we still have record deficits, unbalanced budgets, out of control spending, and calls for higher taxes, year after year.

Wouldn’t it be better if legislators would work to improve education, cut wasteful government spending, eliminate bureaucracy, and balance the budget once and for all? But that won’t happen until our elected officials start paying attention to us. Under the current system, they only pay attention to their campaign contributors. It’s time for a change.

Prop. 77—The Bipartisan Voter Empowerment Solution

1. Voters will be able to vote on the new redistricting plan. That gives the people of California more power and the special interests less.
2. To ensure district lines that are competitive and fair, a panel of retired judges—selected through a bipartisan process with no political agenda—will draw new district lines according to strict guidelines.
3. Voters then may approve or reject the lines. That puts us, Californians, in charge of our elections.
4. Neighborhoods and communities will matter again. Incumbents will no longer be able to draw their own districts, splitting up towns and neighborhoods in an effort to guarantee their own re-election.

Prop. 77 IS A COMMON SENSE, BIPARTISAN SOLUTION THAT WILL:

- Guarantee fair, competitive elections for California voters.
- Give voters the final say in the process.
- Hold the politicians accountable.
- Reduce the influence of political money.

Now is the time. After many years of opposing reform, overspending, and gridlock, legislative leaders of both parties finally admitted, this year, that redistricting reform is necessary—that allowing politicians to draw their own districts is a conflict of interest that must be changed.

The opportunity is now. PLEASE JOIN US IN VOTING YES ON PROP. 77 TO:

- HOLD THE POLITICIANS ACCOUNTABLE!
- CLEAN UP SACRAMENTO.
- REDUCE PARTISAN POLITICS.
- RETURN ELECTORAL CONTROL TO THE PEOPLE.

**EDWARD J. “TED” COSTA**, CEO  
People’s Advocate

**ARNOLD SCHWARZENEGGER**, Governor  
State of California

**JOHN A. ARGUELLES**  
Former California Supreme Court Justice

**Rebuttal to Argument in Favor of Proposition 77**

The people behind Prop. 77 want you to believe it will make things better.

*Don’t be fooled!*

Special interests spent millions of dollars to force a special election and put this loophole-ridden redistricting scheme on the ballot.

In fact, two courts and three judges have already ruled that this measure shouldn’t even be on the ballot. They ruled that proponents broke the law in a rush to have a new redistricting and reapportionment 5 years earlier than normal.

This flawed plan won’t make politicians more accountable . . . they pick the judges!

*Read the fine print.*

- 1) PROP. 77 TAKES AWAY THE RIGHT OF VOTERS to reject redistricting plans *before* they go into effect.
- 2) The so-called *independent* redistricting judges are HAND-PICKED BY POLITICIANS.
- 3) Every time voters reject these redistricting plans, IT WILL COST TAXPAYERS MILLIONS.

- 4) Everything is decided by a small panel of ONLY THREE UNELECTED JUDGES.
- 5) This flawed idea is CEMENTED INTO OUR CONSTITUTION.

Politicians have tried to sneak redistricting schemes past voters four times in the last 25 years. VOTERS SAID NO . . . all four times.

Instead of putting up a straight-forward plan that makes sense, they offer us this unfair and undemocratic redistricting measure.

Vote NO on Prop. 77. It can only make things worse.

[www.NoOnProposition77.com](http://www.NoOnProposition77.com)

**DANIEL H. LOWENSTEIN**, Former Chair  
Fair Political Practices Commission

**DEBORAH BURGER**, President  
California Nurses Association

**HENRY L. “HANK” LACAYO**, State President  
Congress of California Seniors

## Argument Against Proposition 77

*Proposition 77 Makes Things Worse*

Every time they don't get their way, politicians cook up new schemes to change the rules. They've tried sneaking redistricting schemes past voters four times over the last 25 years, and each time, VOTERS SAID NO!

This time, their plan will cost taxpayers millions, and three judges and two courts have ruled it was illegally qualified for the ballot.

Don't be fooled! *Read the fine print.* This undemocratic and unfair redistricting scheme has huge loopholes.

**BIG FLAWS:**

- 1) VOTERS LOSE THEIR RIGHT to reject redistricting plans before they go into effect.
- 2) POLITICIANS SELECT THE JUDGES to draw their districts for them.
- 3) Prop. 77 COSTS TAXPAYERS MILLIONS each time they reject redistricting plans.
- 4) Only 3 UNELECTED JUDGES WILL DECIDE EVERYTHING. That's not fair or balanced.
- 5) This unworkable scheme will be CEMENTED INTO OUR CONSTITUTION!

**PLANS TAKE EFFECT WITHOUT VOTER APPROVAL**

Redistricting plans made from Prop. 77 automatically go into effect WITH NO APPROVAL FROM VOTERS. That's backwards. Voters should approve plans BEFORE they take effect, not afterward. By the time voters have a say, the damage is done. Why won't they let voters approve the plans first?

**POLITICIANS STILL IN CONTROL**

Under Prop. 77, politicians in the Legislature choose the judges to draw their political districts. Politicians get the best of both worlds—they still pick their voters and now they can hide behind judges. There's no accountability!

**REQUIRES MULTIPLE COSTLY ELECTIONS**

If voters reject redistricting plans, the entire process starts over—new judges, new plans, more elections, and more political bickering—wasting millions of tax

dollars. This could go on indefinitely . . . with election after election . . . until voters finally approve . . . all at **TAXPAYER EXPENSE!**

**GIVES TOO MUCH POWER TO JUST 3 UNACCOUNTABLE JUDGES**

This redistricting scheme gives too much power to three retired judges to decide the future of 35 million Californians. These unelected judges have nothing to fear by upsetting the will of the voters.

**NOT THE WAY TO CHANGE OUR CONSTITUTION**

Prop. 77 changes our Constitution. But the Constitution is not a place to experiment with California's future. They're playing political games with a sacred document.

**MOST AREAS OF THE STATE UNREPRESENTED**

Under Prop. 77, all three judges could be from the same area. That's not fair. For example, three Northern California judges could break up Southern California communities, or vice versa. Central Valley voters could have no redistricting panel representation at all!

What effect would this have on regional issues like **WATER RIGHTS** and **TRANSPORTATION FUNDING**?

**WHY NOW? WHAT'S THEIR MOTIVE?**

Redistricting isn't scheduled to occur until 2011, after the Census gives an update on California's population. Instead, special interests spent millions of dollars to rush this strange plan onto the special election ballot. What's their motive?

*We do need to reform our government, but Prop. 77 isn't the answer.*

**VOTE NO ON PROP. 77. IT WON'T MAKE ANYTHING BETTER.**

[www.NoOnProposition77.com](http://www.NoOnProposition77.com)

**DANIEL H. LOWENSTEIN**, Former Chair  
Fair Political Practices Commission

**JUDGE GEORGE H. ZENOVICH**, Associate Justice Retired  
5th District Court of Appeal

**HENRY L. "HANK" LACAYO**, State President  
Congress of California Seniors

## Rebuttal to Argument Against Proposition 77

*Opponents of Prop. 77, the "Voter Empowerment Act," are desperate to protect entrenched politicians and the status quo. They have historically fought to prevent voters' voices from being heard, even trying to keep Prop. 77 off the ballot this year!*

**PROP. 77 WILL RETURN POWER TO THE VOTERS, AWAY FROM POLITICIANS AND SPECIAL INTERESTS WHO CURRENTLY CONTROL OUR UNFAIR ELECTION SYSTEM—IT GIVES VOTERS THE FINAL SAY.**

When politicians are virtually guaranteed to win elections, they are not accountable to voters. Prop. 77 fixes this problem and improves California's election system—ensuring all voters are fairly represented.

*Beware of the smokescreen arguments by opponents of Prop. 77. Remember these important facts:*

- Opponents don't want competitive elections. They like the status quo and will do anything to protect their power.
- They want the politicians to continue protecting their special interests at the expense of California's working families.

- Voter approval of redistricting plans will be held at regularly scheduled elections, so opponents' claims of huge election costs are false.

*Prop. 77 is simple and straightforward:*

- A bipartisan panel of retired judges would establish new, fair district boundaries for the Legislature and Congress.
- They want the politicians to continue protecting their special interests at the expense of California's working families.
- Fair districts mean competitive elections.

Competitive elections ensure our elected officials listen to citizen voices and not just campaign contributors.

*Nothing could be fairer than letting voters have the final word!*

**"YES" ON PROP. 77—IT'S ABOUT RETURNING POWER TO THE PEOPLE**

**JOHN KEHOE**, Policy Director  
California Senior Advocates League

**JULIE VANDERMOST**, President  
California Women's Leadership Association

**NATIVO LOPEZ**, President  
Mexican American Political Association

## Official Title and Summary

Prepared by the Attorney General

### DISCOUNTS ON PRESCRIPTION DRUGS. INITIATIVE STATUTE.

- Establishes discount prescription drug program, overseen by California Department of Health Services.
- Enables certain low- and moderate-income California residents to purchase prescription drugs at reduced prices.
- Authorizes Department: to contract with participating pharmacies to sell prescription drugs at agreed-upon discounts negotiated in advance; to negotiate rebate agreements with participating drug manufacturers.
- Imposes \$15 annual application fee.
- Creates state fund for deposit of drug manufacturers' rebate payments.
- Requires Department's prompt determination of residents' eligibility, based on listed qualifications.
- Permits outreach programs to increase public awareness.
- Allows program to be terminated under specified conditions.

### SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- One-time and ongoing state costs, potentially in the millions to low tens of millions of dollars annually, for administration and outreach activities for a new drug discount program. A significant share of these costs would probably be borne by the state General Fund.
- State costs, potentially in the low tens of millions of dollars, to cover the funding gap between when drug rebates are collected by the state and when the state pays funds to pharmacies for drug discounts provided to consumers. Any such costs not covered through advance rebate payments from drug makers would be borne by the state General Fund.
- Unknown potentially significant savings for state and county health programs due to the availability of drug discounts.
- Potential unknown effects on state revenues and expenditures from changes in prices and quantities of drugs sold in California.

## ANALYSIS BY THE LEGISLATIVE ANALYST

### BACKGROUND

**Prescription Drug Coverage.** Currently, several state and federal programs provide prescription drug coverage to eligible individuals. The state's Medi-Cal Program, which is administered by the Department of Health Services (DHS), provides prescription drugs for low-income children and adults. The state's Managed Risk Medical Insurance Board administers the Healthy Families Program, which provides prescription drugs for children in low-income and moderate-income families who do not qualify for Medi-Cal.

Beginning January 2006, the federal government will provide prescription drug coverage to persons enrolled in Medicare, a federal health program for elderly and disabled persons. (This would include some persons enrolled in Medi-Cal who are also enrolled in Medicare.) Various other programs funded with state or federal funds also provide assistance to help pay part or all of the cost of drugs for specified individuals.

In addition, many Californians receive coverage for prescription drugs through private insurance that is purchased by individuals or provided by their employer or the employer of a member of their family.

**Drug Discount Programs.** California, a number of other states, and private associations and drug makers have established drug discount programs. These programs help certain consumers, including individuals who are not eligible for state and federal programs that provide drug coverage, purchase prescription drugs at reduced prices. Current California law, for example, requires retail pharmacies to sell prescription drugs at a discount to elderly and disabled persons enrolled in Medicare as a condition of a pharmacy's participation in the Medi-Cal Program.

### PROPOSAL

This proposition creates a new state drug discount program to reduce the costs that certain residents of the state would pay for prescription drugs purchased at pharmacies. The major components of the measure are outlined below.

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)**

**Discount Card Program.** Under the new drug discount program, eligible persons could obtain a card that would qualify them for discounts on their drug purchases at pharmacies. The program would be open to California residents in families with an income at or below 300 percent of the federal poverty level—up to almost \$29,000 a year for an individual or about \$58,000 for a family of four. Persons enrolled in Medicare could obtain discount cards for drugs not covered by Medicare. Persons could not participate in the new drug discount program if they receive their drug coverage from private health insurance, from the Medi-Cal or Healthy Families Programs, or from other public programs supported with state or federal funding. Persons generally could not obtain a drug discount card for at least three months after leaving these private or public sources of drug coverage.

The new drug discount program would be administered by DHS, which could contract with a private vendor for assistance. Participants would enroll in the program by paying a \$15 fee, and would pay an annual renewal fee of the same amount. Eligible persons could enroll or reenroll in the program at any pharmacy, doctor's office, or clinic, which chose to participate in the drug discount program. Applications and renewals could also be handled through an Internet Web site or through a telephone call center. The DHS would review applications and mail the drug discount cards to eligible persons, usually within four days.

The state would seek two types of discounts in order to obtain lower prices for persons with the new drug discount cards. First, pharmacies that voluntarily chose to participate in the program would agree to sell prescription drugs to cardholders at an agreed-upon discount negotiated in advance with the state. In addition, pharmacies would further discount the price to reflect any rebates the state negotiated with drug makers. (The pharmacies would subsequently be reimbursed for this second type of discount with rebates collected by the state from drug makers.)

The DHS could end the drug discount program if it found there were insufficient discounts to make the program work, if too few persons enrolled in the program, or if DHS could not find a vendor to help run the program.

**Private Drug Discount Programs.** The measure directs DHS to implement agreements with drug discount programs operated by drug makers and other private groups so that the discount cards would automatically provide consumers with access to the best discount available to them for a particular drug purchase.

**Outreach Efforts.** The measure directs DHS to conduct an outreach program to inform state residents about the new drug discount program.

**Related Provisions in Proposition 79.** Proposition 79 on this ballot also establishes a new state drug discount program. The key differences between Proposition 78 and Proposition 79 are shown in Figure 1.

The State Constitution provides that if a particular provision of a proposition that has been approved by the voters is in conflict with a particular provision of another proposition approved by the voters, only the provision in the measure with the higher number of yes votes would take effect. Proposition 78 specifies that its provisions would go into effect in their entirety, and that none of the provisions of a competing measure such as Proposition 79 would take effect, if Proposition 78 received the higher number of yes votes.

**FISCAL EFFECTS**

This measure could have a number of fiscal effects on state and local government. We discuss several major factors below that could result in costs or savings.

**State Costs for Administration and Outreach Activities.** The DHS would incur significant startup costs, as well as ongoing costs, for administrative and outreach activities to implement the new drug discount program created by this proposition.

This would include administrative costs to:

- Establish the new program, including any new information technology systems that would be needed for its operation.
- Operate the Internet Web site and the call center to receive applications for drug discount cards.
- Process applications and renewals of drug discount cards.
- Negotiate and collect rebates from drug manufacturers and make advance rebate payments to pharmacies.
- Coordinate the state's drug discount program with other private drug discount programs.

The state could also incur additional costs for the proposed outreach activities, potentially including costs for radio or television advertising, written materials, and other promotional efforts to make consumers aware of the drug discount program.

In the aggregate, these administrative and outreach costs would probably range from the millions to low tens of millions of dollars annually. The exact fiscal effect would depend primarily on the extent of outreach efforts and the number of consumers who chose to participate in the drug discount program.

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)**

<b>FIGURE 1</b>		
<b>KEY DIFFERENCES BETWEEN PROPOSITIONS 78 AND 79</b>		
	<b>Proposition 78</b>	<b>Proposition 79</b>
<b>General eligibility requirements</b>	<ul style="list-style-type: none"> <li>California residents in families with an income at or below 300 percent of the federal poverty level. (About \$29,000 annually for an individual and \$58,000 for a family of four.)</li> <li>No such provision.</li> </ul>	<ul style="list-style-type: none"> <li>California residents in families with an income at or below 400 percent of the federal poverty level. (About \$38,000 annually for an individual and \$77,000 for a family of four.)</li> <li>Also, persons in families with medical expenses at or above 5 percent of their family's income.</li> </ul>
<b>Persons excluded from coverage</b>	<ul style="list-style-type: none"> <li>Persons with outpatient prescription drug coverage through Medi-Cal, Healthy Families, a third-party payer, or a health plan or drug discount program supported with state or federal funds (except Medicare beneficiaries).</li> <li>Certain persons with drug coverage, during the three-month period prior to the month the person applied for a drug discount card.</li> </ul>	<ul style="list-style-type: none"> <li>Persons with outpatient prescription drug coverage through Medi-Cal or Healthy Families (except Medicare beneficiaries).</li> <li>No such provision.</li> </ul>
<b>Application and renewal fee</b>	<ul style="list-style-type: none"> <li>\$15 per year.</li> </ul>	<ul style="list-style-type: none"> <li>\$10 per year.</li> </ul>
<b>Method of obtaining rebates from drug makers</b>	<ul style="list-style-type: none"> <li>Negotiated with drug makers.</li> <li>No such provision.</li> </ul>	<ul style="list-style-type: none"> <li>Negotiated with drug makers.</li> <li>Subject to federal approval, links new drug discount program to Medi-Cal for the purpose of obtaining rebates on drugs.</li> </ul>
<b>Assistance to business and labor organizations</b>	<ul style="list-style-type: none"> <li>No such provision.</li> </ul>	<ul style="list-style-type: none"> <li>Establishes drug discount program to assist certain business and labor entities.</li> </ul>
<b>Prescription Drug Advisory Board</b>	<ul style="list-style-type: none"> <li>No such provision.</li> </ul>	<ul style="list-style-type: none"> <li>Creates new nine-member panel to review the access to and pricing of drugs.</li> </ul>
<b>Lawsuits over drug profiteering law</b>	<ul style="list-style-type: none"> <li>No such provision.</li> </ul>	<ul style="list-style-type: none"> <li>Changes state law to make it a civil violation for a drug maker to engage in profiteering from the sale of drugs.</li> </ul>

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)**

These costs could be partly offset by (1) any funds available for this purpose from a new special fund created by this measure, (2) any private donations received for this purpose, and (3) a portion of the enrollment fees collected for the program. The amount of donations that the state would receive on an ongoing basis for outreach activities is unknown. The amount of available special funds or the fee revenues that would be collected by the state is also unknown. In view of the above, it appears likely that a significant share of the cost of this program would be borne by the General Fund.

**Costs for “Float.”** This measure requires the state to reimburse pharmacies for part of the amount that they discounted their drugs. This reimbursement reflects discounts for which the state receives rebates from drug makers.

The reimbursement to pharmacies must be made within two weeks after their claims are filed with the state. However, drug makers are required by the measure to pay rebates to the state on at least a quarterly basis. This means that the state could, in many cases, pay out rebates to pharmacies before it actually collects the rebate funds from drug makers. Moreover, any disputes that arise over the actual amounts owed for rebates could further slow payments of rebate funds by drug makers to the state.

This recurring gap in funding between when rebate money is collected by the state and when the state has to pay pharmacies is commonly referred to as float. The cost of the float is unknown, but could amount to the low tens of millions of dollars, depending on the level of participation in the program. Float costs would occur mainly in the early years of implementing this new program. After the program has been fully implemented, rebate funds collected from drug makers should be largely sufficient to reimburse pharmacies.

This measure permits the state to enter into agreements with drug makers to collect some rebate

funds in advance. The amount of funding that the state would receive through such advance payments is unknown. Any float costs that exceeded these advance rebate payments would be borne by the state General Fund.

**Potential Savings for State and County Health Programs.** The drug discount program established under this proposition could reduce costs to the state and counties for health programs.

Absent the discounts available under such a drug discount program, some lower-income individuals who lack drug coverage might forego the purchase of their prescribed drugs. Such individuals might eventually require hospitalization as a result of their untreated medical conditions, thereby adding to Medi-Cal Program costs. Other individuals might “spend down” their financial assets on expensive drug purchases absent such discounts and become eligible for Medi-Cal. The exact amount of savings to the Medi-Cal Program from a drug discount program is unknown, but could be significant if the program enrolled a large number of consumers.

Similarly, the availability of a drug discount program could reduce costs for other state health programs. It could also do so for county indigent care by decreasing out-of-pocket drug expenses for low-income persons who require medications, thereby making them less likely to rely on county hospitals or clinics for assistance. The extent of these potential savings is unknown.

**Other Fiscal Effects.** This measure would affect both the prices and quantities of prescription drugs sold in California. In turn, this could affect taxable profits of drug makers and businesses that provide health care for their employees, as well as consumers’ disposable income. These changes could affect state revenues. Changes in the prices and quantities of drugs sold could affect state expenditures as well. The net impact of these factors on state revenues and expenditures is unknown.

## Argument in Favor of Proposition 78

Proposition 78 offers Californians struggling with high prescription drug costs real help, right now. Prop. 78 is a proven program that can take effect immediately, and will deliver critically needed prescription drug discounts to millions of seniors and low income, uninsured Californians.

Known as Cal Rx, Proposition 78 offers Californians the best prescription drug discount program in the country. It is an improved version of a successful program already operating in Ohio that is delivering discounts averaging 31%, saving consumers \$15.31 on every covered prescription. Every major prescription drug manufacturer participates in the Ohio program.

“This program is a lifesaver. My family saves \$150 a month on prescription drugs for my husband’s heart condition. For us, it’s a miracle.”

*Robin Ford, Canton, Ohio*

Proposition 78 is even better than the Ohio program. The California Department of Health Services concludes that the Cal Rx program enacted by Proposition 78 will result in discounts of over 40% to millions of eligible Californians. State officials say that Cal Rx prices will compare favorably to prices in Canada.

Here’s how Proposition 78 works:

- The program covers seniors and the uninsured with family incomes up to \$58,000 annually.
- Manufacturers will provide prescription drugs to the Cal Rx program at the lowest commercial price they sell to anyone in California and pharmacists will provide additional discounts. According to state officials, the average discount will be at least 40% off regular retail prices.
- Prop. 78 also makes it easier for people to get access to new and existing free drug programs, meaning even more savings for consumers.
- Enrollment is simple. People can sign up at their local pharmacy.

- Prop. 78 does not require a big government bureaucracy to implement. The discounts go right to the patient in their community.
- ALL drugs are eligible for discounts under Proposition 78, not just those on a government determined list.

“Proposition 78 offers real hope to millions of Californians who currently don’t have access to affordable prescription medications. We want all Californians in need to have access to prescription medications and Proposition 78 will do that.”

*Rick Roberts, HIV/AIDS Patient and Activist*

Proposition 78 enjoys bipartisan support. It is supported by groups representing seniors, patients, taxpayers, and small businesses across the state. A *Los Angeles Times* news report found Prop. 78, “would offer one of the most extensive discounts in the country.”

Proposition 78 will bring real help, right now. It can go into effect immediately and begin delivering deep discounts on prescription drugs, helping millions of seniors and low income, uninsured Californians.

There are two prescription drug discount proposals on the ballot, but only Proposition 78 will work. Unlike the other proposal, Prop. 78 doesn’t require federal approval, provides discounts on a wider range of drugs, doesn’t depend on a big government bureaucracy to be implemented, and won’t result in costly litigation by trial lawyers.

Please, join seniors, taxpayers, consumers, patient advocates, health care professionals, and small businesses, and VOTE YES on Proposition 78.

**KRISTINE YAHN, RN**, Executive Director  
Californians for Patient Care

**CAROLYN PETERSON, RN, MS, AOCN**  
Chief Operating Officer  
Community Hospice

**DORIS LUNA, RN**, Certified Pediatric Oncology Nurse  
UC Davis Medical Center

## Rebuttal to Argument in Favor of Proposition 78

Why are Californians struggling with high drug prices? Because the drug companies funding Prop. 78 charge high prices.

*If drug companies want to offer discounts voluntarily, they can do it today, without an initiative, without a new program.*

- Prop. 78 provides smaller discounts to fewer people and does not allow the state to enforce the discounts. This approach already failed in California.
- Prop. 79 builds on existing efforts that have saved taxpayers billions. It gives more middle and low income Californians bigger discounts that can be enforced.

**PROP. 78 USES AN APPROACH THAT HAS FAILED IN CALIFORNIA AND ELSEWHERE**

In 2001, California created the Golden Bear State Pharmacy which relied on drug companies to voluntarily lower their prices. The state shut it down because very few drug companies agreed to participate.

*Prop. 78 uses the same failed approach.*

**PROP. 78: SMALLER DISCOUNTS, FEWER PEOPLE, NO ENFORCEMENT**

*Drug companies face no penalty under Prop. 78 if they fail to provide discounts and the industry can shut down Prop. 78 at any time by failing to participate. Prop. 78 does not require any, much less all, drugs to be discounted, and it offers smaller discounts to fewer people.*

**DON’T BE FOOLED:** *If Prop. 78 gets more votes than Prop. 79, drug companies win and Californians lose.*

That’s why drug companies contributed more than \$50 million to pass Prop. 78 and defeat Prop. 79. That’s why consumers, seniors, unions, nurses, and doctors say VOTE NO on 78 and YES on 79.

**BARBARA A. BRENNER**, Executive Director  
Breast Cancer Action

**RAMÓN CASTELLBLANCH**, Policy Advisor  
Senior Action Network

**KATHY J. SACKMAN, RN**, President  
United Nurses Association of California

## Argument Against Proposition 78

## THE DRUG LOBBY IS SPENDING HISTORIC AMOUNTS TO BLOCK THE REAL SOLUTION FOR FAIR DRUG PRICES

Prop. 78 is a smokescreen designed and bankrolled with tens of millions of dollars from the prescription drug lobby to block Prop. 79, a real discount solution put forward by consumer, health, and senior groups. *Under their cynical strategy, if both measures get a majority, the one with more votes becomes law.*

Newspapers report that just one contribution from GlaxoSmithKline for \$8.5 million could be “the largest ever from a corporation to a California campaign.” *Drug companies donated \$50 million to Prop. 78 by mid-July, on track to run what could be the most expensive initiative campaign in California history.*

Jan Faiks, VP with PhRMA, the industry’s lobbying arm, told the *Los Angeles Times* “the industry would spend ‘whatever it takes’ to defeat [Prop. 79].”

## PROP. 78 RELIES ON MANUFACTURERS TO VOLUNTEER DISCOUNTS: A PLAN PROVEN TO FAIL

Prop. 78 relies on drug manufacturers to voluntarily lower their prices and does not allow the state of California to enforce the program.

*California tried this voluntary approach in 2001.* The Golden Bear State Pharmacy was designed to offer seniors voluntary discounts on prescription medications. More than 500 drug manufacturers were invited to participate, yet only 14 agreed. Unable to implement it successfully, Governor Schwarzenegger closed the program.

According to news reports, the drug companies said they didn’t participate in Golden Bear because if they did, they would have to give the federal government the same rebates they were giving California seniors. Have they really changed their minds four years later? Can we trust the manufacturers to voluntarily lower their prices now? No.

## PROP. 78’S DISCOUNTS CAN END AT ANY TIME

The drug lobby buried a provision in Prop. 78 that allows them to effectively close their discount program when too few manufacturers voluntarily lower their prices.

*As stated in their initiative, Prop. 78 could end at any time if there are too few participating manufacturers, or insufficient discounts, or too few participating consumers.*

Make no mistake, this provision was included by the drug companies so they can end the program at any time and protect their profit margins.

## FEWER PEOPLE ARE ELIGIBLE, DISCOUNTS ARE LESS

*Half as many Californians are eligible for discounts under Prop. 78 as under Prop. 79.* Prop. 78 provides no discounts to many uninsured Californians, those with catastrophic medical bills, and the chronically ill such as cancer and diabetes patients with inadequate drug coverage.

The discounts offered by Prop. 78 are based on the “lowest commercial price” set by the drug companies. These discounts could be anywhere from 15 to 40 percent—significantly less than Prop. 79’s discounts.

*VOTE NO on PROP. 78,* a smokescreen by the pharmaceutical industry to block the real solution to high prices.

*Instead, VOTE YES on PROP. 79* for fair prescription drug prices.

**NANCY J. BRASMER**, President  
California Alliance for Retired Americans  
**RICHARD HOLOBER**, Executive Director  
Consumer Federation of California  
**JACQUELINE JACOBBERGER**, President  
League of Women Voters of California

## Rebuttal to Argument Against Proposition 78

Proposition 78 is based on a successful Ohio program that delivers big discounts to consumers. Every major drug manufacturer participates in Ohio. Proposition 78 is an improved version of Ohio’s program and will produce even larger discounts.

Even opponents admit that Proposition 78 could result in 40% discounts for consumers. Because it is adapted from a program already in operation, Proposition 78 won’t be subject to lengthy court challenges. Unlike Prop. 79, Proposition 78 doesn’t need federal government approval. Prop. 78 can take effect immediately, helping millions of seniors and low income, uninsured Californians get relief from high prescription drug costs.

The comparison to the Golden Bear program is misleading. That program was flawed, couldn’t be implemented under federal rules to give Californians the largest discounts possible, and was abandoned by the state. Proposition 78 was written to FIX that problem.

This year, the Schwarzenegger administration, working with leading Democrats, came together in the Legislature to support the Cal Rx program contained in Proposition 78.

Had some legislators not succumbed to pressure from special interest groups and defeated Cal Rx in the Legislature, Californians would already be getting drug discounts.

Opponents falsely claim Proposition 78 can be abolished by drug companies. **ONLY THE STATE** can end the program if, for example, federal law changes and a new program becomes available that is better for Californians.

Proposition 78 is supported by dozens of groups representing seniors, taxpayers, small businesses, consumers, health care advocates, and patient groups. It offers millions of Californians real help, right now on prescription drug prices. **Vote YES on Proposition 78.**

**TOM MURPHY**, Chair  
California Arthritis Foundation Council  
**RUSTY HAMMER**, President  
Los Angeles Area Chamber of Commerce  
**JAMES S. GRISOLIA, M.D.**, Senior Vice President  
Epilepsy Foundation of San Diego County

## Official Title and Summary

Prepared by the Attorney General

### PRESCRIPTION DRUG DISCOUNTS. STATE-NEGOTIATED REBATES. INITIATIVE STATUTE.

- Provides for prescription drug discounts to Californians who qualify based on income-related standards, to be funded through rebates from participating drug manufacturers negotiated by California Department of Health Services.
- Prohibits new Medi-Cal contracts with manufacturers not providing the Medicaid best price to this program, except for drugs without therapeutic equivalent.
- Rebates must be deposited in State Treasury fund, used only to reimburse pharmacies for discounts and to offset costs of administration.
- At least 95% of rebates must go to fund discounts.
- Establishes oversight board.
- Makes prescription drug profiteering, as described, unlawful.

### SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- One-time and ongoing state costs, potentially in the low tens of millions of dollars annually, for administration and outreach activities for a new drug discount program. A significant share of these costs would probably be borne by the state General Fund.
- State costs, potentially in the low tens of millions of dollars, to cover the funding gap between when drug rebates are collected by the state and when the state pays funds to pharmacies for drug discounts provided to consumers. Any such costs not covered through advance rebate payments from drug makers would be borne by the state General Fund.
- Unknown potentially significant net costs or savings as a result of provisions linking state Medi-Cal rebate contracts and the new drug discount program.
- Unknown potentially significant savings for state and county health programs due to the availability of drug discounts.
- Unknown costs and revenues from the provisions regarding lawsuits over profiteering on drug sales.
- Potential unknown effects on state revenues and expenditures from changes in prices and quantities of drugs sold in California.

### ANALYSIS BY THE LEGISLATIVE ANALYST

#### BACKGROUND

**Prescription Drug Coverage.** Currently, several state and federal programs provide prescription drug coverage to eligible individuals. The state's Medi-Cal Program, which is administered by the Department of Health Services (DHS), provides prescription drugs for low-income children and adults. The state's

Managed Risk Medical Insurance Board administers the Healthy Families Program, which provides prescription drugs for children in low-income and moderate-income families who do not qualify for Medi-Cal.

Beginning January 2006, the federal government will provide prescription drug coverage to persons also enrolled in Medicare, a federal health program for elderly and disabled persons. (This would include

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)**

some persons enrolled in Medi-Cal who are also enrolled in Medicare.) Various other programs funded with state or federal funds also provide assistance to help pay part or all of the cost of drugs for specified individuals.

In addition, many Californians receive coverage for prescription drugs through private insurance that is purchased by individuals or provided by their employer or the employer of a member of their family.

**Drug Discounts for Individuals.** California, a number of other states, and private associations and drug makers have established drug discount programs. These programs help certain consumers, including individuals who are not eligible for state and federal programs that provide drug coverage, purchase prescription drugs at reduced prices. Current California law, for example, requires retail pharmacies to sell prescription drugs at a discount to elderly and disabled persons enrolled in Medicare as a condition of a pharmacy's participation in the Medi-Cal Program.

**Drug Rebates for Medi-Cal.** Federal law requires that drug makers provide rebates on their drugs to state Medicaid programs, such as Medi-Cal, so that the net price paid would be lower than that paid by most private purchasers. Also, the state negotiates for additional rebates from drug makers in exchange for giving the drugs made by those companies preferred status in the Medi-Cal Program. Preferred status means that doctors may prescribe a particular drug without receiving advance approval from the state. The rebates received by the state help reduce its costs for drugs for persons enrolled in Medi-Cal.

**Linking Medicaid to Other State Programs.** Some states have sought to obtain greater discounts from drug makers on prescription drugs for other health programs, including drug discount programs, by linking them to their Medicaid Programs. This approach involves allowing drug makers' products to have preferred status in their Medicaid Program only if the drug maker provides discounts or rebates on drugs for their non-Medicaid Programs. A 2003 U.S. Supreme Court decision has been interpreted to mean that states may do this as long as their

actions would further the goals of Medicaid, such as providing assistance to individuals who might otherwise end up on the Medicaid rolls, and as long as they seek and obtain prior federal approval for their actions.

**PROPOSAL**

This proposition creates a new state drug discount program to reduce the costs that certain residents of the state would pay for prescription drugs purchased at pharmacies. The major components of the measure are outlined below.

**Discount Card Program.** Under the new drug discount program, eligible persons could obtain a card that would qualify them for discounts on their drug purchases at pharmacies. The program would be open to California residents in families with an income at or below 400 percent of the federal poverty level—up to about \$38,000 a year for an individual or about \$77,000 for a family of four. Discount cards would also be available to some persons in families with higher incomes with medical expenses at or above 5 percent of their family's income. Persons enrolled in Medicare could obtain discount cards for drugs not covered by Medicare. Persons could not participate in the new drug discount program if they receive their drug coverage from the Medi-Cal or Healthy Families Programs.

The new drug discount program would be administered by DHS, which could contract with a private vendor for assistance. Participants would enroll in the program by paying a \$10 fee, and would pay an annual renewal fee of the same amount. Eligible persons could enroll or reenroll in the program at any pharmacy, doctor's office, or clinic which chose to participate in the drug discount program. Applications and renewals could also be handled through an Internet Web site or through a telephone call center. The DHS would review applications and mail the drug discount cards to eligible persons, usually within four days.

The state would seek two types of discounts in order to obtain lower prices for persons with the new drug discount cards. First, pharmacies that voluntarily chose to participate in the program

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)**

would agree to sell prescription drugs to cardholders at an agreed-upon discount negotiated in advance with the state. In addition, pharmacies would further discount the price to reflect any rebates the state negotiated with drug makers. (The pharmacies would subsequently be reimbursed for this second type of discount with rebates collected by the state from the drug makers.)

**Linkage to Medi-Cal Program.** The measure links this new drug discount program to the Medi-Cal Program for the purpose of obtaining reduced prices on drugs purchased with drug discount cards. Specifically, the measure states that DHS may not contract with a drug maker for the Medi-Cal Program if that drug maker does not sell its drugs at a reduced price to the new drug discount program. This includes contracts by which the state obtains rebates on drugs in exchange for giving those drugs preferred status in Medi-Cal. If a drug maker does not agree to such a contract for its drugs, its drugs may be subject to an existing requirement that a doctor receive prior approval from the state before such drugs are prescribed for a Medi-Cal patient. In addition, this measure provides that the names of drug makers and whether they entered into such contracts shall be released to the public.

The measure specifies that these requirements would be implemented consistent with federal law. It further specifies that these provisions would not apply to a drug if there were not another equivalent drug available. Also, the measure provides that a Medi-Cal beneficiary who has already been prescribed a drug would be allowed to continue to receive it without prior approval.

**Private Drug Discount Programs.** The measure directs DHS to implement agreements with drug discount programs operated by drug makers and other private groups so that the discount cards would automatically provide consumers with access to the best discount available to them for a particular drug purchase.

**New State Advisory Board.** The measure creates a new nine-member Prescription Drug Advisory Board to review the access that state residents have to prescription drugs as well as the pricing of those drugs, and to provide advice and regular reports on drug pricing issues to state officials.

**Outreach Efforts.** The measure directs DHS to conduct an outreach program to inform state residents about the new drug discount program. The outreach activities are to be coordinated with the Department of Aging, other state agencies, local agencies, and nonprofit organizations that serve residents who might be eligible for the program.

**Assistance to Businesses and Labor Organizations.** The measure authorizes DHS to establish a drug discount program to assist certain businesses and labor organizations that purchase health coverage for employees and their dependents. The DHS could help these organizations to reduce their drug costs by arranging for discounts on drug prices with pharmacies and seeking to negotiate rebates on drugs on behalf of employees and their dependents.

**Profiteering From Drug Sales.** Existing state law does not limit the prices or profits that can be earned on the sale of prescription drugs in California. This measure changes state law to make it a civil violation for drug makers and certain other specified parties to engage in profiteering from the sale of prescription drugs. The definition of profiteering includes demanding “an unconscionable price” for a drug or demanding “prices or terms that lead to any unjust and unreasonable profit.” Profiteering on drugs would be subject to prosecution by the Attorney General or through a lawsuit filed by any person acting in the interests of itself, its members, or the general public. Violators could be penalized in the amount of \$100,000 or triple the amount of damages, whichever was greater, plus legal costs.

**Related Provisions in Proposition 78.** Proposition 78 on this ballot also establishes a new state drug discount program. The key differences between Proposition 78 and Proposition 79 are shown in Figure 1.

The State Constitution provides that if a particular provision of a proposition that has been approved by the voters is in conflict with a particular provision of another proposition approved by the voters, only the provision in the measure with the higher number of yes votes would take effect. Proposition 78, another measure on the ballot, specifies that its provisions would go into effect in their entirety, and that none of the provisions of a competing measure such as

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)**

<b>FIGURE 1</b>		
<b>KEY DIFFERENCES BETWEEN PROPOSITIONS 78 AND 79</b>		
	<b>Proposition 78</b>	<b>Proposition 79</b>
<b>General eligibility requirements</b>	<ul style="list-style-type: none"> <li>California residents in families with an income at or below 300 percent of the federal poverty level. (About \$29,000 annually for an individual and \$58,000 for a family of four.)</li> <li>No such provision.</li> </ul>	<ul style="list-style-type: none"> <li>California residents in families with an income at or below 400 percent of the federal poverty level. (About \$38,000 annually for an individual and \$77,000 for a family of four.)</li> <li>Also, persons in families with medical expenses at or above 5 percent of their family's income.</li> </ul>
<b>Persons excluded from coverage</b>	<ul style="list-style-type: none"> <li>Persons with outpatient prescription drug coverage through Medi-Cal, Healthy Families, a third-party payer, or a health plan or drug discount program supported with state or federal funds (except Medicare beneficiaries).</li> <li>Certain persons with drug coverage, during the three-month period prior to the month the person applied for a drug discount card.</li> </ul>	<ul style="list-style-type: none"> <li>Persons with outpatient prescription drug coverage through Medi-Cal or Healthy Families (except Medicare beneficiaries).</li> <li>No such provision.</li> </ul>
<b>Application and renewal fee</b>	<ul style="list-style-type: none"> <li>\$15 per year.</li> </ul>	<ul style="list-style-type: none"> <li>\$10 per year.</li> </ul>
<b>Method of obtaining rebates from drug makers</b>	<ul style="list-style-type: none"> <li>Negotiated with drug makers.</li> <li>No such provision.</li> </ul>	<ul style="list-style-type: none"> <li>Negotiated with drug makers.</li> <li>Subject to federal approval, links new drug discount program to Medi-Cal for the purpose of obtaining rebates on drugs.</li> </ul>
<b>Assistance to business and labor organizations</b>	<ul style="list-style-type: none"> <li>No such provision.</li> </ul>	<ul style="list-style-type: none"> <li>Establishes drug discount program to assist certain business and labor entities.</li> </ul>
<b>Prescription Drug Advisory Board</b>	<ul style="list-style-type: none"> <li>No such provision.</li> </ul>	<ul style="list-style-type: none"> <li>Creates new nine-member panel to review the access to and pricing of drugs.</li> </ul>
<b>Lawsuits over drug profiteering law</b>	<ul style="list-style-type: none"> <li>No such provision.</li> </ul>	<ul style="list-style-type: none"> <li>Changes state law to make it a civil violation for a drug maker to engage in profiteering from the sale of drugs.</li> </ul>

## ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

Proposition 79 would take effect, if Proposition 78 received the higher number of yes votes.

### FISCAL EFFECTS

This measure could have a number of fiscal effects on state and local government. We discuss several major factors below that could result in costs or savings.

**State Costs for Administration and Outreach Activities.** The DHS, the Department of Aging, and the newly created Prescription Drug Advisory Board would, in combination, incur significant startup costs, as well as ongoing costs, for administrative and outreach activities to implement the new drug discount program created by this proposition.

This could include administrative costs to:

- Establish the new program, including any new information technology systems that would be needed for its operation.
- Operate the Internet Web site and the call center to receive applications for drug discount cards.
- Process applications and renewals of drug discount cards.
- Negotiate and collect rebates from drug manufacturers and make advance rebate payments to pharmacies.
- Assist business and labor organizations in obtaining drug discounts.
- Coordinate the state's drug discount program with other private drug discount programs.

As noted earlier, this measure links its new drug discount program to Medi-Cal contracts that permit some drugs to be prescribed to Medi-Cal patients without prior approval by the state. To the extent that additional prior approvals of drugs are required for Medi-Cal patients as a result of these provisions, DHS would incur additional administrative costs to process these requests.

The state would also incur additional costs for the proposed outreach activities, potentially including costs for radio or television advertising, written materials, and other promotional efforts to make consumers aware of the drug discount program.

In the aggregate, these administrative and outreach costs—including costs for business and

labor assistance as well as processing additional Medi-Cal requests for prior approval of drug prescriptions—would probably range in the low tens of millions of dollars annually. The exact fiscal effect would depend primarily on the extent of outreach efforts and the number of consumers who chose to participate in the drug discount program.

These state costs could be partly offset by (1) up to a 5 percent share of the rebates collected from drug makers, (2) any private donations received for the support of outreach efforts, and (3) a portion of the enrollment fees collected for the program. Our analysis indicates that the 5 percent share of rebate funding alone is unlikely to offset these state costs. The amount of donations that the state would receive on an ongoing basis for outreach activities is unknown. The amount of fee revenue that would be collected by the state is also unknown. In view of the above, it appears likely that a significant share of the cost of this program would be borne by the state General Fund.

**Costs for "Float."** This measure requires the state to reimburse pharmacies for part of the amount that they discounted their drugs. This reimbursement reflects discounts for which the state receives rebates from drug makers.

The reimbursement to pharmacies must be made within two weeks after their claims are filed with the state. However, drug makers are required by the measure to pay rebates to the state on at least a quarterly basis. This means that the state could, in many cases, pay out rebates to pharmacies before it actually collects the rebate funds from drug makers. Moreover, any disputes that arise over the actual amounts owed for rebates could further slow payments of rebate funds by drug makers to the state.

This recurring gap in funding between when rebate money is collected by the state and when the state has to pay pharmacies is commonly referred to as float. The cost of the float is unknown, but could amount to the low tens of millions of dollars, depending on the level of participation in the new drug discount program. Float costs would occur mainly in the early years of implementing this new program. After the program has been fully implemented, rebate funds collected from drug

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)**

makers should be largely sufficient to reimburse pharmacies.

This measure permits the state to enter into agreements with drug makers to collect rebate funds in advance. The amount of funding that the state would receive through such advance payments is unknown. Any float costs that exceeded these advance rebate payments would be borne by the state General Fund.

***State Costs or Savings From Linking Drug Discount Programs to Medi-Cal.*** As noted earlier, this proposition states that DHS may not enter into a Medi-Cal contract with a drug maker that did not agree to provide discounts on the price of their drugs for the new drug discount program. This provision could result in additional costs and savings to the Medi-Cal Program depending upon future actions by the federal government, drug makers, or doctors. For example, this provision could result in the state receiving fewer drug rebates from drug makers for the Medi-Cal Program, thus resulting in costs. On the other hand, this provision could result in savings in cases in which the removal of a drug from preferred status resulted in fewer prescriptions of the drug and its replacement by a less costly medication. The net fiscal effect of this provision on the Medi-Cal Program is unknown but could be significant.

***Potential Savings for State and County Health Programs.*** The drug discount program established under this proposition could reduce costs to the state and counties for health programs.

Absent the discounts available under such a drug discount program, some lower income individuals who lack drug coverage might forego the purchase of their prescribed drugs. Such individuals might eventually require hospitalization as a result of their untreated medical conditions, thereby adding to Medi-Cal Program costs. Other individuals might

“spend down” their financial assets on expensive drug purchases absent such discounts and become eligible for Medi-Cal. The exact amount of savings to the Medi-Cal Program from a drug discount program is unknown, but could be significant if the program enrolled a large number of consumers.

Similarly, the availability of a drug discount program could reduce costs for other state health programs. It could also do so for county indigent care by decreasing out-of-pocket drug expenses for low-income persons who require medications, thereby making them less likely to rely on county hospitals or clinics for assistance. The extent of these potential savings is unknown.

***State Costs and Revenues From Provision on Profiteering From Drug Sales.*** This measure would have an unknown fiscal impact on state support for local trial courts, depending primarily on whether the measure increases the overall level of court workload. The number of civil cases that might result from this measure is unknown. Also, the measure could result in some additional costs for the Attorney General to prosecute profiteering cases. These costs are estimated by the Department of Justice to be less than \$1 million annually. However, these costs could be offset to the extent that the state collected revenues from civil penalties in cases where civil prosecutions were successful.

***Other Fiscal Effects.*** This measure would affect both the prices and quantities of prescription drugs sold in California. In turn, this could affect the taxable profits of drug makers and businesses that provide health care for their employees, as well as consumers’ disposable income. These changes could affect state revenues. Changes in the prices and quantities of drugs sold could affect state expenditures as well. The net impact of these factors on state revenues and expenditures is unknown.

## Argument in Favor of Proposition 79

As prescription drug prices soar, more and more Californians are forced to choose between vital medicines and other necessities.

There are two prescription drug measures on the ballot. Prop. 78 is sponsored by drug companies. *Prop. 79 is sponsored by consumer, senior and health organizations, and labor unions.*

The pharmaceutical industry has pledged to spend “whatever it takes” to defeat Prop. 79, launching what could be the most expensive initiative campaign in California history. Manufacturers like GlaxoSmithKline and Merck have each donated nearly \$10 million. Here’s why:

**PROP. 79 PROVIDES ENFORCEABLE, NOT “VOLUNTARY,” DISCOUNTS BY DRUG COMPANIES**

*Prop. 78 is completely voluntary for drug companies: they are free to choose whether or not to offer discounts. But California has tried a voluntary drug discount plan before. The pharmaceutical industry refused to participate so the program dissolved in 2001.*

*Prop. 79 has an enforcement mechanism.*

If a drug company refuses to provide discounts, the state can shift business away from that company and buy from other drug companies that offer discounts.

**CALIFORNIA WOULD USE ITS PURCHASING POWER TO GET THE BEST PRICE**

Americans pay more for their prescriptions than consumers in many wealthy nations. That’s in part because these other governments negotiate discounts from the drug industry on behalf of their citizens.

California does something similar through Medi-Cal, negotiating discounts of 50 percent and more, saving taxpayers \$5 billion in the last 10 years. Prop. 79 builds on this success, using the same mechanism to negotiate these discounts for eligible Californians. As a result, consumers will pay less out of their own pockets for prescriptions at the expense of the drug companies, not taxpayers.

*Under Prop. 79, eligible Californians would get a drug discount*

*card to present to their pharmacist to receive discounts of up to 50 percent or more.*

**PROP. 79 OFFERS DISCOUNTS TO 8–10 MILLION CALIFORNIANS**

*Nearly twice as many Californians will be eligible for discounts under Prop. 79 than under Prop. 78, including:*

- Californians with catastrophic medical expenses who spend at least five percent of their income on medical expenses;
- The uninsured who earn up to 400 percent of the Federal Poverty Level (\$64,360 for a family of three);
- Californians on Medicare for drug costs not fully covered by Medicare;
- Seniors, the chronically ill, and others with inadequate drug coverage through private insurers or their employer.

**PROP. 79 WOULD SAVE PATIENTS, TAXPAYERS, AND EMPLOYERS MONEY**

By making affordable drugs more accessible to more people than Prop. 78, fewer people would fall onto Medi-Cal or other public programs, and need to use taxpayer-funded emergency rooms. Prop. 79 can reduce employers’ health premiums by authorizing a new purchasing pool to reduce drug prices for employer-paid coverage.

**PROP. 79: BACKED BY DOZENS OF HEALTH, SENIOR, AND CONSUMER ADVOCACY ORGANIZATIONS**

Stand up to the unfair, unaffordable prices of the prescription drug industry. For real, enforceable discounts of up to 50 percent or more on prescription drugs for 8–10 million Californians, *VOTE YES on PROP. 79.*

**HENRY L. “HANK” LACAYO**, State President  
Congress of California Seniors

**ELIZABETH M. IMHOLZ**, West Coast Office Director  
Consumers Union

**LUPE ALONZO-DIAZ**, Executive Director  
Latino Coalition for a Healthy California

## Rebuttal to Argument in Favor of Proposition 79

There are good reasons why pharmaceutical companies, health professionals, and patient advocates oppose Proposition 79:

- The measure is so poorly written it will result in years of legal challenges and will never get approval by the federal government.
- It contains the same flaw that caused the failure of a similar program in Maine.
- Proposition 79 would let trial lawyers file thousands of lawsuits claiming that prices are too high or profits are unreasonable. Worse, the measure doesn’t define what is a fair price or profit.

The backers of Proposition 79 rant against the pharmaceutical industry to obscure the real issues. The pharmaceutical industry is just one of many that have spoken out against Prop. 79. Groups representing seniors, physicians, nurses, taxpayers, small businesses, and patients all oppose Proposition 79. Prop. 79 is also opposed by leaders in the fight against heart disease, cancer, epilepsy, asthma, AIDS, lupus, and many other diseases.

Prop. 79 won’t provide drug discounts to more people than Prop. 78 because Prop. 79 won’t ever take effect. Just like a similar measure in Maine that spent years in court and never resulted in a single drug discount, Prop. 79 is a false promise. And if Proposition 79 did ever get implemented, it would establish a big government program costing taxpayers millions to administer and put at risk over \$480 million the state currently receives in drug rebates.

There is only one drug discount program on the ballot that will work and that is Proposition 78. Please don’t be fooled by Prop. 79. It’s the wrong prescription for California.

**RODRIGO A. MUNOZ, M.D.**, Past President  
San Diego County Medical Society

**JOHN MERCHANT**, Chair  
California Citizens Against Lawsuit Abuse

**CHRIS MATHYS**, President  
Valley Taxpayers Coalition, Inc.

## Argument Against Proposition 79

We all want to provide cheaper prescription drugs to needy Californians, but Proposition 79 just won't work. It's based on a flawed proposal from the state of Maine that never went into effect, never delivered a single discount, and was ultimately abandoned by Maine. Californians don't need another false initiative promise that will result in years of legal challenges and ultimately never go into effect.

"Maine residents were counting on a drug discount program that was just like California's Proposition 79. But it was tied up in court and never received approval from the federal government. Not a single patient got a discounted drug as a result of that failed program."

*Calvin Fuhrmann, MD, FCCP  
Kennebunk Medical Center, Maine*

Backed by public employee unions, Proposition 79 sets up another big government program that will cost California millions. With huge budget deficits that already affect funding for critical programs, how can we take on a massive new government program? On top of that, Proposition 79 jeopardizes over \$480 million in rebates that taxpayers currently receive from pharmaceutical companies.

Because Proposition 79 changes the state's Medi-Cal program, which is largely funded with federal dollars, the federal government would have to approve Proposition 79. No federal administration, Democratic or Republican, has ever approved a program like Proposition 79.

Why won't Proposition 79 receive federal approval? Prop. 79 risks the health of poor patients in order to provide drug discounts for people who make as much as \$77,000 annually, including some people who already have health insurance. Proposition 79 says that if a drug manufacturer does not provide steep discounts to these higher income Californians, they can't provide prescription drugs to help the poor, seniors, and disabled patients who depend on Medi-Cal.

"Proposition 79 jeopardizes access to prescription drugs for the lowest income and most vulnerable individuals in this state."

*Neva Hirschhorn, Executive Director  
Epilepsy Foundation of Northern California*

A hidden section in Proposition 79 will let trial lawyers file thousands of frivolous lawsuits simply by claiming the price charged for the product is too much or that the manufacturer's profits are too high. The initiative doesn't define what is a fair price or a reasonable profit! Worse, trial lawyers don't need a client to bring these lawsuits and can keep for themselves 100% of the money they are able to force from a defendant!

"Last November, Californians passed Proposition 64 to prevent shakedown lawsuits. Proposition 79 would re-open the door to shakedowns, flood our courts with frivolous litigation, and drive up the cost of prescription drugs."

*John H. Sullivan, President  
Civil Justice Association of California*

Like so many previous initiatives, 79 won't deliver what it claims. It will result in years of litigation and will ultimately be rejected by the federal government. It creates an expensive big government program, jeopardizes the health of low income Californians, and will result in a deluge of frivolous litigation benefiting trial lawyers at our expense.

Prop. 79 is the wrong prescription for California. Join seniors, taxpayers, health advocates, patients, and small businesses and VOTE NO on Proposition 79.

**TOM MURPHY**, Chair  
California Arthritis Foundation Council

**JOHN KEHOE**, Policy Director  
California Senior Advocate League

**RODNEY HOOD, MD**, President  
Multicultural Foundation

## Rebuttal to Argument Against Proposition 79

*If Prop. 79 won't work, why did drug companies contribute more than \$50 million to defeat it?*

**PROP. 79 IS BASED ON CALIFORNIA EXPERIENCE**

*Prop. 79 builds on a successful effort that reduces drug costs for California through enforceable discounts.*

**PROP. 79 SAVES TAXPAYERS MONEY**

The discounts are delivered to consumers from drug companies and pharmacies. This not only saves money for consumers, and gets them the care they need, it also saves taxpayers money on health care costs.

**PROP. 79 CAN BE IMPLEMENTED IMMEDIATELY**

*"Thousands of Maine residents have received drug discounts through our program, without the need for federal approval, despite aggressive opposition and litigation by the pharmaceutical companies."*

*Maine Governor John E. Baldacci, July 2005*

**PROP. 79 HELPS CALIFORNIANS GET THE DRUGS THEY NEED**

*Prop. 79 will not put the health of poor Californians at risk. It employs the same, successful mechanism the Medi-Cal drug program has used for the last decade to help provide*

California with the best price. Protections are already in place to ensure Medi-Cal patients don't go without the prescriptions they need.

**IF ANYBODY USES THE COURTS AGGRESSIVELY, IT'S THE DRUG COMPANIES**

The drug companies launched dozens of lawsuits across the country to keep discount efforts like Prop. 79 from becoming law. *They have already sued to block Prop. 79, only to have the case dismissed by a judge.*

Join consumer, senior, and health organizations: VOTE YES on Prop. 79.

*Check the facts and research for yourself.*

Visit [www.VoteYesOnProp79.org](http://www.VoteYesOnProp79.org).

**BETTY PERRY**, Public Policy Director  
Older Women's League of California

**MICHAEL WEINSTEIN**, President  
AIDS Healthcare Foundation

**JACQUELINE JACOBBERGER**, President  
League of Women Voters of California

## Official Title and Summary

Prepared by the Attorney General

### ELECTRIC SERVICE PROVIDERS. REGULATION. INITIATIVE STATUTE.

- Subjects electric service providers, as defined, to control and regulation by California Public Utilities Commission.
- Imposes restrictions on electricity customers' ability to switch from private utilities to other electric providers.
- Provides that registration by electric service providers with Commission constitutes providers' consent to regulation.
- Requires all retail electric sellers, instead of just private utilities, to increase renewable energy resource procurement by at least 1% each year, with 20% of retail sales procured from renewable energy by 2010, instead of current requirement of 2017.
- Imposes duties on Commission, Legislature and electrical providers.

### SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- Potential annual state administrative costs ranging from negligible up to around \$4 million for regulatory activities of the California Public Utilities Commission, paid for by fee revenues.
- Unknown net impact on state and local government costs and revenues due to the measure's uncertain impact on retail electricity rates.

## ANALYSIS BY THE LEGISLATIVE ANALYST

### BACKGROUND

**Provision of Electricity Service.** Californians generally receive their electricity service from one of three types of providers: investor owned utilities (IOUs), local publicly owned electric utilities, and electric service providers (ESPs). Investor owned utilities have a defined geographic service area and are required by law to serve customers in that area. The three largest electricity IOUs in the state are Pacific Gas & Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company. The California Public Utilities Commission (PUC) regulates the IOUs' rates and how electricity service is provided to their customers (commonly referred to as "terms of service"). (See the nearby text box for definitions of commonly used terms throughout this analysis.)

Publicly owned electric utilities are public entities that provide electric service to residents and businesses in their local area. Unlike IOUs, they are not regulated by the PUC. Major publicly owned electric utilities include the Los Angeles Department of Water and Power, the Sacramento Municipal Utility District, and the Imperial Irrigation District.

The ESPs provide retail electricity service to customers who have chosen not to receive electricity service from the utility that serves their area.

Instead, these customers have entered into "direct access" contracts with ESPs for their electricity. This electricity is delivered to these ESP customers through the transmission and distribution system of their local utility. There are currently eighteen registered ESPs operating in the state, generally serving large industrial and commercial businesses. The ESPs also provide electricity to certain state and local government entities, such as the California State University system, several University of California campuses, some community college districts, and some local school districts.

Under current law, ESPs are only required to register with the PUC for licensing purposes; their rates and terms of service are not regulated by the PUC. However, the PUC has applied certain additional requirements to ESPs (discussed below).

Currently, the IOUs provide about 71 percent of the electricity in the state; publicly owned electric utilities provide 14 percent; ESPs provide 11 percent; and the state's Department of Water Resources provides 4 percent (chiefly for the operation of the State Water Project).

**Deregulation and Direct Access.** California began the process of restructuring electricity service in the early 1990s by introducing competition into the generation of electricity, with the ultimate goal being lower prices for IOU customers. The plan ultimately adopted in 1996 included a "transition"

ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

COMMONLY USED TERMS—PROPOSITION 80

- ✓ **Community Choice Aggregation**—The authority of a city or county to aggregate all the electrical demand of the residents, businesses, and municipal users under its jurisdiction and to meet this demand from an electricity provider other than the electric utility currently serving that local area.
- ✓ **Direct Access**—Retail electricity service is provided to a customer directly from an electric service provider, rather than from the utility (local publicly owned or investor owned) that serves the customer's area.
- ✓ **ESP (Electric Service Provider)**—Companies that provide retail electricity service directly to customers who have chosen not to receive service from the utility that serves their area. Customers of ESPs are referred to as “direct access” customers.
- ✓ **IOU (Investor Owned Utility)**—Privately owned electric utilities that have a defined geographic service area and are required by law to serve customers in that area. The Public Utilities Commission regulates the IOUs' rates and terms of service.
- ✓ **Procurement Process**—The process, overseen by the Public Utilities Commission, through which the IOUs secure long-term electricity supplies through competitive bidding.
- ✓ **PUC (Public Utilities Commission)**—The state agency that regulates various types of utilities, including investor owned electric utilities.
- ✓ **Renewables Portfolio Standard**—Requirement that electricity providers increase their share of electricity generated from renewable sources (such as wind or solar power) according to a specified timeline.
- ✓ **Resource Adequacy Requirement**—Requirement of the PUC that IOUs and ESPs show that they will have adequate electricity supplies to meet projected demand and maintain system reliability.
- ✓ **Time-Differentiated Electricity Rates**—An electricity rate structure under which customers would be charged different prices for electricity based on the time of day in which it is used, given that the availability and cost of providing electricity varies depending on the time of day.

period during which the IOUs were to sell off their fossil fuel power plants to independent generators, while retaining their hydroelectric and nuclear power plants. During this transition period, the PUC continued to regulate the IOUs' rates. Eventually, however, electricity purchases and customer rates were to be determined in a competitive market. In such a market, customers could choose to have the IOUs purchase the electricity on their behalf, or they could purchase electric power *directly* from ESPs through “direct access.”

The deregulation process was put on hold in response to the energy crisis that arose in 2000 and early 2001. At that time, the combination of sharply rising electricity demand, lagging investment in new power plants, and other factors led to electricity shortages and sharply rising prices. At that point, two of the IOUs were still under the transition period and therefore remained under PUC rate regulation. These IOUs were not permitted to pass along the sharply rising wholesale costs to their customers and were pushed into near financial insolvency.

In response to the energy crisis, the state began purchasing electricity on behalf of the IOUs and halted several aspects of deregulation. Among these, the state prevented the IOUs from continuing to sell their power plants and suspended new direct access for IOU customers. Under existing law, this suspension will continue until long-term electricity contracts signed on behalf of the IOUs by the Department of Water Resources expire. The last of the contracts expires in 2015.

While individual customers are currently barred from entering into direct access service, current law does allow a city or county to aggregate all the electrical demand of the residents, businesses, and municipal users under its jurisdiction and to meet this demand from an electricity provider other than the local IOU, such as an ESP. This variation on direct access is referred to as “community choice aggregation.”

**Long-Term Procurement Process and Resource Adequacy Requirements.** As required by current law, the PUC is currently overseeing a process through which the IOUs secure long-term electricity supplies through a competitive bidding process. Under this competitive “procurement process,” the IOUs select a mix of electricity supplied by their own power plants and electricity provided under contract from other generators to meet their long-term electricity needs. The PUC approved the IOUs' first long-term procurement plans in April 2004.

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)**

In addition, the PUC has adopted rules requiring both the IOUs and the ESPs to show that they will have enough electricity to meet projected demand, known as a resource adequacy requirement.

**Renewables Portfolio Standard.** Current law requires that electricity providers, including the IOUs, community choice aggregators, and ESPs, increase their share of electricity generated from renewable sources (such as solar or wind power) by 1 percent per year, up to 20 percent of their total electricity supply by 2017. This requirement is known as the renewables portfolio standard.

The PUC has adopted a policy of accelerating the 20 percent requirement to 2010, but this is not required by law. Current law does not require electricity providers to continue to increase the proportion of their electricity from renewable sources once they have reached the 20 percent requirement.

**Time-Differentiated Electricity Rates.** Generally, all but the largest electricity consumers pay electricity rates that do not change based on the time of day or season. The IOUs have submitted proposals to the PUC to implement a system of time-differentiated rates that would apply to more consumers. Under such a system, customers would be charged different prices for electricity based on the time of day in which it is used, given that the cost to the IOUs of providing electricity varies depending on the time of day. For example, during peak demand times, customers would pay higher rates, while they would pay lower rates during the lower demand times of the day. In theory, time-differentiated pricing would encourage consumers to reduce electricity consumption during periods of peak demand, typically hot summer afternoons when electricity supply is the tightest and therefore its cost is high. The PUC is currently considering IOU proposals to implement time-differentiated rates in a regulatory proceeding, and has not yet determined how such a system of rates would be applied to more consumers.

**PROPOSAL**

**Overview of Measure.** The measure addresses a number of aspects of the state's electricity market: the regulation of the ESPs and direct access, the procurement process, resource adequacy requirements, the renewables portfolio standard, and the use of time-differentiated electricity rates. Each of these aspects is discussed below.

**Regulation of ESPs.** The measure places the ESPs under the "jurisdiction, control and regulation" of the PUC. The measure specifies that the scope of this regulation includes the enforcement of requirements related to energy procurement, contracting standards, resource adequacy, energy efficiency, demand response, and the renewables portfolio standard. While the measure broadens the authority of the PUC to regulate the ESPs, it does not, however, specify the extent to which it would regulate ESP rates and terms of service.

**Direct Access.** In general, the measure bars any customer currently receiving electricity service from an IOU from switching to an ESP. Customers currently being served by direct access contracts with ESPs could continue to receive electricity service from ESPs, effectively "grandfathering" in their direct access service. Direct access customers could also return to IOU electricity service under specified conditions. The measure does not restrict current or future community choice aggregation.

**Procurement Process.** The measure requires that the PUC implement a long-term procurement process, and directs the PUC to consider a series of factors in evaluating the IOUs' long-term procurement plans. While the PUC generally now considers the factors listed in the measure, current law does not specify that all of these factors be considered.

The measure also requires that the first priority for IOUs in procuring new electricity is to be from "cost-effective" energy efficiency and conservation programs, followed by "cost-effective" renewable resources, and then from traditional sources such as fossil fuel burning power plants. This "loading order," as it is known, has been adopted by the PUC, but is not currently required by law.

**Resource Adequacy Requirement.** The measure requires both the IOUs and ESPs to show that they are able to meet peak demand with adequate reserves to ensure system reliability. This puts into law current PUC practice.

**Renewables Portfolio Standard.** The measure accelerates to December 31, 2010, the deadline for the IOUs and ESPs to meet the 20 percent renewable resources requirement, consistent with a recent PUC decision. The measure also deletes a provision in existing law that explicitly provides that electricity providers are not required to increase their share of electricity from renewable sources once the 20 percent requirement has been reached.

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)**

***Time-Differentiated Electricity Rates.*** Under the measure, residential and small commercial customers with electricity use under a specified amount and in a building built before January 2006 could not be required to pay time-differentiated electricity rates without their consent.

***Amending the Measure.*** The measure states that the Legislature may amend the measure only to achieve its “purposes and intent” and would require a two-thirds vote of both legislative houses and signature of the Governor to do so. To the extent that the measure puts into law existing processes and policies of the PUC that are not currently required by law, the measure would make it more difficult for the state to modify these practices and policies when, for example, conditions in the electricity market change.

**FISCAL EFFECTS**

***State Administrative Costs to Implement Measure.*** The measure could increase the PUC’s administrative costs, largely depending on the extent to which the commission exercises the broadened authority given to it under the measure to regulate the ESPs. The fiscal impact on the PUC could range from a negligible cost up to around \$4 million annually. The upper end of the range would occur if the PUC regulates the rates and terms of service of the ESPs. The measure, however, would not increase the PUC’s costs in areas where the measure puts into law existing PUC practices related to procurement, resource adequacy, and the renewables portfolio standard. Under current law, the potential additional costs would be funded by fees paid by electricity customers.

***Uncertain Impact on State and Local Costs and Revenues.*** The primary fiscal effect of this measure

on state and local governments would depend on the impact it would have on electricity rates.

Changes in electricity rates would affect government *costs* since state and local governments are large consumers of electricity. To the extent that the measure limits state and local governments from entering into new direct access contracts, the measure takes away an opportunity for these government entities to potentially reduce their electricity costs.

State and local *revenues* would be affected by the measure’s impact on electricity rates, since tax revenues received by governments are affected by business profits, personal income, and sales—all of which in turn are affected by what persons and businesses pay for electricity.

It is not possible to determine the net effect of this measure on electricity rates (and hence state and local government costs and revenues), as the net impact would be influenced by several potentially offsetting factors. For example:

- To the extent that the measure increases certainty about the structure of the electricity market, this may encourage additional investment in the market. Such investment, including the construction of new generation, could increase the supply of electricity and potentially lower electricity rates.
- On the other hand, the measure’s ban on customers entering into new direct access contracts with ESPs could result in higher electricity rates over the long term by limiting competition in the retail electricity market.

The measure’s impact on retail electricity rates would be influenced by a number of factors, including the specific structure of the regulations adopted by the PUC to implement the proposition.

## Argument in Favor of Proposition 80

Five years ago, California was devastated by an electricity crisis.

Enron and other energy traders held Californians hostage, extorting tens of billions of dollars from us. They manipulated the electricity market, driving up wholesale prices 1000%. Californians faced rolling blackouts and untold economic damage.

Audiotapes released by the U.S. Justice Department revealed Enron energy traders boasting of “making buckets of money” by creating power shortages. One trader laughed about “all the money you guys stole from those poor grandmothers in California,” while another ordered a power plant worker to “just go ahead and shut her down.”

California’s failed experiment in electric deregulation cost our people and businesses billions of dollars.

We learned many lessons from that disaster. The state has taken some positive steps to clean up the mess—but not nearly enough. Amazingly, legislation to require sufficient supplies of electricity was vetoed by the Governor last year.

That’s why Proposition 80—the Repeal of Deregulation and Blackout Prevention Act—is on the ballot.

It provides critical reforms to make sure our deregulation nightmare never returns.

It provides the stability necessary to ensure long-term investment in new, clean electricity supplies.

Here’s how Proposition 80 accomplishes these goals:

*Lower rates.* It requires independent generators and utilities to compete against each other to give ratepayers the best deal on new power plants.

*Adequate supplies.* It requires all electricity providers to have enough power and reserves to keep the lights on. That simple requirement—critical to ending market manipulation and keeping the system stable—was vetoed last year.

*Market stability.* It makes sure that utilities know how many customers they will have to serve, so they can make long-term investments in new supplies. Amazingly,

deregulation advocates have pushed legislation that would create more uncertainty and destabilize the market.

*Regulation.* It ensures that all electricity providers are subject to regulation and control, so that traders cannot manipulate the system.

*Renewables and energy efficiency.* It speeds up the shift to renewable energy, and gives first priority to energy efficiency programs.

*Ratepayer protection.* It prevents small ratepayers from being forced onto potentially expensive time-of-use rates without their consent—especially important in hot climates.

Proposition 80 was carefully drafted by the state’s foremost consumer advocates and legal experts. It allows for amendments by the Legislature consistent with its purposes, to adjust to changing times.

Proposition 80 is a common-sense measure that achieves a clear goal:

*Never again* will California be taken to the cleaners by greedy energy traders.

*Never again* will we be subject to rolling blackouts and skyrocketing electricity prices because of power shortages and market manipulation.

Instead, Proposition 80 means that Californians can look forward to getting the cleanest, greenest energy at the lowest possible prices.

Proposition 80 means that Californians can expect a stable electricity future, with sensible long-term investment in cost-effective energy solutions.

That’s why consumers, seniors, environmentalists, business groups, labor organizations, minority groups, and people from all walks of life support Proposition 80.

**ROBERT FINKELSTEIN**, Executive Director  
The Utility Reform Network (TURN)

**RICHARD HOLOBER**, Executive Director  
Consumer Federation of California

**NAN BRASMER**, President  
California Alliance of Retired Americans

## Rebuttal to Argument in Favor of Proposition 80

*Proposition 80 is the wrong way to make energy policy for California. The initiative would lock in renewable energy goals established back in 2002, even though environmental groups and Governor Schwarzenegger have urged that California should set higher targets for renewable energy. The initiative would make it harder for the Legislature to pass a stronger renewable plan in the future.*

*Proposition 80 is the wrong way for California. Vote NO on Proposition 80.*

*V. John White, Executive Director  
Center for Energy Efficiency and Renewable Technologies*

*We agree with Mr. White and believe the proponents’ confusing argument shows just how risky Proposition 80 really is. No one wants to relive the Enron Era. This vote is about the future, not the past.*

*PROPOSITION 80 IS POORLY WRITTEN, RISKY ENERGY POLICY. IT’S BAD FOR CONSUMERS AND BAD FOR THE ENVIRONMENT. Energy policy is too complex for the initiative process and should be developed through a more comprehensive approach that includes public hearings.*

*What does Proposition 80 mean to you?*

*PROPOSITION 80 WON’T PREVENT ANOTHER ENERGY CRISIS OR FUTURE BLACKOUTS. In fact, it could stall investment in new power plants California needs to prevent another energy crisis.*

*PROPOSITION 80 WON’T LOWER YOUR ELECTRIC BILL AND IT ELIMINATES CUSTOMER CHOICE. Proposition 80 prohibits power consumers like schools and hospitals from buying cheaper and cleaner energy, making needed goods and services more expensive and placing our environment at risk.*

*Proposition 80 is too risky. Protect consumers and the environment. Vote No on Proposition 80.*

**LES NELSON**, President  
California Solar Energy Industries Association

**DOROTHY ROTHROCK**, Co-Chair  
Californians for Reliable Electricity

**TONY VALENZUELA**, Associate Vice President  
Facilities, Development and Operations at  
San Jose State University

## Argument Against Proposition 80

*Proposition 80 is a high-risk approach that could hurt consumers, the environment and the state's economy. This deeply flawed measure will undermine the security of state energy supplies, undercut the availability of affordable electricity and undercut the construction of environmentally-friendly renewable energy generation from wind, solar, and geothermal resources.*

*It will sharply restrict consumer choice about who we buy our electricity from and how much we pay for services. It could well lead us down the road toward another serious energy crisis. That's because Proposition 80 is the wrong way to make energy policy for California.*

*Reinventing California's energy system through the initiative process, without public hearings is too great a risk to take. Instead, this critical issue should be addressed carefully through public hearings that involve all affected parties, including the state Utility and Energy Commissions, consumer groups, and small business associations.*

*Because Proposition 80 takes away energy choices and price competition, energy cost savings will be limited or lost for many of California's vital institutions such as community colleges, the University of California and the State University systems, local school districts, hospitals, and city and county governments. Taxpayers, students, teachers, and patients will ultimately pay for these higher energy costs.*

*PROPOSITION 80 TAKES AWAY THE RIGHT OF CONSUMERS AND BUSINESSES TO CHOOSE AN ENERGY SUPPLIER THAT CAN SAVE MONEY. Just when California needs more jobs and investments in our infrastructure to help our economy, Proposition 80 sends the wrong signal of uncertainty and risk. Proposition 80 takes away an energy choice that often attracts high paying jobs and new investment.*

*Proposition 80 would make it extremely difficult to improve the State's standards for generating electricity from renewable sources, which could seriously undermine adoption of wind, solar, and geothermal technologies. Growth of California's green businesses could be placed at risk.*

*Electricity regulation is too risky to be addressed through the initiative process. Flaws in this measure will be very difficult or impossible to fix. Proposition 80 is bad policy because it:*

- Restricts energy choices for all consumers, big and small.
- Limits the market for increasing solar, wind, and geothermal energy resources—even if demanded by consumers.
- Threatens to increase the cost of energy for community colleges, the University of California and State University systems, hospitals, and local governments that will end up being paid by taxpayers.
- Discourages future jobs and business investment in California.
- Destabilizes the current progress toward a secure energy future for California.

*Proposition 80 IS A HIGH RISK PROPOSITION THAT WILL HURT CONSUMERS AND THE ENVIRONMENT. Vote NO on Proposition 80.*

**LES NELSON**, President

California Solar Energy Industries Association

**KARL GAWELL**, Executive Director

Geothermal Energy Association

**JAMES SWEENEY**, Co-Director of the Energy,

Natural Resources and the Environment Program at the Stanford Institute for Economic Policy Research

## Rebuttal to Argument Against Proposition 80

The opponents' argument makes the case *FOR* Proposition 80. They want to bring back deregulation by calling it consumer choice!

The first round of deregulation also emphasized "consumer choice." The "choice" for consumers was higher rates, market manipulation, and rolling blackouts.

Deregulation brought a reliable electric system to its knees. It allowed traders to manipulate the market. Enron signed up the University of California—and then walked away. The State was forced into expensive long-term contracts to clean up the mess! *And ordinary consumers had no real choices.*

Proposition 80 reins in deregulation and ensures that electricity providers are accountable in the future. *That's the number one reason you should vote for it.*

The opponents' other claims are simply wrong.

Renewables? Proposition 80 not only speeds up from 2017 to 2010 the deadline for purchasing 20% of our energy needs from renewables, it *repeals the existing legal limit on utilities' purchases of renewables.* How can that be bad for renewable energy?

Misuse of the initiative process? Major provisions of Proposition 80 passed the Legislature but were vetoed at the urging of energy company lobbyists. This is exactly what the initiative process was designed for.

Competition? Proposition 80 embraces competition between independent generators and utilities to build power plants at the lowest cost to consumers.

Don't be swayed by fear tactics from the energy companies! We've had enough failure. Proposition 80 will stabilize the electrical system, avoid blackouts, bring rates down, and benefit all Californians.

Vote YES on Proposition 80.

**MIKE MOWREY**, International Vice-President, 9th District International Brotherhood of Electrical Workers, AFL-CIO

**HENRY L. (HANK) LACAYO**, State President Congress of California Seniors

**STEVE BLACKLEDGE**, Policy Director

California Public Interest Research Group (CalPIRG)

# TEXT OF PROPOSED LAWS

## PROPOSITION 73

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

This initiative measure expressly amends the California Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

## PROPOSED LAW

### SECTION 1. Title

This measure shall be known and may be cited as the Parents' Right to Know and Child Protection Initiative.

### SEC. 2. Declaration of Findings and Purposes

The people of California have a special and compelling interest in and responsibility for protecting the health and well-being of children, ensuring that parents are properly informed of potential health-related risks to their children, and promoting parent-child communication and parental responsibility.

### SEC. 3. Parental Notification

Section 32 is added to Article I of the California Constitution, to read:

*SEC. 32. (a) For purposes of this section, the following terms shall be defined to mean:*

*(1) "Abortion" means the use of any means to terminate the pregnancy of an unemancipated minor female known to be pregnant with knowledge that the termination with those means will, with reasonable likelihood, cause the death of the unborn child, a child conceived but not yet born. For purposes of this section, "abortion" shall not include the use of any contraceptive drug or device.*

*(2) "Medical emergency" means a condition which, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant unemancipated minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.*

*(3) "Notice" means a written notification, signed and dated by a physician or his or her agent and addressed to a parent or guardian, informing the parent or guardian that the unemancipated minor is pregnant and that she has requested an abortion.*

*(4) "Parent or guardian" means either parent if both parents have legal custody, or the parent or person having legal custody, or the legal guardian of a minor.*

*(5) "Unemancipated minor" means a female under the age of 18 years who has not entered into a valid marriage and is not on active duty with the armed services of the United States and has not received a declaration of emancipation under state law. For the purposes of this section, pregnancy does not emancipate a female under the age of 18 years.*

*(6) "Physician" means any person authorized under the statutes and regulations of the State of California to perform an abortion upon an unemancipated minor.*

*(b) Notwithstanding Section 1 of Article I, or any other provision of this Constitution or law to the contrary and except in a medical emergency as provided for in subdivision (f), a physician shall not perform an abortion upon a pregnant unemancipated minor until after the physician or the physician's agent has first provided written notice to a parent or guardian either personally as provided for in subdivision (c) and a reflection period of at least 48 hours has elapsed after personal delivery of notice; or until the physician can presume that notice has been delivered by mail as provided in subdivision (d) and a reflection period of at least 48 hours has elapsed after presumed delivery of notice by mail; or until the physician or the physician's agent has received from a parent or guardian a written waiver of notice as provided for in subdivision (e); or until the physician has received a copy of a waiver of notification from the court as provided in subdivision (h), (i), or (j). A copy of any notice or waiver shall be retained with the unemancipated minor's medical records. The physician or the physician's agent shall inform the unemancipated minor that her parent or guardian may receive notice as provided for in this section.*

*(c) The written notice shall be delivered to the parent or guardian personally by the physician or the physician's agent. A form for the*

*notice shall be prescribed by the State Department of Health Services. The notice form shall be bilingual, in English and Spanish, and also available in English and each of the other languages in which California Official Voter Information Guides are published.*

*(d) In lieu of the personal delivery required in subdivision (c), written notice may be made by certified mail addressed to the parent or guardian at the parent's or guardian's last known address with return receipt requested and restricted delivery to the addressee, which means a postal employee may only deliver the mail to the authorized addressee. To help ensure timely notice, a copy of the written notice shall also be sent at the same time by first-class mail to the parent or guardian. Notice can only be presumed to have been delivered under the provisions of this subdivision at noon of the second day after the written notice sent by certified mail was postmarked, not counting any days on which regular mail delivery does not take place.*

*(e) Notice of an unemancipated minor's intent to obtain an abortion and the reflection period of at least 48 hours may be waived by a parent or guardian. The waiver must be in writing, on a form prescribed by the State Department of Health Services, signed by a parent or guardian, dated, and notarized. The written waiver need not be notarized if the parent or guardian personally delivers it to the physician or the physician's agent. The form shall include the following statement: **"WARNING. It is a crime to knowingly provide false information to a physician or a physician's agent for the purpose of inducing a physician or a physician's agent to believe that a waiver of notice has been provided by a parent or guardian."** The waiver form shall be bilingual, in English and Spanish, and also available in English and each of the other languages in which California Official Voter Information Guides are published.*

*(f) Notice shall not be required under this section if the attending physician certifies in the unemancipated minor's medical records the medical indications supporting the physician's good-faith clinical judgment that the abortion is necessary due to a medical emergency as defined in paragraph (2) of subdivision (a).*

*(g) Notice shall not be required under this section if waived pursuant to this subdivision and subdivision (h), (i), or (j). If the pregnant unemancipated minor elects not to permit notice to be given to a parent or guardian, she may file a petition with the juvenile court. If, pursuant to this subdivision, an unemancipated minor seeks to file a petition, the court shall assist the unemancipated minor or person designated by the unemancipated minor in preparing the petition and notifications required pursuant to this section. The petition shall set forth with specificity the unemancipated minor's reasons for the request. The court shall ensure that the minor's identity be kept confidential and that all court proceedings be sealed. No filing fee shall be required for filing a petition. An unemancipated pregnant minor shall appear personally in the proceedings in juvenile court and may appear on her own behalf or with counsel of her own choosing. The court shall, however, advise her that she has a right to court-appointed counsel upon request. The court shall appoint a guardian ad litem for her. The hearing shall be held by 5 p.m. on the second court day after filing the petition unless extended at the written request of the unemancipated minor, her guardian ad litem, or her counsel. If the guardian ad litem requests an extension, that extension may not be granted for more than one court day without the consent of the unemancipated minor or her counsel. The unemancipated minor shall be notified of the date, time, and place of the hearing on the petition. Judgment shall be entered within one court day of submission of the matter. The judge shall order a record of the evidence to be maintained, including the judge's written factual findings and legal conclusions supporting the decision.*

*(h) (1) If the judge finds, by clear and convincing evidence, that the unemancipated minor is sufficiently mature and well-informed to decide whether to have an abortion, the judge shall authorize a waiver of notice of a parent or guardian.*

*(2) If the judge finds, by clear and convincing evidence, that notice of a parent or guardian is not in the best interests of the unemancipated minor, the judge shall authorize a waiver of notice. If the finding that notice of a parent or guardian is not in the best interests of the minor is based on evidence of physical, sexual, or emotional abuse by a parent or guardian, the court shall ensure that such evidence is brought to the attention of the appropriate county child protective agency.*

## TEXT OF PROPOSED LAWS (PROPOSITION 73 CONTINUED)

(3) If the judge does not make a finding specified in paragraph (1) or (2), the judge shall deny the petition.

(i) If the judge fails to rule within the time period specified in subdivision (g) and no extension was requested and granted, the petition shall be deemed granted and the notice requirement shall be waived.

(j) The unemancipated minor may appeal the judgment of the juvenile court at any time after the entry of judgment. The Judicial Council shall prescribe, by rule, the practice and procedure on appeal and the time and manner in which any record on appeal shall be prepared and filed and may prescribe forms for such proceedings. These procedures shall require that the hearing shall be held within three court days of filing the notice of appeal. The unemancipated minor shall be notified of the date, time, and place of the hearing. Judgment shall be entered within one court day of submission of the matter. The appellate court shall ensure that the unemancipated minor's identity be kept confidential and that all court proceedings be sealed. No filing fee shall be required for filing an appeal. Judgment on appeal shall be entered within one court day of submission of the matter.

(k) The Judicial Council shall prescribe, by rule, the practice and procedure for petitions for waiver of parental notification, hearings and entry of judgment as it deems necessary and may prescribe forms for such proceedings. Each court shall provide annually to the Judicial Council, in a manner to be prescribed by the Judicial Council to ensure confidentiality of the unemancipated minors filing petitions, a report, by judge, of the number of petitions filed, the number of petitions granted under paragraph (1) or (2) of subdivision (h), deemed granted under subdivision (i), denied under paragraph (3) of subdivision (h), and granted and denied under subdivision (j), said reports to be publicly available unless the Judicial Council determines that the data contained in individual reports should be aggregated by court or by county before being made available to the public in order to preserve the confidentiality of the unemancipated minors filing petitions.

(l) The State Department of Health Services shall prescribe forms for the reporting of abortions performed on unemancipated minors by physicians. The report forms shall not identify the minor or her parent(s) or guardian by name or request other information by which the minor or her parent(s) or guardian might be identified. The forms shall include the date of the procedure and the unemancipated minor's month and year of birth, the duration of the pregnancy, the type of abortion procedure, the physician who performed the abortion, and the facility where the abortion was performed. The forms shall also indicate whether the abortion was performed at least 48 hours after either personal delivery of a notice pursuant to subdivision (c) or presumed delivery of a notice by mail pursuant to subdivision (d) to a parent or guardian; or was an abortion performed after a parent's or guardian's waiver of notice pursuant to subdivision (e); or was an emergency abortion performed without a notice pursuant to subdivision (f); or was an abortion performed after a judicial waiver of notice pursuant to paragraph (1) or (2) of subdivision (h) or subdivision (i) or (j).

(m) The physician who performs an abortion on an unemancipated minor shall within one month file a dated and signed report concerning it with the State Department of Health Services on forms prescribed pursuant to subdivision (l). The identity of the physician shall be kept confidential and shall not be subject to disclosure under the California Public Records Act.

(n) The State Department of Health Services shall compile an annual statistical report from the information specified in subdivision (l). The annual report shall not include the identity of any physician who filed a report as required by subdivision (m). The compilation shall include statistical information on the numbers of abortions by month and by county where performed, the minors' ages, the duration of the pregnancies, the types of abortion procedures, and the numbers of abortions performed after notice to a parent or guardian pursuant to subdivision (c) or (d); the numbers of emergency abortions performed without notice to a parent or guardian pursuant to subdivision (f); the numbers performed after a parent's or guardian's waiver of notice pursuant to subdivision (e); and the number of abortions performed after judicial waivers pursuant to paragraph (1) or (2) of subdivision (h) or subdivision (i) or (j). The annual statistical report shall be made available to county public health officials, Members of the Legislature,

the Governor, and the public.

(o) Any person who performs an abortion on an unemancipated minor and in so doing knowingly or negligently fails to comply with the provisions of this section shall be liable for damages in a civil action brought by the unemancipated minor, her legal representative, or by a parent or guardian wrongfully denied notification. A person shall not be liable under this section if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the unemancipated minor or other persons regarding information necessary to comply with this section were bona fide and true. At any time prior to the rendering of a final judgment in an action brought under this subdivision, the parent or guardian may elect to recover, in lieu of actual damages, an award of statutory damages in the amount of ten thousand dollars (\$10,000). In addition to any damages awarded under this subdivision, the plaintiff shall be entitled to an award of reasonable attorney's fees. Nothing in this section shall abrogate, limit, or restrict the common law rights of parents or guardians, or any right to relief under any theory of liability that any person or any state or local agency may have under any statute or common law for any injury or damage, including any legal, equitable, or administrative remedy under federal or state law, against any party, with respect to injury to an unemancipated minor from an abortion.

(p) Other than an unemancipated minor who is the patient of a physician, or other than the physician or the physician's agent, any person who knowingly provides false information to a physician or a physician's agent for the purpose of inducing the physician or the physician's agent to believe that pursuant to this section notice has been or will be delivered, or that a waiver of notice has been obtained, or that an unemancipated minor patient is not an unemancipated minor, is guilty of a misdemeanor punishable by a fine of up to one thousand dollars (\$1,000).

(q) Notwithstanding any notices delivered pursuant to subdivision (c) or (d) or waivers received pursuant to subdivision (e), paragraph (1) or (2) of subdivision (h), or subdivision (i) or (j), except where the particular circumstances of a medical emergency as defined in paragraph (2) of subdivision (a) or her own mental incapacity precludes obtaining her consent, a physician shall not perform or induce an abortion upon an unemancipated minor except with the consent of the unemancipated minor herself.

(r) Notwithstanding any notices delivered pursuant to subdivision (c) or (d) or waivers received pursuant to subdivision (e), paragraph (1) or (2) of subdivision (h), or subdivision (i) or (j), an unemancipated minor who is being coerced by any person through force, threat of force, or threatened or actual deprivation of food or shelter to consent to undergo an abortion may apply to the juvenile court for relief. The court shall give the matter expedited consideration and grant such relief as may be necessary to prevent such coercion.

(s) This section shall not take effect until 90 days after the election in which it is approved. The Judicial Council shall, within these 90 days, prescribe the rules, practices, and procedures and prepare and make available any forms it may prescribe as provided in subdivision (k). The State Department of Health Services shall, within these 90 days, prepare and make available the forms prescribed in subdivisions (c), (e), and (l).

(t) If any one or more provision, subdivision, sentence, clause, phrase, or word of this section or the application thereof to any person or circumstance is found to be unconstitutional or invalid, the same is hereby declared to be severable and the balance of this section shall remain effective notwithstanding such unconstitutionality or invalidity. Each provision, subdivision, sentence, clause, phrase, or word of this section would have been approved by voters irrespective of the fact that any one or more provision, subdivision, sentence, clause, phrase, or word might be declared unconstitutional or invalid.

(u) Except for the rights, duties, privileges, conditions, and limitations specifically provided for in this section, nothing in this section shall be construed to grant, secure, or deny any other rights, duties, privileges, conditions, and limitations relating to abortion or the funding thereof.

## PROPOSITION 74

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

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

## PROPOSED LAW

### SECTION 1. Title

This measure shall be known as the “Put the Kids First Act.”

### SECTION 2. Findings and Declarations

(a) California children deserve the best teachers available.

(b) Teachers currently are granted permanent employment status after only two years on the job. Experts believe that a teacher’s ultimate potential and skill level cannot be fully assessed within just two years.

(c) Teacher assignments are based more on teacher seniority and tenure rules than on the needs of the students, depriving students of the best available educational experience.

(d) Once a teacher has permanent status:

(1) Union negotiated rules often require them to be assigned to positions by seniority rather than the needs of the students or best interests of a school.

(2) Teachers can usually be replaced, no matter how talented the replacement, only after a lengthy appeals process costing upwards of \$150,000.

(e) There is an immediate need to give greater flexibility in the assignment of teachers in order to provide students with the greatest educational opportunity.

### SECTION 3. Purpose and Intent

In enacting this measure, it is the intent of the people of the State of California to ensure that the needs of students will be given high priority in the assignment of teachers.

SECTION 4. Section 44929.21 of the Education Code is amended to read:

44929.21. (a) Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for three complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district.

This subdivision shall apply only to probationary employees whose probationary period commenced prior to the 1983–84 fiscal year.

(b) Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for two complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district.

The governing board shall notify the employee, on or before March 15 of the employee’s second complete consecutive school year of employment by the district in a position or positions requiring certification qualifications, of the decision to reelect or not reelect the employee for the next succeeding school year to the position. In the event that the governing board does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year.

This subdivision shall apply only to probationary employees whose probationary period commenced during the 1983–84 fiscal year or any fiscal year thereafter.

(c) *Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for five complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district. The governing board shall notify the employee, on or before March 15 of the employee’s fifth complete consecutive school year of employment by the*

*district in a position or positions requiring certification qualifications, of the decision to reelect or not reelect the employee for the next succeeding school year to the position. In the event that the governing board does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year.*

*This subdivision shall apply only to probationary employees whose probationary period commenced during the 2003–04 fiscal year or any fiscal year thereafter.*

SECTION 5. Section 44932 of the Education Code is amended to read:

44932. *Grounds for dismissal of permanent employee; Suspension of permanent probationary employee for unprofessional conduct.*

(a) No permanent employee shall be dismissed except for one or more of the following causes:

(1) Immoral or unprofessional conduct.

(2) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188 of the Statutes of 1919, or in any amendment thereof.

(3) Dishonesty.

(4) Unsatisfactory performance.

(5) Evident unfitness for service.

(6) Physical or mental condition unfitting him or her to instruct or associate with children.

(7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her.

(8) Conviction of a felony or of any crime involving moral turpitude.

(9) Violation of Section 51530 or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947.

(10) Knowing membership by the employee in the Communist Party.

(11) Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children.

(b) The governing board of a school district may suspend without pay for a specific period of time on grounds of unprofessional conduct a permanent certificated employee or, in a school district with an average daily attendance of less than 250 pupils, a probationary employee, pursuant to the procedures specified in Sections 44933, 44934, 44935, 44936, 44937, 44943, and 44944. This authorization shall not apply to any school district which has adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3543.2 of the Government Code.

(c) *The receipt by a permanent employee of two consecutive unsatisfactory evaluations conducted pursuant to Article 11 (commencing with Section 44660) of Chapter 3 shall constitute unsatisfactory performance as the term is used in this section, and the governing board of the school district may, in its discretion, and without regard for Sections 44934 and 44938, dismiss the employee by written notice on the basis of the employee’s evaluation reports. Within 30 days of receipt of the notice of dismissal, the employee may request an administrative hearing which shall be conducted pursuant to Section 44944.*

### SECTION 6. Conflicting Ballot Measures

In the event that this measure and another measure or measures relating to teacher tenure shall appear on the same statewide election ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measures shall be null and void.

### SECTION 7. Severability

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

### SECTION 8. Amendment

This measure may be amended to further its purposes by a bill passed by a two-thirds vote of the membership of both houses of the Legislature and signed by the Governor, provided that at least 14 days prior to passage in each house, copies of the bill in final form shall be made available by the clerk of each house to the public and the news media.

# TEXT OF PROPOSED LAWS (CONTINUED)

## PROPOSITION 75

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

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

## PROPOSED LAW

### SECTION 1. Title.

This measure shall be known as “The Public Employees’ Right to Approve Use of Union Dues for Political Campaign Purposes Act.”

### SEC. 2. Findings and Declarations.

The People of the State of California find and declare as follows:

(a) Public employees are generally required to join a labor organization or pay fees to the labor organization in lieu of membership.

(b) Public employee labor organizations operate through dues or fees deducted from their members’ salaries which are paid from public funds.

(c) Routinely these dues or fees are used in part to support the political objectives of the labor leaders in support of state and local legislative candidates and ballot measures. Public employees often find their dues or fees used to support political candidates or ballot measures with which they do not agree.

(d) It is fundamentally unfair to force public employees to give money to political activities or candidates they do not support.

(e) Because public money is involved, the public has a right to ensure that public employees have a right to approve the use of their dues or fees to support the political objectives of their labor organization.

(f) To ensure that public employees have a say whether their dues or fees may be used for political campaign purposes, it is fair and just to require that their consent be obtained in advance.

### SEC. 3. Purpose and Intent.

In enacting this measure, it is the intent of the people of the State of California to guarantee the right of public employees to have a say whether their dues and fees may be used for political campaign purposes.

SEC. 4. Chapter 5.9 (commencing with Section 85990) is added to Title 9 of the Government Code, to read:

#### CHAPTER 5.9.

85990. (a) *No public employee labor organization may use or obtain any portion of dues, agency shop fees, or any other fees paid by members of the labor organization, or individuals who are not members, through payroll deductions or directly, for disbursement to a committee as defined in subdivision (a) of Section 82013, except upon the written consent of the member or individual who is not a member received within the previous 12 months on a form described by subdivision (c) signed by the member or nonmember and an officer of the union.*

(b) *Subdivision (a) does not apply to any dues or fees collected from members of the labor organization, or individuals who are not members, for the benefit of charitable organizations organized under Section 501(c)(3) of Title 26 of the United States Code, or for health care insurance, or similar purposes intended to directly benefit the specific member of the labor organization or individual who is not a member.*

(c) *The authorization referred to in subdivision (a) shall be made on the following form, the sole purpose of which is the documentation of such authorization. The form’s title shall read, in at least 24-point bold type, “Consent for Political Use of Dues/ Fees or Request to Make Political Contributions” and shall state, in at least 14-point bold type, the following specific text.*

*Signing this form authorizes your union to use the amount of \$\_\_\_\_.00 from each of your dues or agency shop fee payments during the next 12 months as a political contribution or expenditure.” (\_\_\_)*

*Signing this form requests your union to make a deduction of \$\_\_\_\_.00 from each of your dues or agency shop fee payments during the next 12 months as a political contribution to the (name of the committee). (\_\_\_)*

*Check applicable box.*

\_\_\_\_\_  
*(Name of Employee)*

\_\_\_\_\_  
*(Union Officer)*

\_\_\_\_\_  
*(Name of Union)*

\_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

(d) *Any public employee labor organization that uses any portion of dues, agency shop fees, or other fees to make contributions or expenditures under subdivision (a) shall maintain records that include a copy of each authorization obtained under subdivision (c), the amounts and dates funds were actually withheld, the amounts and dates funds were transferred to a committee, and the committee to which the funds were transferred. Records maintained under this subdivision shall not include the employee’s home address or telephone number.*

(e) *Copies of all records maintained under subdivision (d) shall be sent to the commission on request but shall not be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).*

(f) *Individuals who do not authorize contributions or expenditures under subdivision (a) may not have their dues, agency shop fees, or other fees raised in lieu of the contribution or expenditure.*

(g) *If the dues, agency shop fees, or other fees referred to in subdivisions (a) and (d) include an amount for a contribution or expenditure, the dues, agency shop fees, or other fees shall be reduced by that amount for any individual who does not sign an authorization as described under subdivision (a).*

(h) *The requirements of this section may not be waived by the member or individual and waiver of these requirements may not be made a condition of employment or continued employment.*

(i) *For the purposes of this section, “agency shop” has the same meaning as defined in subdivision (a) of Section 3502.5 of the Government Code on April 1, 1997.*

(j) *For the purposes of this section, “public employee labor organization” means a labor organization organized for the purpose set forth in subdivision (g) of Section 12926 of the Government Code on April 1, 1997.*

SEC. 5. This measure shall be liberally construed to accomplish its purposes.

SEC. 6. In the event that this measure and another measure or measures relating to the consent of public employees to the use of their payroll deductions or dues being used for political contributions or expenditures without their consent shall appear on the same statewide election ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measures shall be null and void.

SEC. 7. If any provision of this measure, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions are severable.

SEC. 8. If this measure is approved by the voters, but is superseded by another measure on the same ballot receiving a higher number of votes and deemed in conflict with this measure, and the conflicting measure is subsequently held invalid, it is the intent of the voters that this measure become effective.

SEC. 9. This measure may be amended to further its purposes by a bill passed by a two-thirds vote of the membership of both houses of the Legislature and signed by the Governor, provided that at least 14 days prior to passage in each house, copies of the bill in final form shall be made available by the clerk of each house to the public and the news media.

**PROPOSITION 76**

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

This initiative measure expressly amends the California Constitution by amending and repealing sections thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

**PROPOSED LAW**

**SECTION 1. Title**

This measure shall be known as the “California Live Within Our Means Act.”

**SECTION 2. Findings and Declarations**

(a) For the last four years, California has enacted budgets that have spent billions of dollars more than the state received in revenues.

(b) The Legislature is chronically late in passing budgets and seems institutionally incapable of passing balanced budgets.

(c) Spending will continue to rise faster than revenues because of laws guaranteeing annual increases in spending for a host of public services and granting entitlements to growing caseloads of qualified recipients. When combined with the refusal of the Legislature to change these laws, this auto-pilot spending is a recipe for California’s bankruptcy.

(d) In March 2004, the people overwhelmingly enacted Proposition 58, the California Balanced Budget Act. The California Live Within Our Means Act is needed to strengthen that law to deal with budget emergencies when the Legislature fails to act.

(e) The Governor’s current authority to veto or “blue pencil” excessive appropriations from budget bills cannot deal with spending mandates built into current law or with mid-year revenue losses or unexpected spending demands.

(f) The Governor needs the authority, when the Legislature fails to act in budget emergencies, to make spending reductions to keep the state from spending more than it is taking in and either running farther into debt or forcing massive tax increases.

(g) To meet the financial mandates of auto-pilot spending formulas enacted by the Legislature, the state has borrowed billions of dollars from schools, transportation funds, and local governments. The Constitution should prohibit such budgetary gimmickry and require the borrowed money be repaid without making current deficits worse.

**SECTION 3. Purpose and Intent**

In enacting this measure, it is the intent of the people of the State of California to enact comprehensive budget reform which will:

(a) Supply the tools that will help the state enact budgets that are balanced and on time so that the pressure for tax increases will be reduced; and

(b) Provide that if the Legislature fails to act in fiscal emergencies, the budget can be balanced by reductions in spending.

**SECTION 4. Section 10 of Article IV of the California Constitution is amended to read:**

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

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

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

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

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

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

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

(d) The Legislature may not present any bill to the Governor after November 15 of the second calendar year of the biennium of the legislative session.

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

(f) (1) *Commencing with the 2006–07 fiscal year and each fiscal year thereafter, the maximum amount of total expenditures allowable for the current fiscal year shall be computed by multiplying the prior year total expenditures by one plus the average annual growth in General Fund revenues and special fund revenues as defined in paragraph (3) for the three previous fiscal years.*

(2) *For computing the average annual growth in revenues under paragraph (1), the amount of actual revenue for the fiscal year is to be used if available. If the actual amount of revenue is unknown, then the revenue shall be estimated by the Department of Finance through a regular and transparent process.*

(3) *“General Fund revenues and special fund revenues” means all taxes, any other charges or exactions imposed by the State and all other sources of revenue which were considered “General Fund” or “special fund” sources of revenue for the 2004–05 fiscal year. “General Fund revenues and special fund revenues” does not include revenues to Nongovernmental Cost Funds, including federal funds, trust and agency funds, enterprise funds or selected bond funds.*

(4) *The expenditure limit imposed by paragraph (1) may be exceeded for a fiscal year in an emergency. “Emergency” means the existence, as declared by the Governor, of conditions of disaster or of extreme peril to the safety of persons and property within the State, or parts thereof, caused by an attack or probable or imminent attack by an enemy of the United States, epidemic, fire, flood, drought, storm, civil disorder, earthquake, tsunami, or volcanic eruption. Expenditures in excess of the limit pursuant to this paragraph shall not become part of the expenditure base for purposes of determining the amount of allowable expenditures for the next fiscal year.*

(5) *If total General Fund revenue and special fund revenues exceed the amount which may be expended for the current fiscal year due to the expenditure limit imposed by paragraph (1), the amount of such excess shall be proportionately attributed to the General Fund and each special fund. The amount of such excess attributed to each special fund shall be held as a reserve in that special fund for expenditure in a subsequent fiscal year. The amount of such excess attributed to the General Fund shall be allocated from the General Fund as follows:*

(A) *Twenty-five percent to the Budget Stabilization Account.*

(B) *Fifty percent to be allocated among the following according to the budget act: (1) to any outstanding maintenance factor pursuant to Section 8 of Article XVI in existence as of June 30, 2005, until allocated in full, but the amount so allocated in any fiscal year shall not exceed one-fifteenth of the amount in existence as of June 30, 2005;*

(2) *to the Deficit Recovery Bond Retirement Sinking Fund Subaccount,*

## TEXT OF PROPOSED LAWS (PROPOSITION 76 CONTINUED)

so long as any bonds issued pursuant to the Economic Recovery Bond Act remain outstanding, and (3) to the Transportation Investment Fund, until such amount as was loaned to the General Fund during the 2003–04, 2004–05, 2005–06, and 2006–07 fiscal years has been repaid in full, but the amount so allocated in any fiscal year shall not exceed one-fifteenth of the amount in existence as of June 30, 2007. The deposit of funds pursuant to this subparagraph shall supplement, but not supplant, the transfers to the Deficit Recovery Bond Retirement Sinking Fund Subaccount required by paragraph (1) of subdivision (f) of Section 20 of Article XVI.

(C) Twenty-five percent to the School, Roads, and Highways Construction Fund, which is hereby created in the Treasury as a trust fund, which shall be available for road and highway construction projects and for school construction and modernization projects, upon appropriation by the Legislature. Any funds allocated to school districts pursuant to this provision are not subject to Section 8 of Article XVI.

(D) No funds expended pursuant to subparagraph (B) or (C) are part of the expenditure base for the purposes of determining the amount of allowable expenditures pursuant to paragraph (1) for subsequent fiscal years.

(g) (1) If, following the enactment of the budget bill for the 2004–05 fiscal year or any subsequent fiscal year, the Governor determines that, for that fiscal year, General Fund revenues will decline substantially below the estimate of General Fund revenues upon which the budget bill for that fiscal year, as enacted, was based, or General Fund expenditures will increase substantially above that estimate of General Fund revenues, or both, the Governor may issue a proclamation declaring a fiscal emergency and shall thereupon cause the Legislature to assemble in special session for this purpose. The proclamation shall identify the nature of the fiscal emergency and shall be submitted by the Governor to the Legislature, accompanied by proposed legislation to address the fiscal emergency. ~~at the end of any quarter determines that, for that fiscal year, General Fund revenues have fallen by a rate of at least one and one-half percent on an annualized basis below revenues as estimated by the Department of Finance or if, following the enactment of the budget bill for the 2006–07 fiscal year or any subsequent fiscal year, the Governor determines that, for that fiscal year, the balance of the Budget Stabilization Account will decline to below one-half of the balance in the account available at the beginning of the fiscal year, the Governor may issue a proclamation declaring a fiscal emergency and shall thereupon cause the Legislature to assemble in special session solely for that purpose. The proclamation shall identify the nature of the proposed legislation to remedy the fiscal emergency.~~

(2) Notwithstanding any other provisions of this Constitution, if a bill or bills have not been enacted to remedy the fiscal emergency by the 45th day following the issuance of the proclamation, or the 30th day if appropriation authority is currently provided pursuant to subdivision (g) of Section 12 of Article IV, the Governor shall reduce items of appropriation as necessary to remedy the fiscal emergency. The Governor may reduce items of appropriation on an equally proportionate basis, or disproportionately, at his or her discretion.

No reduction may be made in appropriations for debt service, appropriations necessary to comply with federal laws and regulations, or appropriations where the result of a reduction would be in violation of contracts to which the State is a party.

(3) Notwithstanding any other provision of this Constitution, the Governor's authority to reduce appropriations shall apply to any General Fund payment made with respect to any contract, collective bargaining agreement, or other entitlement under law for which liability of the State to pay arises on or after the effective date of the measure that added this paragraph.

(4) The reduction authority set forth in paragraph (2) applies until the effective date, no later than the end of that fiscal year, of a proclamation issued by the Governor declaring the end of the fiscal emergency or the budget and any legislation necessary to implement it has been enacted.

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

(3) (6) A bill addressing the fiscal emergency declared pursuant to this section shall contain a statement to that effect.

(h) If, following the enactment of the budget bill for the 2006–07 fiscal year or any subsequent fiscal year, the Governor determines that, for that fiscal year, total expenditures are expected to exceed the limit imposed by paragraph (1) of subdivision (f), for that fiscal year, the Governor shall propose to the Legislature or implement to the extent practicable by executive order measures to reduce or eliminate the excess expenditures. If after the conclusion of that fiscal year it is determined by the Director of the Department of Finance that actual expenditures for that fiscal year have exceeded the maximum amount allowable for that year, then the maximum amount of allowable expenditures as determined under subdivision (f) for the fiscal year following the fiscal year in which such determination is made shall be reduced by the amount of the excess.

SECTION 5. Section 12 of Article IV of the California Constitution is amended to read:

SEC. 12. (a) Within the first 10 days of each calendar year, the Governor shall submit to the Legislature, with an explanatory message, a budget for the ensuing fiscal year containing itemized statements for recommended state expenditures and estimated state revenues. If recommended expenditures exceed estimated revenues, the Governor shall recommend the sources from which the additional revenues should be provided.

(b) (1) The Governor and the Governor-elect may require a state agency, officer, or employee to furnish whatever information is deemed necessary to prepare the budget.

(2) The Director of Finance shall advise the Governor on the current status of state revenues and expenditures at least quarterly, and at the beginning of any fiscal year for which a budget bill has not been enacted.

(c) (1) The budget shall be accompanied by a budget bill itemizing recommended expenditures.

(2) The budget bill shall be introduced immediately in each house by the persons chairing the committees that consider the budget.

(3) The Legislature shall pass the budget bill by midnight on June 15 of each year.

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

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

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

(f) For the 2004–05 fiscal year, or any subsequent fiscal year, the Legislature may not send to the Governor for consideration, nor may the Governor sign into law, a budget bill that would appropriate from the General Fund, for that fiscal year, a total amount that, when combined with all appropriations from the General Fund for that fiscal year made as of the date of the budget bill's passage, and the amount of any General Fund moneys transferred to the Budget Stabilization Account for that fiscal year pursuant to Section 20 of Article XVI, exceeds General Fund revenues for that fiscal year estimated as of the date of the budget bill's passage. That estimate of General Fund revenues shall be set forth in the budget bill passed by the Legislature.

(g) For the fiscal year of the effective date of the measure that added this subdivision, or any subsequent fiscal year, if the budget bill is not enacted prior to July 1, as of that date, and notwithstanding any other provision of this Constitution, amounts equal to the amounts appropriated by each of the items of appropriation in the budget act and any amendments to the budget act for the immediately preceding fiscal year are hereby appropriated for the current fiscal year, adjusted for debt service, in the same proportions, for the same purposes, from the same funding sources, and under the same conditions that apply to those items under that budget act or amendment to the budget act.

# TEXT OF PROPOSED LAWS (PROPOSITION 76 CONTINUED)

*The appropriation authority set forth in this subdivision applies until the effective date of the budget act enacted for that fiscal year.*

*(h) (1) On and after July 1, 2006, funds may not be transferred from a special fund to the General Fund as a loan. Any funds transferred prior to that date from a special fund to the General Fund for the purpose of making a loan to the General Fund and not repaid to that special fund by July 1, 2006, shall be repaid to that special fund no later than July 1, 2021.*

*(2) The prohibition contained in this subdivision does not apply to loans made for the purpose of meeting the short-term cash flow needs of the State if any amount owed is to be repaid in full to the fund from which it was borrowed during the same fiscal year in which the loan was made, or if repayment is to be made no later than a date not more than 30 days after the date of enactment of the budget bill for the subsequent fiscal year.*

SECTION 6. Section 8 of Article XVI of the California Constitution is amended to read:

SEC. 8. (a) From all state revenues there shall first be set apart the moneys to be applied by the State for support of the public school system and public institutions of higher education.

(b) Commencing with the 1990–91 fiscal year, the moneys to be applied by the State for the support of school districts and community college districts shall be not less than the greater of *either* of the following amounts:

(1) The amount ~~which that~~, as a percentage of General Fund revenues ~~which that~~ may be appropriated pursuant to Article XIII B, equals the percentage of General Fund revenues appropriated for school districts and community college districts, respectively, in the 1986–87 fiscal year 1986–87.

(2) The amount required to ensure that the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes ~~shall~~ are not less than the total amount from these sources in the prior fiscal year, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for changes in enrollment and adjusted for the change in the cost of living pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B. ~~This paragraph shall be operative only in a fiscal year in which the percentage growth in California per capita personal income is less than or equal to the percentage growth in per capita General Fund revenues plus one-half of one percent.~~

(3) (A) The amount required to ensure that the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes shall equal the total amount from these sources in the prior fiscal year, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for changes in enrollment and adjusted for the change in per capita General Fund revenues.

(B) In addition, an amount equal to one-half of one percent times the prior year total allocations to school districts and community colleges from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for changes in enrollment.

(C) This paragraph ~~(3)~~ shall be operative only in a fiscal year in which the percentage growth in California per capita personal income in a fiscal year is greater than the percentage growth in per capita General Fund revenues plus ~~one-half one-half~~ of one percent.

(D) ~~This paragraph is not operative in any fiscal year succeeding the fiscal year in which the measure that added this subparagraph became effective.~~

(c) In any fiscal year, if the amount computed pursuant to paragraph (1) of subdivision (b) exceeds the amount computed pursuant to paragraph (2) of subdivision (b) by a difference that exceeds one and one-half percent of General Fund revenues, the amount in excess of one and one-half percent of General Fund revenues shall not be considered allocations to school districts and community colleges for purposes of computing the amount of state aid pursuant to paragraph (2) ~~or 3~~ of subdivision (b) in the subsequent fiscal year.

~~(d) In any fiscal year in which school districts and community college districts are allocated funding pursuant to paragraph (3) of~~

~~subdivision (b) or pursuant to subdivision (h), they shall be entitled to a maintenance factor, equal to the difference between (1) the amount of General Fund moneys which would have been appropriated pursuant to paragraph (2) of subdivision (b) if that paragraph had been operative or the amount of General Fund moneys which would have been appropriated pursuant to subdivision (b) had subdivision (b) not been suspended, and (2) the amount of General Fund moneys actually appropriated to school districts and community college districts in that fiscal year.~~

~~(e) The maintenance factor for school districts and community college districts determined pursuant to subdivision (d) shall be adjusted annually for changes in enrollment, and adjusted for the change in the cost of living pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B, until it has been allocated in full. The maintenance factor shall be allocated in a manner determined by the Legislature in each fiscal year in which the percentage growth in per capita General Fund revenues exceeds the percentage growth in California per capita personal income. The maintenance factor shall be reduced each year by the amount allocated by the Legislature in that fiscal year. The minimum maintenance factor amount to be allocated in a fiscal year shall be equal to the product of General Fund revenues from proceeds of taxes and one-half of the difference between the percentage growth in per capita General Fund revenues from proceeds of taxes and in California per capita personal income, not to exceed the total dollar amount of the maintenance factor.~~

~~(f)~~

~~(d) If, for any fiscal year, an amount is appropriated for the support of school districts and community college districts in excess of the minimum amount required to be appropriated for that fiscal year pursuant to subdivision (b), the excess amount so appropriated shall not be deemed an allocation to school districts and community college districts for purposes of calculating the moneys to be applied by the State for the support of those entities for any subsequent fiscal year pursuant to paragraph (2) of subdivision (b).~~

~~(e) (1) The total amount of any maintenance factors, arising pursuant to former subdivision (d) for one or more fiscal years preceding the fiscal year that commences subsequent to the effective date of the measure that added this subdivision, shall be repaid no later than July 1, 2021. The repayment of any maintenance factor pursuant to this paragraph for any fiscal year shall be divided between school districts and community college districts in the same proportion that allocations for that fiscal year that were made prior to the effective date of the measure that added this subdivision were apportioned to school districts and community college districts. The payment of a maintenance factor amount in any fiscal year shall not be deemed an allocation to school districts and community college districts for purposes of calculating the moneys to be applied by the State for the support of those entities for any subsequent fiscal year pursuant to paragraph (2) of subdivision (b).~~

~~(2) The balance of any amounts that were required by this section to be allocated to school districts and community college districts for the 2003–04 fiscal year, or any preceding fiscal year, but were not allocated as of the effective date of the measure that added this subdivision, shall be allocated no later than 15 years following that date. The total amount of augmentations allocated pursuant to this paragraph for any fiscal year shall be divided between school districts and community college districts in the same proportion that allocations for that fiscal year that were made prior to the effective date of the measure that added this subdivision were apportioned to school districts and community college districts.~~

~~(3) (A) The balance of any amounts that are required by this section to be allocated to school districts and community college districts, for the 2004–05 fiscal year, or any subsequent fiscal year, but are not allocated as of the end of that fiscal year, are continuously appropriated to the Controller from the General Fund of the State for allocation to school districts and community college districts upon the certification by the Department of Finance and the Superintendent of Public Instruction of the final data necessary to perform the calculations required pursuant to subdivision (b). That certification shall be completed within 24 months subsequent to the end of the fiscal year. The amount appropriated pursuant to this paragraph shall be~~

## TEXT OF PROPOSED LAWS (PROPOSITION 76 CONTINUED)

divided between school districts and community college districts in the same proportion that allocations were made during that fiscal year to school districts and community college districts.

(B) The Legislature may require, in the budget act or any other statute, that a school district or community college district use funds allocated pursuant to this paragraph for a specified purpose.

(f) (1) Payable claims for state-mandated costs incurred prior to the 2004–05 fiscal year by a school district or community college district that have not been paid prior to the 2005–06 fiscal year shall be paid no later than the 2020–21 fiscal year.

(2) Amounts allocated to a school district or community college district for a fiscal year pursuant to subdivision (b) shall first be expended by the district to pay the costs for state mandates incurred during that fiscal year.

(g) (1) For purposes of this section, “changes in enrollment” shall be measured by the percentage change in average daily attendance. However, in any fiscal year, there shall be no adjustment for decreases in enrollment between the prior fiscal year and the current fiscal year unless there have been decreases in enrollment between the second prior fiscal year and the prior fiscal year and between the third prior fiscal year and the second prior fiscal year.

(2) For purposes of this section, “maintenance factor” means the difference between: (A) the amount of General Fund moneys that would have been appropriated for a fiscal year pursuant to paragraph (2) of subdivision (b) if that paragraph, rather than former paragraph (3) of that subdivision, had been operative or, as applicable, the amount of General Fund moneys that would have been appropriated for a fiscal year pursuant to subdivision (b) had subdivision (b) not been suspended pursuant to a statute enacted prior to January 1, 2005, and (B) the amount of General Fund moneys actually appropriated to school districts and community college districts for that fiscal year.

(h) Subparagraph (B) of paragraph (3) of subdivision (b) may be suspended for one year only when made part of or included within any bill enacted pursuant to Section 12 of Article IV. All other provisions of subdivision (b) may be suspended for one year by the enactment of an urgency statute pursuant to Section 8 of Article IV, provided that the urgency statute may not be made part of or included within any bill enacted pursuant to Section 12 of Article IV.

SECTION 7. Section 6 of Article XIX of the California Constitution is amended to read:

SEC. 6. The tax revenues designated under this article may be loaned to the General Fund only if one of the following conditions is imposed:

(a) That any amount loaned is to be repaid in full to the fund from which it was borrowed during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the budget bill for the subsequent fiscal year.

(b) That any amount loaned is to be repaid in full to the fund from which it was borrowed within three fiscal years from the date on which the loan was made and one of the following has occurred:

(1) The Governor has proclaimed a state of emergency and declares that the emergency will result in a significant negative fiscal impact to the General Fund.

(2) The aggregate amount of General Fund revenues for the current fiscal year, as projected by the Governor in a report to the Legislature in May of the current fiscal year, is less than the aggregate amount of General Fund revenues for the previous fiscal year, adjusted for the change in the cost of living and the change in population, as specified in the budget submitted by the Governor pursuant to Section 12 of Article IV in the current fiscal year.

(c) Nothing in this section prohibits the Legislature from authorizing Nothing in subdivision (h) of Section 12 of Article IV prohibits the Legislature from authorizing, by statute, loans to local transportation agencies, cities, counties, or cities and counties, from funds that are subject to this article, for the purposes authorized under this article. Any loan authorized as described by this subdivision section shall be repaid, with interest at the rate paid on money in the Pooled Money Investment Account, or any successor to that account, during the period of time that the money is loaned, to the fund from

which it was borrowed, not later than four years after the date on which the loan was made.

SECTION 8. Section 1 of Article XIX A of the California Constitution is repealed.

SECTION 1. The funds in the Public Transportation Account in the State Transportation Fund, or any successor to that account, may be loaned to the General Fund only if one of the following conditions is imposed:

(a) That any amount loaned is to be repaid in full to the account during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the budget bill for the subsequent fiscal year.

(b) That any amount loaned is to be repaid in full to the account within three fiscal years from the date on which the loan was made and one of the following has occurred:

(1) The Governor has proclaimed a state of emergency and declares that the emergency will result in a significant negative fiscal impact to the General Fund.

(2) The aggregate amount of General Fund revenues for the current fiscal year, as projected by the Governor in a report to the Legislature in May of the current fiscal year, is less than the aggregate amount of General Fund revenues for the previous fiscal year, as specified in the budget submitted by the Governor pursuant to Section 12 of Article IV in the current fiscal year.

SECTION 9. Section 1 of Article XIX B of the California Constitution is amended to read:

SEC. 1. (a) For the 2003–04 fiscal year and each fiscal year thereafter, all moneys that are collected during the fiscal year from taxes under the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code), or any successor to that law, upon the sale, storage, use, or other consumption in this State of motor vehicle fuel, and that are deposited in the General Fund of the State pursuant to that law, shall be transferred to the Transportation Investment Fund, which is hereby created in the State Treasury as a special fund.

(b) (1) For the 2003–04 to 2007–08 fiscal years, inclusive, moneys in the Transportation Investment Fund shall be allocated, upon appropriation by the Legislature, in accordance with Section 7104 of the Revenue and Taxation Code as that section read on the operative date of this article March 6, 2002.

(2) For the 2008–09 fiscal year and each fiscal year thereafter, moneys in the Transportation Investment Fund shall be allocated solely for the following purposes:

(A) Public transit and mass transportation.

(B) Transportation capital improvement projects, subject to the laws governing the State Transportation Improvement Program, or any successor to that program.

(C) Street and highway maintenance, rehabilitation, reconstruction, or storm damage repair conducted by cities, including a city and county.

(D) Street and highway maintenance, rehabilitation, reconstruction, or storm damage repair conducted by counties, including a city and county.

(c) For the 2008–09 fiscal year and each fiscal year thereafter, moneys in the Transportation Investment Fund shall be allocated, upon appropriation by the Legislature, as follows:

(A)

(1) Twenty percent of the moneys for the purposes set forth in subparagraph (A) of paragraph (2) of subdivision (b).

(B)

(2) Forty percent of the moneys for the purposes set forth in subparagraph (B) of paragraph (2) of subdivision (b).

(C)

(3) Twenty percent of the moneys for the purposes set forth in subparagraph (C) of paragraph (2) of subdivision (b).

(D)

(4) Twenty percent of the moneys for the purpose set forth in subparagraph (D) of paragraph (2) of subdivision (b).

(d) (1) The transfer of revenues from the General Fund of the State to the Transportation Investment Fund pursuant to subdivision (a) may be suspended, in whole or in part, for a any fiscal year preceding the 2007–08 fiscal year if both of the following conditions are met:

(†)

(A) The Governor has issued a proclamation that declares that the transfer of revenues pursuant to subdivision (a) will result in a significant negative fiscal impact on the range of functions of government funded by the General Fund of the State.

(‡)

(B) The Legislature enacts by statute, pursuant to a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, a suspension for that fiscal year of the transfer of revenues pursuant to subdivision (a), provided that the bill does not contain any other unrelated provision.

(2) (A) *The total amount, as of July 1, 2007, of revenues that were not transferred from the General Fund of the State to the Transportation Investment Fund because of a suspension pursuant to this subdivision shall be repaid to the Transportation Investment Fund no later than June 30, 2022. Until that total amount has been repaid, the amount of that repayment to be made in each fiscal year shall not be less than one-fifteenth of the total amount due.*

(B) *The Legislature may provide by statute for the issuance of bonds by the State or local agencies, as applicable, that are secured by the payments required by this paragraph. Proceeds of the sale of the bonds shall be applied for purposes consistent with this article, and for costs associated with the issuance and sale of the bonds.*

(e) The Legislature may enact a statute that modifies the percentage shares set forth in subdivision (c) by a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, provided that the bill does not contain any other unrelated provision and that the moneys described in subdivision (a) are expended solely for the purposes set forth in paragraph (2) of subdivision (b).

SECTION 10. Section 6 of Article XIII B of the California Constitution is amended to read:

SEC. 6. (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates:

(1) Legislative mandates requested by the local agency affected.

(2) Legislation defining a new crime or changing an existing definition of a crime.

(3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

(b) (1) Except as provided in paragraph (2), for the 2005–06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law. *In the event payment of a mandate is suspended in whole or in part by the Governor pursuant to paragraph (2) of subdivision (g) of Section 10 of Article IV, the operation of the mandate is suspended for the fiscal year in which payment is suspended.*

(2) Payable claims for costs incurred prior to the 2004–05 fiscal year that have not been paid prior to the 2005–06 fiscal year may shall be paid over a term of *not more than 5 years*, as prescribed by law.

(3) Ad valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service.

(4) This subdivision applies to a mandate only as it affects a city, county, city and county, or special district.

(5) This subdivision shall not apply to a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment and that constitutes a mandate subject to this section.

(c) A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.

SECTION 11. Conflicting Ballot Measures

In the event that this measure and another measure or measures relating to the appropriation, allocation, classification, and expenditure of state revenues for support of state government and education shall appear on the same statewide election ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measures shall be null and void.

SECTION 12. Severability

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

## PROPOSITION 77

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

This initiative measure expressly amends the California Constitution by amending sections thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout~~ type and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

## PROPOSED LAW

REDISTRICTING REFORM: THE VOTER EMPOWERMENT ACT

SECTION 1. Findings and Declarations of Purpose

The People of the State of California find and declare that:

(a) Our Legislature should be responsive to the demands of the citizens of the State of California, and not the self-interest of individual legislators or the partisan interests of political parties.

(b) Self-interest and partisan gerrymandering have resulted in uncompetitive districts, ideological polarization in our institutions of representative democracy, and a disconnect between the interests of the People of California and their elected representatives.

(c) The redistricting plans adopted by the California Legislature in 2001 serve incumbents, not the People, are repugnant to the People, and are in direct opposition to the People's interest in fair and competitive elections. They should not be used again.

(d) We demand that our representative system of government be fair to all, open to public scrutiny, free of conflicts of interest, and dedicated

to the principle that government derives its power from the consent of the governed. Therefore, the People of the State of California hereby adopt the "Redistricting Reform: The Voter Empowerment Act."

SECTION 2. Fair Redistricting

Article XXI of the California Constitution is amended to read:

SECTION 1. (a) *Except as provided in subdivision (b), in the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, a panel of Special Masters composed of retired judges shall adjust the boundary lines of the Senatorial, Assembly, Congressional, and Board of Equalization districts in accordance with the standards and provisions of this article.*

(b) *Within 20 days following the effective date of this section, the Legislature shall appoint, pursuant to the provisions of paragraph (2) of subdivision (c), a panel of Special Masters to adopt a plan of redistricting adjusting the boundary lines of the Senatorial, Assembly, Congressional, and Board of Equalization districts for use in the next set of statewide primary and general elections and until the next adjustment of boundary lines is required pursuant to subdivisions (a) or (i). The panel shall establish a schedule and deadlines to ensure timely adoption of the plan. Except for paragraph (1) of subdivision (c), all provisions of this article shall apply to the adoption of the plan required by this subdivision.*

(c) (1) *Except as provided in subdivision (b), on or before January 15 of the year following the year in which the national census*

## TEXT OF PROPOSED LAWS (PROPOSITION 77 CONTINUED)

is taken, the Legislature shall appoint, pursuant to the provisions of paragraph (2) of subdivision (c), a panel of Special Masters composed of retired judges to adopt a plan of redistricting adjusting the boundary lines of the Senatorial, Assembly, Congressional, and Board of Equalization districts pursuant to this article.

(2) (A) In sufficient time to allow the appointment of the Special Masters, the Judicial Council shall nominate by lot 24 retired judges willing to serve as Special Masters. Only retired California state or federal judges, who have never held elected partisan public office or political party office, have not changed their party affiliation, as declared on their voter registration affidavit, since their initial appointment or election to judicial office, and have not received income during the past 12 months from the Legislature, a committee thereof, the United States Congress, a committee thereof, a political party, or a partisan candidate or committee controlled by such candidate, are qualified to serve as Special Master. Not more than 12 of the 24 retired judges may be of a single party affiliation, and the two largest political parties in California shall be equally represented among the nominated retired judges.

(B) A retired judge selected to serve as a Special Master shall also pledge, in writing, that he or she will not run for election in the Senatorial, Assembly, Congressional, or Board of Equalization districts adjusted by him or her pursuant to this article nor accept, for at least five years from the date of appointment as a Special Master, California state public employment or public office, other than judicial employment or judicial office or a teaching position.

(C) From the pool of retired judges nominated by the Judicial Council, the Speaker of the Assembly, the Minority Leader of the Assembly, the President pro Tempore of the Senate, and the Minority Leader of the Senate shall each nominate, no later than five days before the deadline for appointment of the panel of Special Masters, three retired judges, who are not registered members of the same political party as that of the legislator making the nomination. No retired judge may be nominated by more than one legislator.

(D) If, for any reason, any of the aforementioned legislative leadership fails to nominate the requisite number of retired judges within the time period specified herein, the Chief Clerk of the Assembly shall immediately draw, by lot, that legislator's remaining nominees in accordance with the requirements of subparagraph (C) of paragraph (2) of subdivision (c).

(E) No later than three days before the deadline for appointment of the panel of Special Masters, each legislator authorized to nominate a retired judge shall also be entitled to exercise a single preemptory challenge striking the name of any nominee of any other legislator.

(F) From the list of remaining nominees selected by said legislative leadership, the Chief Clerk of the Assembly shall then draw, by lot, three persons to serve as Special Masters. If the drawing fails to produce at least one Special Master from each of the two largest political parties, the drawing shall be conducted again until this requirement is met. If the drawing is unable to produce at least one Special Master from each of the two largest political parties, the drawing for the Special Master from the political party not represented from the list of remaining nominees shall be made from the original pool of 24 retired judges nominated by the Judicial Council, except that no retired judge whose name was struck pursuant to subparagraph (E) of paragraph (2) of subdivision (c) may be appointed. In the event of a vacancy in the panel of Special Masters, the Chief Clerk shall immediately thereafter draw, by lot, from the list of remaining nominees selected by said legislative leadership, or the original pool of 24 retired judges, if necessary, except for those whose names were struck, a replacement who satisfies the composition requirements for the panel under this subdivision.

(d) Each Special Master shall be compensated at the same rate for each day engaged in official duties and reimbursed for actual and necessary expenses, including travel expenses, in the same manner as a member of the California Citizens Compensation Commission pursuant to subdivision (j) of Section 8 of Article III. The Special Masters' term of office shall expire upon approval or rejection of a plan pursuant to subdivision (h).

(e) Each Special Master shall be subject to the same restrictions on gifts as imposed on a retired judge of the superior court serving in the assigned judges program, and shall file a statement of economic

interest, or any successor document, to the same extent and in the same manner as such a retired judge.

(f) (1) Public notice shall be given of all meetings of the Special Masters, and the Special Masters shall be deemed a state body subject to the provisions of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code), or any successor act, as amended from time to time; provided that all meetings and sessions of the Special Masters shall be recorded. The Special Masters shall establish procedures that restrict ex parte communications from members of the public and the Legislature concerning the merits of any redistricting plan.

(2) The panel of Special Masters shall establish and publish a schedule to receive and consider proposed redistricting plans and public comment from any member of the Legislature or public. The panel of Special Masters shall hold at least three public hearings throughout the state to consider redistricting plans. At least one such hearing shall be held after the Special Masters have submitted their proposed redistricting plan pursuant to paragraph (3) of subdivision (f), but before adoption of the final plan.

(3) Before the adoption of a final redistricting plan, the Special Masters shall submit their plan to the Legislature for an opportunity to comment within the time set by the Special Masters. The Special Masters shall address in writing each change to their plan that is recommended by the Legislature and incorporated into the plan.

(g) The final redistricting plan shall be approved by a single resolution adopted unanimously by the Special Masters and shall become effective upon its filing with the Secretary of State for use at the next statewide primary and general elections, and, if adopted by initiative pursuant to subdivision (h), for succeeding elections until the next adjustment of boundaries is required pursuant to this article.

(h) The Secretary of State shall submit the final redistricting plan as if it were proposed as an initiative statute under Section 8 of Article II at the same next general election provided for under subdivision (g) for approval or rejection by the voters for use in succeeding elections until the next adjustment of boundaries is required. The ballot title shall read: "Shall the boundary lines of the Senatorial, Assembly, Congressional, and Board of Equalization districts adopted by Special Masters as required by Article XXI of the California Constitution, and used for this election, be used until the next constitutionally required adjustment of the boundaries?"

(i) If the redistricting plan is approved by the voters pursuant to subdivision (h), it shall be used in succeeding elections until the next adjustment of boundaries is required. If the plan is rejected by the voters pursuant to subdivision (h), a new panel of Special Masters shall be appointed within 90 days in the manner provided in paragraph (2) of subdivision (c), for the purpose of proposing a new plan for the next statewide primary and general elections pursuant to this article. Any officials elected under a final redistricting plan shall serve out their term of office notwithstanding the voters' disapproval of the plan for use in succeeding primary and general elections.

(j) The Legislature shall make such appropriations from the Legislature's operating budget, as limited by Section 7.5 of Article IV, as necessary to provide the panel of Special Masters with equipment, office space, and necessary personnel, including counsel and independent experts in the field of redistricting and computer technology, to assist them in their work. The Legislative Analyst shall determine the maximum amount of the appropriation, based on one-half the amount expended by the Legislature in creating plans in 2001, adjusted by the California Consumer Price Index. For purposes of the plan of redistricting under subdivision (b) only, there is hereby appropriated to the panel of Special Masters from the General Fund of the State during the fiscal year in which the panel performs its responsibilities a sum equal to one-half the amount expended by the Legislature in creating plans in 2001. The expenditure of funds under this appropriation shall be subject to the normal administrative review given to other state appropriations. For purposes of all plans of redistricting under subdivision (a), until appropriations are made, the Legislative Analyst's Office, or any successor thereto, shall furnish, from existing resources, staff and services to the panel as needed for the performance of its duties.

# TEXT OF PROPOSED LAWS (PROPOSITION 77 CONTINUED)

(k) Except for judicial decrees, the provisions of this article are the exclusive means of adjusting the boundary lines of the districts specified herein.

Section 2. (a) Each member of the Senate, Assembly, Congress, and the Board of Equalization shall be elected from a single-member district. Districts of each type shall be numbered consecutively commencing at the northern boundary of the State and ending at the southern boundary.

(b) The population of all districts of a particular type shall be as nearly equal as practicable. For congressional districts, the maximum population deviation between districts shall not exceed federal constitutional standards. For state legislative and Board of Equalization districts, the maximum population deviation between districts of the same type shall not exceed one percent or any stricter standard required by federal law.

(c) Districts shall comply with any additional requirements of the United States Constitution and any applicable federal statute, including the federal Voting Rights Act.

(d) Each Board of Equalization district shall be comprised of 10 adjacent Senate districts and each Senate district shall be comprised of two adjacent Assembly districts.

(e) Every district shall be contiguous.

(f) District boundaries shall conform to the geographic boundaries of a county, city, or city and county to the greatest extent practicable. In this regard, a redistricting plan shall comply with these criteria in the following order of importance: (1) create the most whole counties possible, (2) create the fewest county fragments possible, (3) create the most whole cities possible, and (4) create the fewest city fragments possible, except as necessary to comply with the requirements of the preceding subdivisions of this section.

(g) Every district shall be as compact as practicable except to the extent necessary to comply with the requirements of the preceding subdivisions of this section. With regard to compactness, to the extent practicable a contiguous area of population shall not be bypassed to incorporate an area of population more distant.

(h) No census block shall be fragmented unless required to satisfy the requirements of the United States Constitution.

(i) No consideration shall be given as to the potential effects on incumbents or political parties. No data regarding the residence of an incumbent or of any other candidate or the party affiliation or voting history of electors may be used in the preparation of plans, except as required by federal law.

Section 3. Any action or proceeding alleging that a plan adopted by the Special Masters does not conform with the requirements of this article must be filed within 45 days of the filing of the plan with

the Secretary of State or such action or proceeding is forever barred. Judicial review of the conformity of any plan with the requirements of this article may be pursuant to a petition for extraordinary relief. If any court finds a plan to be in violation of this article, it may order that a new plan be adopted by a panel of Special Masters pursuant to this article. A court may order any remedy necessary to effectuate this article.

In the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, the Legislature shall adjust the boundary lines of the Senatorial, Assembly, Congressional, and Board of Equalization districts in conformance with the following standards:

(a) Each member of the Senate, Assembly, Congress, and the Board of Equalization shall be elected from a single/member district.

(b) The population of all districts of a particular type shall be reasonably equal.

(c) Every district shall be contiguous.

(d) Districts of each type shall be numbered consecutively commencing at the northern boundary of the State and ending at the southern boundary.

(e) The geographical integrity of any city, county, or city and county, or of any geographical region shall be respected to the extent possible without violating the requirements of any other subdivision of this section.

SECTION 3. Severability

If any provision of this measure or the application thereof to any person or circumstance is held invalid, including, but not limited to, subdivision (b) of Section 1 of Article XXI, that invalidity shall not affect other provisions or applications which can reasonably be given effect in the absence of the invalid provision or application.

SECTION 4. Conflicting Ballot Measures

(a) In the event that this measure and another measure or measures relating to the redistricting of Senatorial, Assembly, Congressional, or Board of Equalization districts is approved by a majority of voters at the same election, and this measure receives a greater number of affirmative votes than any other such measure or measures, this measure shall control in its entirety and said other measure or measures shall be rendered void and without any legal effect. If this measure is approved but does not receive a greater number of affirmative votes than said other measure or measures, this measure shall take effect to the extent permitted by law.

(b) If this measure is approved by voters but superseded by law by any other conflicting ballot measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force of law.

## PROPOSITION 78

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

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

### PROPOSED LAW

#### SECTION 1. FINDINGS AND DECLARATION OF PURPOSE

The people of the State of California do hereby find and declare that:

- (a) Prescription drugs are an integral part to managing acute and chronic illness improving quality of life; and
- (b) Prescription drugs are a convenient, cost-effective alternative to more costly medical interventions; and
- (c) Increasing the affordability and access of prescription medicines will significantly improve health care quality and lower overall health care costs.

#### SEC. 2. CALIFORNIA STATE PHARMACY ASSISTANCE PROGRAM (CAL RX)

Division 112 (commencing with Section 130600) is added to the Health and Safety Code, to read:

#### DIVISION 112. CALIFORNIA STATE PHARMACY ASSISTANCE PROGRAM (CAL RX)

##### CHAPTER 1. GENERAL PROVISIONS

130600. This division shall be known, and may be cited, as the California State Pharmacy Assistance Program or Cal Rx.

130601. For the purposes of this division, the following definitions shall apply:

(a) "Benchmark price" means the price for an individual drug or aggregate price for a group of drugs offered by a manufacturer equal to the lowest commercial price for the individual drug or group of drugs.

(b) "Cal Rx" means the California State Pharmacy Assistance Program.

(c) "Department" means the State Department of Health Services.

(d) "Fund" means the California State Pharmacy Assistance Program Fund.

(e) "Inpatient" means a person who has been admitted to a hospital for observation, diagnosis, or treatment and who is expected to remain overnight or longer.

(f) (1) "Lowest commercial price" means the lowest purchase price for an individual drug, including all discounts, rebates, or free goods, available to any wholesale or retail commercial class of trade in California.

## TEXT OF PROPOSED LAWS (PROPOSITION 78 CONTINUED)

(2) Lowest commercial price excludes purchases by government entities, purchases pursuant to Section 340B of the federal Public Health Services Act (42 U.S.C. Sec. 256b), or nominal prices as defined in federal Medicaid drug rebate agreements.

(3) A purchase price provided to an acute care hospital or acute care hospital pharmacy may be excluded if the prescription drug is used exclusively for an inpatient of the hospital.

(4) Wholesale or retail commercial class of trade includes distributors, retail pharmacies, pharmacy benefit managers, health maintenance organizations, or any entities that directly or indirectly sell prescription drugs to consumers through licensed retail pharmacies, physician offices, or clinics.

(g) "Manufacturer" means a drug manufacturer as defined in Section 4033 of the Business and Professions Code.

(h) "Manufacturer's rebate" means the rebate for an individual drug or aggregate rebate for a group of drugs necessary to make the price for the drug ingredients equal to or less than the applicable benchmark price.

(i) "Prescription drug" means any drug that bears the legend "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(j) "Private discount drug program" means a prescription drug discount card or manufacturer patient assistance program that provides discounted or free drugs to eligible individuals. For the purposes of this division, a private discount drug program is not considered insurance or a third-party payer program.

(k) "Recipient" means a resident that has completed an application and has been determined eligible for Cal Rx.

(l) "Resident" means a California resident pursuant to Section 17014 of the Revenue and Taxation Code.

(m) "Third-party vendor" means a public or private entity with whom the department contracts pursuant to subdivision (b) of Section 130602, which may include a pharmacy benefit administration or pharmacy benefit management company.

130602. (a) There is hereby established the California State Pharmacy Assistance Program or Cal Rx.

(b) The department shall provide oversight of Cal Rx. To implement and administer Cal Rx, the department may contract with a third-party vendor or utilize existing health care service provider enrollment and payment mechanisms, including the Medi-Cal program's fiscal intermediary.

(c) Any resident may enroll in Cal Rx if determined eligible pursuant to Section 130605.

### CHAPTER 2. ELIGIBILITY AND APPLICATION PROCESS

130605. (a) To be eligible for Cal Rx, an individual shall meet all of the following requirements at the time of application and reapplication for the program:

(1) Be a resident.

(2) Have family income, as reported pursuant to Section 130606, that does not exceed 300 percent of the federal poverty guidelines, as revised annually by the United States Department of Health and Human Services in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. Sec. 9902), as amended.

(3) Not have outpatient prescription drug coverage paid for in whole or in part by any of the following:

(A) A third-party payer.

(B) The Medi-Cal program.

(C) The children's health insurance program.

(D) The disability medical assistance program.

(E) Another health plan or pharmacy assistance program that uses state or federal funds to pay part or all of the cost of the individual's outpatient prescription drugs. Notwithstanding any other provision of this division to the contrary, an individual enrolled in Medicare may participate in this program, to the extent allowed by federal law, for prescription drugs not covered by Medicare.

(4) Not have had outpatient prescription drug coverage specified in paragraph (3) during any of the three months preceding the month in which the application or reapplication for Cal Rx is made, unless any of the following applies:

(A) The third-party payer that paid all or part of the coverage filed for bankruptcy under the federal bankruptcy laws.

(B) The individual is no longer eligible for coverage provided through a retirement plan subject to protection under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001), as amended.

(C) The individual is no longer eligible for the Medi-Cal program, children's health insurance program, or disability medical assistance program.

(b) Application and an annual reapplication for Cal Rx shall be made pursuant to subdivision (d) of Section 130606. An applicant, or a guardian or custodian of an applicant, may apply or reapply on behalf of the applicant and the applicant's spouse and children.

130606. (a) The department or third-party vendor shall develop an application and reapplication form for the determination of a resident's eligibility for Cal Rx.

(b) The application, at a minimum, shall do all of the following:

(1) Specify the information that an applicant or the applicant's representative must include in the application.

(2) Require that the applicant, or the applicant's guardian or custodian, attest that the information provided in the application is accurate to the best knowledge and belief of the applicant or the applicant's guardian or custodian.

(3) Include a statement printed in bold letters informing the applicant that knowingly making a false statement is punishable under penalty of perjury.

(4) Specify that the application and annual reapplication fee due upon submission of the applicable form is fifteen dollars (\$15).

(c) In assessing the income requirement for Cal Rx eligibility, the department shall use the income information reported on the application and not require additional documentation.

(d) Application and annual reapplication may be made at any pharmacy, physician office, or clinic participating in Cal Rx, through a Web site or call center staffed by trained operators approved by the department, or through the third-party vendor. A pharmacy, physician office, clinic, or third-party vendor completing the application shall keep the application fee as reimbursement for its processing costs. If it is determined that the applicant is already enrolled in Cal Rx, the fee shall be returned to the applicant and the applicant shall be informed of his or her current status as a recipient.

(e) The department or third-party vendor shall utilize a secure electronic application process that can be used by a pharmacy, physician office, or clinic, by a Web site, by a call center staffed by trained operators, or through the third-party vendor to enroll applicants in Cal Rx.

(f) During normal hours, the department or third-party vendor shall make a determination of eligibility within four hours of receipt by Cal Rx of a completed application. The department or third-party vendor shall mail the recipient an identification card no later than four days after eligibility has been determined.

(g) For applications submitted through a pharmacy, the department or third-party vendor may issue a recipient identification number for eligible applicants to the pharmacy for immediate access to Cal Rx.

130607. (a) The department or third-party vendor shall attempt to execute agreements with private discount drug programs to provide a single point of entry for eligibility determination and claims processing for drugs available in those private discount drug programs.

(b) (1) Private discount drug programs may require an applicant to provide additional information, beyond that required by Cal Rx, to determine the applicant's eligibility for discount drug programs.

(2) An applicant shall not be, under any circumstances, required to participate in, or to disclose information that would determine the applicant's eligibility to participate in, private discount drug programs in order to participate in Cal Rx.

(3) Notwithstanding paragraph (2), an applicant may voluntarily disclose or provide information that may be necessary to determine eligibility for participation in a private drug discount program.

(c) For those drugs available pursuant to subdivision (a), the department or third-party vendor shall develop a system that provides

## TEXT OF PROPOSED LAWS (PROPOSITION 78 CONTINUED)

a recipient with the best prescription drug discounts that are available to them through Cal Rx or through private discount drug programs.

(d) The recipient identification card issued pursuant to subdivision (g) of Section 130606 shall serve as a single point of entry for drugs available pursuant to subdivision (a) and shall meet all legal requirements for a uniform prescription drug card pursuant to Section 1363.03.

### CHAPTER 3. ADMINISTRATION AND SCOPE

130615. (a) To the extent that funds are available, the department shall conduct outreach programs to inform residents about Cal Rx and private drug discount programs available through the single point of entry as specified in subdivisions (a) and (d) of Section 130607. No outreach material shall contain the name or likeness of a drug. The name of the organization sponsoring the material pursuant to subdivision (b) may appear on the material once and in a font no larger than 10 point.

(b) The department may accept on behalf of the state any gift, bequest, or donation of outreach services or materials to inform residents about Cal Rx. Neither Section 11005 of the Government Code, nor any other law requiring approval by a state officer of a gift, bequest, or donation shall apply to these gifts, bequests, or donations. For purposes of this section, outreach services may include, but shall not be limited to, coordinating and implementing outreach efforts and plans. Outreach materials may include, but shall not be limited to, brochures, pamphlets, fliers, posters, advertisements, and other promotional items.

(c) An advertisement provided as a gift, bequest, or donation pursuant to this section shall be exempt from Article 5 (commencing with Section 11080) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

130616. (a) Any pharmacy licensed pursuant to Article 7 (commencing with Section 4110) of Chapter 9 of Division 2 of the Business and Professions Code may participate in Cal Rx.

(b) Any manufacturer, as defined in subdivision (g) of Section 130601, may participate in Cal Rx.

130617. (a) This division shall apply only to prescription drugs dispensed to noninpatient recipients.

(b) The amount a recipient pays for a drug within Cal Rx shall be equal to the pharmacy contract rate pursuant to subdivision (c), plus a dispensing fee that shall be negotiated as part of the rate pursuant to subdivision (c), less the applicable manufacturer's rebate.

(c) The department or third-party vendor may contract with participating pharmacies for a rate other than the pharmacist's usual and customary rate. However, the department must approve the contracted rate of a third-party vendor.

(d) The department or third-party vendor shall provide a claims processing system that complies with all of the following requirements:

- (1) Charges a price that meets the requirements of subdivision (b).
- (2) Provides the pharmacy with the dollar amount of the discount to be returned to the pharmacy.
- (3) Provides a single point of entry for access to private discount drug programs pursuant to Section 130607.
- (4) Provides drug utilization review warnings to pharmacies consistent with the drug utilization review standards outlined in Section 1927 of the federal Social Security Act (42 U.S.C. Sec. 1396r-8(g)).

(e) The department or third-party vendor shall pay a participating pharmacy the discount provided to recipients pursuant to subdivision (b) by a date that is not later than two weeks after the claim is received.

(f) The department or third-party vendor shall develop a program to prevent the occurrence of fraud in Cal Rx.

(g) The department or third-party vendor shall develop a mechanism for recipients to report problems or complaints regarding Cal Rx.

130618. (a) In order to secure the discount required pursuant to subdivisions (b) and (c) of Section 130617, the department or third-party vendor shall attempt to negotiate drug rebate agreements for Cal Rx with drug manufacturers.

(b) Each drug rebate agreement shall do all of the following:

- (1) Specify which of the manufacturer's drugs are included in the agreement.
- (2) Permit the department to remove a drug from the agreement in the event of a dispute over the drug's utilization.
- (3) Require the manufacturer to make a rebate payment to the department for each drug specified under paragraph (1) dispensed to a recipient.

(4) Require the rebate payment for a drug to be equal to the amount determined by multiplying the applicable per unit rebate by the number of units dispensed.

(5) Define a unit, for purposes of the agreement, in compliance with the standards set by the National Council of Prescription Drug Programs.

(6) Require the manufacturer to make the rebate payments to the department on at least a quarterly basis.

(7) Require the manufacturer to provide, upon the request of the department, documentation to validate that the per unit rebate provided complies with paragraph (4).

(8) Permit a manufacturer to audit claims for the drugs the manufacturer provides under Cal Rx. Claims information provided to manufacturers shall comply with all federal and state privacy laws that protect a recipient's health information.

(c) To obtain the most favorable discounts, the department may limit the number of drugs available within Cal Rx.

(d) The entire amount of the drug rebates negotiated pursuant to this section shall go to reducing the cost to Cal Rx recipients of purchasing drugs. The Legislature shall annually appropriate an amount to cover the state's share of the discount provided by this section.

(e) The department or third-party vendor may collect prospective rebates from manufacturers for payment to pharmacies. The amount of the prospective rebate shall be contained in drug rebate agreements executed pursuant to this section.

(f) Drug rebate contracts negotiated by the third-party vendor shall be subject to review by the department. The department may cancel a contract that it finds not in the best interests of the state or Cal Rx recipients.

(g) The third-party vendor may directly collect rebates from manufacturers in order to facilitate the payment to pharmacies pursuant to subdivision (e) of Section 130617. The department shall develop a system to prevent diversion of funds collected by the third-party vendor.

130619. (a) The department or third-party vendor shall generate a monthly report that, at a minimum, provides all of the following:

- (1) Drug utilization information.
- (2) Amounts paid to pharmacies.
- (3) Amounts of rebates collected from manufacturers.
- (4) A summary of the problems or complaints reported regarding Cal Rx.

(b) Information provided in paragraphs (1), (2), and (3) of subdivision (a) shall be at the national drug code level.

130620. (a) The department or third-party vendor shall deposit all payments received pursuant to Section 130618 into the California State Pharmacy Assistance Program Fund, which is hereby established in the State Treasury.

(b) Notwithstanding Section 13340 of the Government Code, moneys in the fund are hereby appropriated to the department without regard to fiscal years for the purpose of providing payment to participating pharmacies pursuant to Section 130617 and for defraying the costs of administering Cal Rx. Notwithstanding any other provision of law, no money in the fund is available for expenditure for any other purpose or for loaning or transferring to any other fund, including the General Fund.

130621. The department may hire any staff needed for the implementation and oversight of Cal Rx.

130622. The department shall seek and obtain confirmation from the federal Centers for Medicare and Medicaid Services that Cal Rx complies with the requirements for a state pharmaceutical assistance program pursuant to Section 1927 of the federal Social Security Act (42 U.S.C. Sec. 1396r-8) and that discounts provided under the program are exempt from Medicaid best price requirements.

130623. (a) Contracts and change orders entered into pursuant to this division and any project or systems development notice shall be exempt from all of the following:

- (1) The competitive bidding requirements of State Administrative Manual Management Memo 03-10.
- (2) Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.
- (3) Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code.

# TEXT OF PROPOSED LAWS (PROPOSITION 78 CONTINUED)

(b) *Change orders entered into pursuant to this division shall not require a contract amendment.*

130624. *The department may terminate Cal Rx if the department makes any one of the following determinations:*

(a) *That there are insufficient discounts to participants to make Cal Rx viable.*

(b) *That there are an insufficient number of applicants for Cal Rx.*

(c) *That the department is unable to find a responsible third-party vendor to administer Cal Rx.*

130625. *Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this division in whole or in part, by means of a provider bulletin or other similar instructions, without taking regulatory action.*

## SEC. 3. GENERAL PROVISIONS

(a) **Conflicting Measures:**

(1) This measure is intended to be comprehensive. It is the intent of the people that in the event that this measure and another initiative measure or measures relating to the same subject shall appear on the

same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

(2) If this measure is approved by voters but superseded by law by any other conflicting ballot measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force of law.

(b) **Severability:** The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(c) **Amendment:** The provisions of this act may be amended by a statute that is passed by a vote of two-thirds of the membership of each house of the Legislature and signed by the Governor. All amendments to this act shall be to further the act and shall be consistent with its purposes.

## PROPOSITION 79

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

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

## PROPOSED LAW

### CHEAPER PRESCRIPTION DRUGS FOR CALIFORNIA ACT (CAL RX PLUS)

SECTION 1. Division 112 (commencing with Section 130500) is added to the Health and Safety Code, to read:

#### DIVISION 112. CHEAPER PRESCRIPTION DRUGS FOR CALIFORNIA ACT (CAL RX PLUS)

##### CHAPTER 1. GENERAL PROVISIONS

130500. *This division shall be known, and may be cited, as the Cheaper Prescription Drugs for California Program or Cal Rx Plus.*

130501. *The Cheaper Prescription Drugs for California Program, or Cal Rx Plus, is established to reduce prescription drug prices and to improve the quality of health care for residents of the state. The program is administered by the State Department of Health Services to use manufacturer rebates and pharmacy discounts to reduce prescription drug prices for Californians.*

130502. *The people of California find that affordability is critical in providing access to prescription drugs for California residents. This program is enacted by the people to enable the state to take steps to make prescription drugs more affordable for qualified California residents, thereby increasing the overall health of California residents, promoting healthy communities, and protecting the public health and welfare. It is not the intention of the state to discourage employers from offering or paying for prescription drug benefits for their employees or to replace employer-sponsored prescription drug benefit plans that provide benefits comparable to those made available to qualified California residents under this program.*

130503. *Cal Rx Plus shall be available to Californians facing high prescription drug costs to provide lower prescription drug prices. To the extent permitted by federal law, Cal Rx Plus shall also be available to small businesses and other entities, as defined, that provide health coverage for Californians.*

130504. *For purposes of this division, the following definitions apply:*

(a) *“Department” means the State Department of Health Services.*

(b) *“Fund” means the Cal Rx Plus Program Fund.*

(c) *“Program” means the Cheaper Prescription Drugs for California Program or Cal Rx Plus.*

(d) (1) *“Qualified Californian” means a resident of California whose total unreimbursed medical expenses equal 5 percent or more of family income.*

(2) *“Qualified Californian” also means an individual enrolled in Medicare who may participate in this program, to the extent allowed by federal law, for prescription drugs not covered by Medicare.*

(3) *“Qualified Californian” also means a resident of California who has a family income equal to or less than 400 percent of the federal poverty guidelines and who shall not have outpatient prescription drug coverage paid for in whole or in part by the Medi-Cal program or the Healthy Families Program.*

(4) *For purposes of this subdivision, the cost of drugs provided under this division is considered an expense incurred by the family for eligibility determination purposes.*

(e) *“Prescription drug” means any drug that bears the legend “Caution: federal law prohibits dispensing without prescription,” “Rx only,” or words of similar import.*

##### CHAPTER 2. PRESCRIPTION DRUG DISCOUNTS

130510. (a) *The amount a Cal Rx Plus participant pays for a drug through the program shall be equal to the participating provider’s usual and customary charge or the pharmacy contract rate pursuant to subdivision (c), less a program discount for the specific drug or an average discount for a group of drugs or all drugs covered by the program.*

(b) *In determining program discounts on individual drugs, the department shall take into account the rebates provided by the drug’s manufacturer and the state’s share of the discount.*

(c) *The department may contract with participating pharmacies for a rate other than the pharmacies’ usual and customary rate.*

130511. (a) *The department shall negotiate drug rebate agreements with drug manufacturers to provide for discounts for prescription drugs purchased through Cal Rx Plus.*

(b) *Consistent with federal law, the department shall seek to contract for drug rebates that result in a net price comparable to or lower than the Medicaid best price for drugs covered by the program. The department shall also seek to contract a net price comparable to or lower than the price for prescription drugs provided to the federal government.*

(c) *To obtain the most favorable discounts, the department may limit the number of drugs available through the program.*

(d) *No less than 95 percent of the drug rebates negotiated pursuant to this section shall be used to reduce the cost of drugs purchased by participants in the program.*

(e) (1) *Any pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code may participate in the program.*

(2) *Any drug manufacturer may participate in the program.*

130512. (a) *Subject to this section, the department may not enter into a new contract or extend an existing contract with a drug manufacturer for the Medi-Cal program if the drug manufacturer will not provide Cal Rx Plus a rate comparable to or lower than the Medicaid best price. This provision shall not apply to a drug for which there is no therapeutic equivalent.*

(b) *To the extent permitted by federal law, the department may require prior authorization in the Medi-Cal program for any drug of a manufacturer that fails to agree to a price comparable to or lower than the Medi-Cal best price for prescription drugs purchased under this division.*

## TEXT OF PROPOSED LAWS (PROPOSITION 79 CONTINUED)

(c) If a contract with a manufacturer is precluded under subdivision (a) or if prior authorization is required for a drug pursuant to this section, in no event shall a Medi-Cal beneficiary be denied the continued use of a drug that is part of a prescribed therapy until that drug is no longer prescribed for that beneficiary's therapy. The State Department of Health Services shall approve or deny requests for prior authorization necessitated by this section as required by state or federal law.

(d) This section shall be implemented consistent with federal law.

130513. The names of manufacturers that do and do not enter into rebate agreements with the department pursuant to this division shall be public information and shall be released to the public.

130514. (a) Each drug rebate agreement shall do all of the following:

(1) Specify which of the manufacturer's drugs are included in the agreement.

(2) Permit the department to remove a drug from the agreement in the event of a dispute over the drug's utilization.

(3) Require the manufacturer to make a rebate payment to the department for each drug specified under paragraph (1) dispensed to a participant.

(4) Require the manufacturer to make the rebate payments to the department on at least a quarterly basis.

(5) Require the manufacturer to provide, upon the request of the department, documentation to validate the rebate.

(6) Permit a manufacturer to audit claims for the drugs the manufacturer provides under Cal Rx Plus. Claims information provided to manufacturers shall comply with all federal and state privacy laws that protect a participant's health information.

(b) The department may collect prospective rebates from manufacturers for payment to pharmacies. The amount of the prospective rebate shall be contained in drug rebate agreements executed pursuant to this section.

(c) (1) Manufacturers shall calculate and pay interest on late or unpaid rebates. The interest shall not apply to any prior period adjustments of unit rebate amounts or department utilization adjustments.

(2) For state rebate payments, manufacturers shall calculate and pay interest on late or unpaid rebates for quarters that begin on or after the effective date of the act that added this subdivision.

(d) Interest pursuant to subdivision (c) shall begin accruing 38 calendar days from the date of mailing of the invoice, including supporting utilization data sent to the manufacturer. Interest shall continue to accrue until the date of mailing of the manufacturer's payment.

130515. (a) The department shall generate a monthly report that, at a minimum, provides all of the following:

(1) Drug utilization information.

(2) Amounts paid to pharmacies.

(3) Amounts of rebates collected from manufacturers.

(4) A summary of the problems or complaints reported regarding Cal Rx Plus.

(b) Information provided in paragraphs (1), (2), and (3) of subdivision (a) shall be at the national drug code level.

130516. (a) The department shall provide a claims processing system that complies with all of the following requirements:

(1) Charges a price that meets the requirements of this division.

(2) Provides the pharmacy with the dollar amount of the discount to be returned to the pharmacy.

(3) Provides drug utilization review warnings to pharmacies consistent with the drug utilization review standards outlined in federal law.

(b) The department shall pay a participating pharmacy the discount provided to participants pursuant to this division by a date that is not later than two weeks after the claim is received.

(c) The department shall develop a mechanism for Cal Rx Plus participants to report problems or complaints regarding Cal Rx Plus.

### CHAPTER 3. CAL RX PLUS APPLICATION, ENROLLMENT, AND OUTREACH

130520. (a) The department shall develop an application and reapplication form for the determination of a resident's eligibility for Cal Rx Plus. An applicant, or a guardian or custodian of an applicant, may apply or reapply on behalf of the applicant and the applicant's spouse and children.

(b) The application, at a minimum, shall do all of the following:

(1) Specify the information that an applicant or the applicant's representative must include in the application.

(2) Require that the applicant, or the applicant's guardian or custodian, attest that the information provided in the application is accurate to the best knowledge and belief of the applicant or the applicant's guardian or custodian.

(3) Specify that the application and annual reapplication fee due upon submission of the applicable form is ten dollars (\$10).

(c) In assessing the income requirement for Cal Rx Plus eligibility, the department shall use the income information reported on the application and not require additional documentation.

(d) Application and annual reapplication may be made at any pharmacy, physician office, or clinic participating in Cal Rx Plus, or through a Web site or call center staffed by trained operators approved by the department. A pharmacy, physician office, clinic, or nonprofit community organization completing the application shall keep the application fee as reimbursement for its processing costs. If it is determined that the applicant is already enrolled in Cal Rx Plus, the fee shall be returned to the applicant and the applicant shall be informed of his or her current status as a participant.

(e) The department shall utilize a secure electronic application process that can be used by a pharmacy, physician office, or clinic, by a Web site, by a call center staffed by trained operators, by a nonprofit community organization, or through the third-party vendor to enroll applicants in Cal Rx Plus.

(f) During normal hours, the department shall make a determination of eligibility within four hours of receipt by Cal Rx Plus of a completed application. The department shall mail the participant an identification card no later than four days after eligibility has been determined.

(g) For applications submitted through a pharmacy, the department may issue a participant identification number for eligible applicants to the pharmacy for immediate access to Cal Rx Plus.

(h) A Cal Rx Plus participant who has been determined to be eligible shall be enrolled for 12 months or until the participant notifies the department of a desire to end enrollment.

(i) The department shall notify a participant 30 days prior to the termination of enrollment. A Cal Rx Plus participant shall remain enrolled until the participant notifies the department that the participant no longer meets the enrollment criteria.

130521. (a) The department shall conduct an outreach program to inform California residents of their opportunity to participate in the Cheaper Prescription Drugs for California Program. The department shall coordinate outreach activities with the California Department of Aging and other state agencies, local agencies, and nonprofit organizations that serve residents who may qualify for the program. No outreach material shall contain the name or likeness of a drug.

(b) The department may accept on behalf of the state any gift, bequest, or donation of outreach services or materials to inform residents about Cal Rx Plus. The name of the organization sponsoring the material pursuant to this subdivision shall in no way appear on the material but shall be reported to the public and the Legislature as otherwise provided by law.

130522. (a) A drug dispensed pursuant to prescription, including a drug dispensed without charge to the consumer, must be accompanied by Cal Rx Plus participation information in a manner approved by the department and as permitted by law.

(b) The information shall include advice to consult a health care provider or pharmacist about access to drugs at lower prices.

(c) The requirements of this section may be met by the distribution of a separate writing that is approved by or produced and distributed by the department.

### CHAPTER 4. PHARMACEUTICAL MANUFACTURER PATIENT ASSISTANCE PROGRAMS

130530. (a) The department shall execute agreements with drug manufacturer and other private patient assistance programs to provide a single point of entry for eligibility determination and claims processing for drugs available through those programs.

(b) The department shall develop a system to provide a participant under this division with the best discounts on prescription drugs that

## TEXT OF PROPOSED LAWS (PROPOSITION 79 CONTINUED)

are available to the participant through this program or through a drug manufacturer or other private patient assistance program.

(c) (1) The department may require an applicant to provide additional information to determine the applicant's eligibility for other discount card and patient assistance programs.

(2) The department shall not require an applicant to participate in a drug manufacturer patient assistance program or to disclose information that would determine the applicant's eligibility to participate in a drug manufacturer patient assistance program in order to participate in the program established pursuant to this division.

(d) In order to verify that California residents are being served by drug manufacturer patient assistance programs, the department shall require drug manufacturers to provide the department annually with all of the following information:

(1) The total value of the manufacturer's drugs provided at no or very low cost to California residents during the previous year.

(2) The total number of prescriptions or 30-day supplies of the manufacturer's drugs provided at no or very low cost to California residents during the previous year.

(e) The Cal Rx Plus card issued pursuant to this division shall serve as a single point of entry for drugs available pursuant to subdivision (a) and shall meet all legal requirements for a health benefit card.

### CHAPTER 5. EMPLOYER-PAID HEALTH INSURANCE PRESCRIPTION DRUG DISCOUNTS

130540. The department may establish a prescription drug purchasing program to assist small businesses, small employer purchasing pools, Taft-Hartley trust funds, and other entities that purchase health coverage for employees of those employers and their dependents.

130541. No employer or other entity that purchases coverage for employees and dependents shall be eligible to participate unless the employer pays more than 50 percent of the cost of health coverage for their employees and their dependents.

130542. The department shall seek to obtain, and the department shall seek to contract for, drug rebates that result in a net price comparable to the Cal Rx Plus program.

130543. (a) The amount a participant pays for a drug through the program shall be equal to the participating provider's usual and customary charge or the pharmacy contract rate pursuant to subdivision (c), less a program discount for the specific drug or an average discount for a group of drugs or all drugs covered by the program.

(b) In determining program discounts on individual drugs, the department shall take into account the rebates provided by the drug's manufacturer and the state's share of the discount.

(c) The department may contract with participating pharmacies for a rate other than the pharmacies' usual and customary rate.

130544. The department shall work with employers, the California Chamber of Commerce, and other associations of employers as well as the California Labor Federation AFL-CIO and consumer organizations to develop and implement this chapter.

### CHAPTER 6. ADMINISTRATION

130550. The Prescription Drug Advisory Board ("board") is established to review access to and the pricing of prescription drugs for residents of the state, to advise the Secretary on prescription drug pricing, and to provide periodic reports to the commissioner, the Governor, and the Legislature.

(a) No board member shall have a financial interest in pharmaceutical companies, or have worked for pharmaceutical companies or their agents or served within five years before being appointed to the board. No board member shall be employed for a pharmaceutical company for five years after serving on the board.

(b) The board shall consist of nine representatives of the public from the state at large. The Governor, the Senate President pro Tempore, and the Speaker of the Assembly shall each appoint three of these members. Legislative appointees shall serve staggered terms.

(c) (1) Of the three appointees by the Governor, one shall be a person over 65 enrolled in Medicare, one shall be from a school of pharmacy at the University of California, and one shall be an economist.

(2) Of the three appointees by the Speaker of the Assembly, one shall be a consumer or a representative of a recognized organization representing consumers eligible under this division, one shall be a retail pharmacist, and one shall be an employer or a representative of a recognized organization representing employers eligible for a business discount drug purchasing program.

(3) Of the three appointees by the Senate President pro Tempore, one shall be a labor trustee of a Taft-Hartley trust fund, one shall be a physician or nurse with expertise in drug benefits, and one shall be a member of the board of CalPERS.

(d) The term of office of board members shall be as follows:

(1) (A) A member appointed by the Governor shall serve for two years at the pleasure of the Governor, and may be reappointed for succeeding two-year periods, provided that the member may continue to serve beyond the two-year term until the Governor has acted and the appointee is authorized to sit and serve on the board.

(B) A member appointed by the Senate President pro Tempore or the Speaker of the Assembly shall serve for four years, and may be reappointed for succeeding four-year periods, provided that the member may continue to serve beyond the four-year term until his or her appointing authority has acted and the appointee is authorized to sit and serve on the board. If the Senate President pro Tempore or the Speaker of the Assembly has not acted within 60 days after the expiration of a member's term, the position shall become vacant until a person is appointed to a four-year term, calculated from the expiration date of the preceding term.

(2) If a vacancy occurs prior to the expiration of the term for the vacated seat, the appointing authority shall appoint a member for the remainder of the unexpired term pursuant to this chapter.

(3) On the effective date of the act, the Senate President pro Tempore shall appoint three members to serve two-year terms and the Speaker of the Assembly shall each appoint three members to serve four-year terms. All subsequent terms shall be for four years.

(d) Vacancies that occur shall be filled within 30 days after the occurrence of the vacancy, and shall be filled in the same manner in which the vacating member was selected or appointed.

(e) The board members shall select one of their members to serve as chairperson and one of their members to serve as vice chairperson on an annual basis. The chairman shall have the authority to call meetings of the Prescription Drug Advisory Board.

130552. Contracts entered into for purposes of this division are exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code. Contracts with pharmacies and drug manufacturers may be entered into on a bid or nonbid basis.

130553. To implement and administer Cal Rx Plus, the department may contract with a third-party vendor or utilize existing health care service provider enrollment and payment mechanisms, including the Medi-Cal program's fiscal intermediary. Drug rebate contracts negotiated by a third-party shall be subject to review by the department. The department may cancel a contract that it finds not in the best interests of the state or Cal Rx Plus participants.

130554. (a) The department shall deposit all payments the department receives pursuant to this division into the Cal Rx Plus Program Fund, which is hereby established in the State Treasury.

(b) The fund is hereby continuously appropriated to the department without regard to fiscal years for the purpose of providing payment to participating pharmacies pursuant to this division and for defraying the costs of administering this division. Notwithstanding any other provision of law, no money in the fund is available for expenditure for any other purpose or for loaning or transferring to any other fund, including the General Fund. The fund shall also contain any interest accrued on moneys in the fund.

130555. (a) The director may adopt regulations as are necessary for the initial implementation of this division. The adoption, amendment, repeal, or re adoption of a regulation authorized by this section is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted from the requirement that it describe specific facts showing the need for immediate action.

(b) As an alternative to the adoption of regulations pursuant to subdivision (a), and notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this article, in whole or in part, by means of a provider bulletin or other similar instructions, without taking regulatory action, provided that no such bulletin or other similar instructions shall remain in effect after July 31, 2007. It is the intent that regulations adopted pursuant to subdivision (a) shall be in place on or before July 31, 2007.

CHAPTER 7. ENFORCEMENT

130570. The Attorney General, upon the Attorney General's own initiative or upon petition of the department or of 50 or more residents of the state, shall investigate suspected violations of this division.

130571. The Attorney General may require, by summons, the attendance and testimony of witnesses and the production of books and papers before the Attorney General related to any such matter under investigation. The summons must be served in the same manner as summonses for witnesses in criminal cases, and all provisions of law related to criminal cases apply to summonses issued under this section so far as they are applicable. All investigations or hearings under this section to which witnesses are summoned or called upon to testify or to produce books, records, or correspondence are public or private at the choice of the person summoned and must be held in the county where the act to be investigated is alleged to have been committed, or if the investigation is on petition, it must be held in the county in which the petitioners reside.

130572. A court of competent jurisdiction may by order, upon application of the Attorney General, compel the attendance of witnesses, the production of books and papers, including correspondence, and the giving of testimony before the Attorney General in the same manner and to the same extent as before the superior court. Any failure to obey such an order may be punishable by that court as a contempt.

130574. If the Attorney General fails to act within 180 days to investigate suspected violations of this division, any person acting for the interests of itself, its members, or the general public may seek to obtain, in addition to other remedies, injunctive relief and a civil penalty in an amount of up to one hundred thousand dollars (\$100,000) or three times the amount of the damages, plus the costs of suit, including necessary and reasonable investigative costs, reasonable expert fees, and reasonable attorney's fees.

SEC. 1.5. Division 112.5 (commencing with Section 130600) is added to the Health and Safety Code, to read:

DIVISION 112.5. PROFITEERING  
IN PRESCRIPTION DRUGS

130600. Profiteering in prescription drugs is unlawful and is subject to the provisions of this section. The provisions of this section apply to manufacturers, distributors, and labelers of prescription drugs. A manufacturer, distributor, or labeler of prescription drugs engages in illegal profiteering if that manufacturer, distributor or labeler:

(a) Exacts or demands an unconscionable price;

(b) Exacts or demands prices or terms that lead to any unjust or unreasonable profit;

(c) Discriminates unreasonably against any person in the sale, exchange, distribution, or handling of prescription drugs dispensed or delivered in the state; or

(d) Intentionally prevents, limits, lessens, or restricts the sale or distribution of prescription drugs in this state in retaliation for the provisions of this chapter.

130601. Each violation of this division is a civil violation for which the Attorney General or any person acting for the interests of itself, its members, or the general public may obtain, in addition to other remedies, injunctive relief and a civil penalty in an amount of one hundred thousand dollars (\$100,000) or three times the amount of the damages, whichever is greater, plus the costs of suit, including necessary and reasonable investigative costs, reasonable expert fees, and reasonable attorney's fees.

SEC. 2. (a) This act shall be broadly construed and applied in order to fully promote its underlying purposes. If any provision of this initiative conflicts directly or indirectly with any other provisions of law, or any other statute previously enacted by the Legislature, it is the intent of the voters that such provisions shall be null and void to the extent that they are inconsistent with this initiative and are hereby repealed.

(b) No provision of this act may be amended by the Legislature except to further the purposes of that provision by a statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electorate. No amendment by the Legislature shall be deemed to further the purposes of this act unless it furthers the purpose of the specific provision of this act that is being amended. In any judicial action with respect to any legislative amendment, the court shall exercise its independent judgment as to whether or not the amendment satisfies the requirements of this subdivision.

(c) If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act that can be given effect in the absence of the invalid provision or application. To this end, the provisions of this act are severable.

**PROPOSITION 80**

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

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

**PROPOSED LAW**

Section 1. This measure shall be known and may be cited as "The Repeal of Electricity Deregulation and Blackout Prevention Act."

Section 2. (a) The people of the State of California find and declare all of the following:

(1) A reliable electricity system that delivers power to all consumers at just and reasonable prices is vital to the health, safety, and well-being of all Californians.

(2) Electricity is a unique good in modern society. It cannot be stored, must be delivered to the entire grid at the same time it is produced, and has no substitutes. Failure of supply for even a few seconds can lead to blackouts and disruption.

(3) The deregulation of the electricity market in California was a disastrous, ill-conceived experiment that led to rolling blackouts, supply shortages, and market manipulation, resulting in billions of dollars in excessive prices being borne by California ratepayers.

(4) The financial crisis and regulatory uncertainty that were created by the deregulated market have stifled investment in needed power plants.

(5) Deregulation of electricity, including the authorization of direct transactions, creates uncertainty regarding the customer base that must be served, making it impossible to conduct the long-term integrated resource planning that is necessary for an environmentally sound and reliable electricity system, and enables cost-shifting from large customers to small.

(6) Despite the past failures of electricity deregulation, its advocates are once again urging the Legislature and the Public Utilities Commission to launch a further experiment that may inflict additional damage on ratepayers and the California economy.

(b) In enacting this measure, it is the intent of the people to achieve the following policy goals:

(1) Ensure that all customers receive reliable retail electric service at just and reasonable rates.

(2) Provide a stable customer base for planning purposes, in order to assure resource adequacy and prevent inappropriate cost shifting. To that end, no new direct transactions shall be permitted, except as provided in this measure.

(3) Ensure that all rates, terms, and conditions of retail electric service are regulated by the Public Utilities Commission in a non-discriminatory manner as to all suppliers of retail electric service, and that all electricity service providers are under the jurisdiction of the commission.

## TEXT OF PROPOSED LAWS (PROPOSITION 80 CONTINUED)

(4) Ensure that the electrical system is developed in a manner that mitigates and minimizes any adverse environmental impacts to the maximum extent reasonably practicable by, among other things, requiring that each retail seller of electricity obtain at least 20 percent of its retail sales from eligible renewable energy resources no later than December 31, 2010.

Section 3. Section 218.3 of the Public Utilities Code is amended to read:

218.3. "Electric service provider" means an entity that offers electrical service to customers within the service territory of an electrical corporation, as defined in Section 218, but does not include an entity that offers electrical service solely to service customer load consistent with subdivision (b) of Section 218, and does not include an electrical corporation, as defined in Section 218, or a public agency that offers electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility. "Electric service provider" includes the unregulated affiliates and subsidiaries of an electrical corporation, as defined in Section 218. *An electric service provider is subject to the jurisdiction, control, and regulation of the commission and the provisions of this part, pursuant to subdivision (f) of Section 394.*

Section 4. Section 330 of the Public Utilities Code is repealed.

330.—In order to provide guidance in carrying out this chapter, the Legislature finds and declares all of the following:

(a) It is the intent of the Legislature that a cumulative rate reduction of at least 20 percent be achieved not later than April 1, 2002, for residential and small commercial customers, from the rates in effect on June 10, 1996. In determining that the April 1, 2002, rate reduction has been met, the commission shall exclude the costs of the competitively procured electricity and the costs associated with the rate reduction bonds, as defined in Section 840.

(b) The people, businesses, and institutions of California spend nearly twenty-three billion dollars (\$23,000,000,000) annually on electricity, so that reductions in the price of electricity would significantly benefit the economy of the state and its residents.

(c) The Public Utilities Commission has opened rulemaking and investigation proceedings with regard to restructuring California's electric power industry and reforming utility regulation.

(d) The commission has found, after an extensive public review process, that the interests of ratepayers and the state as a whole will be best served by moving from the regulatory framework existing on January 1, 1997, in which retail electricity service is provided principally by electrical corporations subject to an obligation to provide ultimate consumers in exclusive service territories with reliable electric service at regulated rates, to a framework under which competition would be allowed in the supply of electric power and customers would be allowed to have the right to choose their supplier of electric power.

(e) Competition in the electric generation market will encourage innovation, efficiency, and better service from all market participants, and will permit the reduction of costly regulatory oversight.

(f) The delivery of electricity over transmission and distribution systems is currently regulated, and will continue to be regulated to ensure system safety, reliability, environmental protection, and fair access for all market participants.

(g) Reliable electric service is of utmost importance to the safety, health, and welfare of the state's citizenry and economy. It is the intent of the Legislature that electric industry restructuring should enhance the reliability of the interconnected regional transmission systems, and provide strong coordination and enforceable protocols for all users of the power grid.

(h) It is important that sufficient supplies of electric generation will be available to maintain the reliable service to the citizens and businesses of the state.

(i) Reliable electric service depends on conscientious inspection and maintenance of transmission and distribution systems. To continue and enhance the reliability of the delivery of electricity, the Independent System Operator and the commission, respectively, should set inspection, maintenance, repair, and replacement standards.

(j) It is the intent of the Legislature that California enter into a compact with western region states. That compact should require the publicly and investor-owned utilities located in those states, that

self energy to California retail customers, to adhere to enforceable standards and protocols to protect the reliability of the interconnected regional transmission and distribution systems:

(k) In order to achieve meaningful wholesale and retail competition in the electric generation market, it is essential to do all of the following:

(1) Separate monopoly utility transmission functions from competitive generation functions, through development of independent, third-party control of transmission access and pricing:

(2) Permit all customers to choose from among competing suppliers of electric power:

(3) Provide customers and suppliers with open, nondiscriminatory, and comparable access to transmission and distribution services:

(f) The commission has properly concluded that:

(1) This competition will best be introduced by the creation of an Independent System Operator and an independent Power Exchange:

(2) Generation of electricity should be open to competition:

(3) There is a need to ensure that no participant in these new market institutions has the ability to exercise significant market power so that operation of the new market institutions would be distorted:

(4) These new market institutions should commence simultaneously with the phase in of customer choice, and the public will be best served if these institutions and the nonbypassable transition cost recovery mechanism referred to in subdivisions (s) to (w), inclusive, are in place simultaneously and no later than January 1, 1998:

(m) It is the intention of the Legislature that California's publicly owned electric utilities and investor-owned electric utilities should commit control of their transmission facilities to the Independent System Operator. These utilities should jointly advocate to the Federal Energy Regulatory Commission a pricing methodology for the Independent System Operator that results in an equitable return on capital investment in transmission facilities for all Independent System Operator participants:

(n) Opportunities to acquire electric power in the competitive market must be available to California consumers as soon as practicable, but no later than January 1, 1998, so that all customers can share in the benefits of competition:

(o) Under the existing regulatory framework, California's electrical corporations were granted franchise rights to provide electricity to consumers in their service territories:

(p) Consistent with federal and state policies, California electrical corporations invested in power plants and entered into contractual obligations in order to provide reliable electrical service on a nondiscriminatory basis to all consumers within their service territories who requested service:

(q) The cost of these investments and contractual obligations are currently being recovered in electricity rates charged by electrical corporations to their consumers:

(r) Transmission and distribution of electric power remain essential services imbued with the public interest that are provided over facilities owned and maintained by the state's electrical corporations:

(s) It is proper to allow electrical corporations an opportunity to continue to recover, over a reasonable transition period, those costs and categories of costs for generation-related assets and obligations, including costs associated with any subsequent renegotiation or buyout of existing generation-related contracts, that the commission, prior to December 20, 1995, had authorized for collection in rates and that may not be recoverable in market prices in a competitive generation market, and appropriate additions incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that the costs are necessary to maintain those facilities through December 31, 2001. In determining the costs to be recovered, it is appropriate to net the negative value of above market assets against the positive value of below market assets:

(t) The transition to a competitive generation market should be orderly, protect electric system reliability, provide the investors in these electrical corporations with a fair opportunity to fully recover the costs associated with commission approved generation-related assets and obligations, and be completed as expeditiously as possible:

(u) The transition to expanded customer choice, competitive markets, and performance-based ratemaking as described in

## TEXT OF PROPOSED LAWS (PROPOSITION 80 CONTINUED)

Decision 95-12-063, as modified by Decision 96-01-009, of the Public Utilities Commission, can produce hardships for employees who have dedicated their working lives to utility employment. It is preferable that any necessary reductions in the utility workforce directly caused by electrical restructuring, be accomplished through offers of voluntary severance, retraining, early retirement, outplacement, and related benefits. Whether workforce reductions are voluntary or involuntary, reasonable costs associated with these sorts of benefits should be included in the competition transition charge.

(v) Charges associated with the transition should be collected over a specific period of time on a nonbypassable basis and in a manner that does not result in an increase in rates to customers of electrical corporations. In order to insulate the policy of nonbypassability against incursions, if exemptions from the competition transition charge are granted, a firewall shall be created that segregates recovery of the cost of exemptions as follows:

(1) The cost of the competition transition charge exemptions granted to members of the combined class of residential and small commercial customers shall be recovered only from those customers.

(2) The cost of the competition transition charge exemptions granted to members of the combined class of customers other than residential and small commercial customers shall be recovered only from those customers. The commission shall retain existing cost allocation authority provided that the firewall and rate freeze principles are not violated.

(w) It is the intent of the Legislature to require and enable electrical corporations to monetize a portion of the competition transition charge for residential and small commercial consumers so that these customers will receive rate reductions of no less than 10 percent for 1998 continuing through 2002. Electrical corporations shall, by June 1, 1997, or earlier, secure the means to finance the competition transition charge by applying concurrently for financing orders from the Public Utilities Commission and for rate reduction bonds from the California Infrastructure and Economic Development Bank.

(x) California's public utility electrical corporations provide substantial benefits to all Californians, including employment and support of the state's economy. Restructuring the electric services industry pursuant to the act that added this chapter will continue these benefits, and will also offer meaningful and immediate rate reductions for residential and small commercial customers, and facilitate competition in the supply of electric power.

Section 5. Section 365 of the Public Utilities Code is repealed.

365.—The actions of the commission pursuant to this chapter shall be consistent with the findings and declarations contained in Section 330. In addition, the commission shall do all of the following:

(a) Facilitate the efforts of the state's electrical corporations to develop and obtain authorization from the Federal Energy Regulatory Commission for the creation and operation of an Independent System Operator and an independent Power Exchange, for the determination of which transmission and distribution facilities are subject to the exclusive jurisdiction of the commission, and for approval, to the extent necessary, of the cost recovery mechanism established as provided in Sections 367 to 376, inclusive. The commission shall also participate fully in all proceedings before the Federal Energy Regulatory Commission in connection with the Independent System Operator and the independent Power Exchange, and shall encourage the Federal Energy Regulatory Commission to adopt protocols and procedures that strengthen the reliability of the interconnected transmission grid, encourage all publicly owned utilities in California to become full participants, and maximize enforceability of such protocols and procedures by all market participants.

(b) (1) Authorize direct transactions between electricity suppliers and end use customers, subject to implementation of the nonbypassable charge referred to in Sections 367 to 376, inclusive. Direct transactions shall commence simultaneously with the start of an Independent System Operator and Power Exchange referred to in subdivision (a). The simultaneous commencement shall occur as soon as practicable, but no later than January 1, 1998. The commission shall develop a phase-in schedule at the conclusion of which all customers shall have the right to engage in direct transactions. Any phase-in of customer eligibility for direct transactions ordered by the commission shall be equitable to all

customer classes and accomplished as soon as practicable, consistent with operational and other technological considerations, and shall be completed for all customers by January 1, 2002.

(2) Customers shall be eligible for direct access irrespective of any direct access phase-in implemented pursuant to this section if at least one-half of that customer's electrical load is supplied by energy from a renewable resource provider certified pursuant to Section 383, provided however that nothing in this section shall provide for direct access for electric consumers served by municipal utilities unless so authorized by the governing board of that municipal utility.

Section 6. Section 365.5 of the Public Utilities Code is repealed.

365.5.—Nothing in this chapter shall prevent the commission from exercising its authority to investigate a process for certification and regulation of the rates, charges, terms, and conditions of default service. If the commission determines that a process for certification and regulation of default service is in the public interest, the commission shall submit its findings and recommendations to the Legislature for approval.

Section 7. Section 366 of the Public Utilities Code is repealed.

366.—(a) The commission shall take actions as needed to facilitate direct transactions between electricity suppliers and end-use customers. Customers shall be entitled to aggregate their electrical loads on a voluntary basis, provided that each customer does so by a positive written declaration. If no positive declaration is made by a customer, that customer shall continue to be served by the existing electrical corporation or its successor in interest, except aggregation by community choice aggregators, accomplished pursuant to Section 366.2.

(b) Aggregation of customer electrical load shall be authorized by the commission for all customer classes, including, but not limited, to small commercial or residential customers. Aggregation may be accomplished by private market aggregators, special districts, or on any other basis made available by market opportunities and agreeable by positive written declaration by individual consumers, except aggregation by community choice aggregators, which shall be accomplished pursuant to Section 366.2.

Section 8. Section 366 is added to the Public Utilities Code, to read:

366. (a) *No new direct transactions for retail electric service may be entered into after the effective date of this act, except by those customers of an electrical corporation who were being served via a direct transaction on January 1, 2005.*

(b) *A customer who was being served via a direct transaction on January 1, 2005, may return to service by an electrical corporation upon one year's notice to the electrical corporation, and thereafter may not enter into a new direct transaction. If a customer returns to service by an electrical corporation prior to the expiration of the one year notice period, that customer shall pay a generation rate that is equal to the higher of the electrical corporation's bundled generation portfolio price or the current short-term market price until the one year notice period has elapsed.*

(c) *A customer that was being served via a direct transaction on January 1, 2005, may take temporary default service from an electrical corporation, at a generation rate that is equal to the higher of the electrical corporation's bundled generation portfolio price or the current short-term market price, for a period of no longer than 120 days. If the customer does not enter into a new direct transaction by the end of the 120 day period, that customer may not thereafter enter into a new direct transaction, and shall continue to be served by the electrical corporation at the default service rate for a period of one year, at which point the customer will be charged the bundled generation portfolio price.*

(d) *Any customer that the commission has determined, in its Decision 02-11-022, is responsible to pay a cost recovery surcharge as a condition of having purchased electricity via a direct transaction shall continue to pay the cost recovery surcharge until full collection is achieved.*

(e) *Nothing in this section alters the provisions of Sections 366.1 and 366.2, relating to community choice aggregation.*

Section 9. Section 394 of the Public Utilities Code is amended to read:

394. (a) As used in this section, "electric service provider" means an entity that offers electrical service to customers within the service

## TEXT OF PROPOSED LAWS (PROPOSITION 80 CONTINUED)

territory of an electrical corporation, but does not include an electrical corporation, as defined in Section 218, does not include an entity that offers electrical service solely to serve customer load consistent with subdivision (b) of Section 218, and does not include a public agency that offers electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility. "Electric service provider" includes the unregulated affiliates and subsidiaries of an electrical corporation, as defined in Section 218.

(b) Each electric service provider shall register with the commission. As a precondition to registration, the electric service provider shall provide, under oath, declaration, or affidavit, all of the following information to the commission:

(1) Legal name and any other names under which the electric service provider is doing business in California.

(2) Current telephone number.

(3) Current address.

(4) Agent for service of process.

(5) State and date of incorporation, if any.

(6) Number for a customer contact representative, or other personnel for receiving customer inquiries.

(7) Brief description of the nature of the service being provided.

(8) Disclosure of any civil, criminal, or regulatory sanctions or penalties imposed within the 10 years immediately prior to registration, against the company or any owner, partner, officer, or director of the company pursuant to any state or federal consumer protection law or regulation, and of any felony convictions of any kind against the company or any owner, partner, officer, or director of the company. In addition, each electric service provider shall furnish the commission with fingerprints for those owners, partners, officers, and managers of the electric service provider specified by any commission decision applicable to all electric service providers. The commission shall submit completed fingerprint cards to the Department of Justice. Those fingerprints shall be available for use by the Department of Justice and the Department of Justice may transmit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The commission may use information obtained from a national criminal history record check conducted pursuant to this section to determine an electric service provider's eligibility for registration.

(9) Proof of financial viability. The commission shall develop uniform standards for determining financial viability and shall publish those standards for public comment no later than March 31, 1998. In determining the financial viability of the electric service provider, the commission shall take into account the number of customers the potential registrant expects to serve, the number of kilowatthours of electricity it expects to provide, and any other appropriate criteria to ensure that residential and small commercial customers have adequate recourse in the event of fraud or nonperformance.

(10) Proof of technical and operational ability. The commission shall develop uniform standards for determining technical and operational capacity and shall publish those standards for public comment no later than March 31, 1998.

(c) Any registration filing approved by the commission prior to the effective date of this section which does not comply in all respects with the requirements of subdivision (a) of Section 394 shall nevertheless continue in force and effect so long as within 90 days of the effective date of this section the electric service provider undertakes to supplement its registration filing to the satisfaction of the commission. Any registration that is not supplemented by the required information within the time set forth in this subdivision shall be suspended by the commission and shall not be reinstated until the commission has found the registration to be in full compliance with subdivision (a) of Section 394.

(d) Any public agency offering aggregation services as provided for in Section 366 solely to retail electric customers within its jurisdiction that has registered with the commission prior to the enactment of this section may voluntarily withdraw its registration to the extent that it is exempted from registration under this chapter.

(e) Before reentering the market, electric service providers whose registration has been revoked shall file a formal application with the

commission that satisfies the requirements set forth in Section 394.1 and demonstrates the fitness and ability of the electric service provider to comply with all applicable rules of the commission.

~~(f) Registration with the commission is an exercise of the licensing function of the commission, and does not constitute regulation of the rates or terms and conditions of service offered by electric service providers. Nothing in this part authorizes the commission to regulate the rates or terms and conditions of service offered by electric service providers.~~

~~(f) Registration with the commission is an exercise of the licensing function of the commission, and registration by an electric service provider constitutes agreement of the electric service provider to the jurisdiction, control, and regulation of its rates and terms and conditions of service by the commission. The commission shall exercise such jurisdiction, control, and regulation of electric service providers in their provision of electrical service in the same manner as its exercise of jurisdiction, control, and regulation of electrical corporations, including, but not limited to, enforcement of: energy procurement and contracting standards and requirements; resource adequacy requirements; energy efficiency and demand response requirements; renewable portfolio standards; and appropriate assignment of costs among customers to prevent cost shifting.~~

Section 10. Section 399.15 of the Public Utilities Code is amended to read:

399.15. (a) In order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of output from eligible renewable energy resources as a specified percentage of total kilowatthours sold to their retail end-use customers each calendar year, if sufficient funds are made available pursuant to paragraph (2), and Section 399.6 and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to cover the above-market costs of eligible renewables, and subject to all of the following:

(1) An electric corporation shall not be required to enter into long-term contracts with eligible renewable energy resources that exceed the market prices established pursuant to subdivision (c) of this section.

(2) The Energy Commission shall provide supplemental energy payments from funds in the New Renewable Resources Account in the Renewable Resource Trust Fund to eligible renewable energy resources pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, consistent with this article, for above-market costs. Indirect costs associated with the purchase of eligible renewable energy resources, such as imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades shall not be eligible for supplemental energy payments, but shall be recoverable by an electrical corporation in rates, as authorized by the commission.

(3) For purposes of setting annual procurement targets, the commission shall establish an initial baseline for each electrical corporation based on the actual percentage of retail sales procured from eligible renewable energy resources in 2001, and, to the extent applicable, adjusted going forward pursuant to subdivision (a) of Section 399.12.

(b) The commission shall implement annual procurement targets for each electrical corporation as follows:

~~(1) Beginning on January 1, 2003, each electrical corporation shall, pursuant to subdivision (a), increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2017. An electrical corporation with 20 percent of retail sales procured from eligible renewable energy resources in any year shall not be required to increase its procurement of such resources in the following year.~~

~~(1) Beginning on January 1, 2003, each retail seller shall, pursuant to subdivision (a), increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010.~~

(2) Only for purposes of establishing these targets, the commission shall include all power sold to retail customers by the Department of

# TEXT OF PROPOSED LAWS (PROPOSITION 80 CONTINUED)

Water Resources pursuant to Section 80100 of the Water Code in the calculation of retail sales by an electrical corporation.

(3) In the event that an electrical corporation fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the electrical corporation shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall if sufficient funds are made available pursuant to paragraph (2), and Section 399.6 and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to cover the above-market costs of eligible renewables.

(4) If supplemental energy payments from the Energy Commission, in combination with the market prices approved by the commission, are insufficient to cover the above-market costs of eligible renewable energy resources, the commission shall allow an electrical corporation to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments.

(c) The commission shall establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with renewable generators, in consideration of the following:

(1) The long-term market price of electricity for fixed price contracts, determined pursuant to the electrical corporation's general procurement activities as authorized by the commission.

(2) The long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities.

(3) The value of different products including baseload, peaking, and as-available output.

(d) The establishment of a renewables portfolio standard shall not constitute implementation by the commission of the federal Public Utility Regulatory Policies Act of 1978 (Public Law 95-617).

(e) The commission shall consult with the Energy Commission in calculating market prices under subdivision (c) and establishing other renewables portfolio standard policies.

Section 11. Chapter 2.4 (commencing with Section 400) is added to Part 1 of Division 1 of the Public Utilities Code, to read:

*CHAPTER 2.4. THE RELIABLE ELECTRIC SERVICE ACT*  
400. This chapter shall be known, and may be cited, as the *Reliable Electric Service Act*.

400.1. The commission and the Legislature shall do all of the following:

(a) Restore and affirm the electric utility's obligation to serve all of its customers reliably and at just and reasonable rates.

(b) Eliminate opportunities for market manipulation and assure the best value for consumers by authorizing cost-based construction and operation of new electric plants as well as competitive utility wholesale electricity procurement.

(c) Protect consumers, the environment, and the reliability of the electricity system, by establishing a comprehensive long-term integrated resource planning process, under regulation, in order to ensure resource adequacy and reasonably priced electricity. Such a process shall include, as a first priority, funding of all cost-effective energy efficiency and conservation programs, and increasing the proportion of electricity provided from cost-effective renewable resources.

(d) Establish and enforce resource adequacy requirements to ensure that adequate physical generating capacity dedicated to serving all load requirements is available to meet peak demand and planning and operating reserves, at such locations and at such times as may be necessary to ensure local area reliability and system reliability, at just and reasonable rates. Resource adequacy requirements shall apply in a nondiscriminatory manner to all load serving entities.

(e) Advance and promote opportunities for consumers to use innovative new technologies, such as distributed generation, consistent with grid reliability and environmental protection and improvement, provided that residential and small commercial customers with average usage of less than 1,000 kilowatt-hours per month and occupying a building that was constructed prior to January 1, 2006, shall not be required to take service under a time-differentiated rate schedule without their affirmative written consent.

400.2. (a) An electrical corporation has an obligation to plan for and provide its customers with reliable electric service at just and

reasonable rates, pursuant to Section 451, including those customers who purchase standby service from the electrical corporation.

(b) For purposes of this chapter, "electric service" includes providing adequate and efficient resources, including utility-owned and procured generation resources, such as new and repowered generation resources, cogeneration, and renewable generation resources, transmission and distribution resources, metering and billing, funding for cost-effective energy efficiency and other demand reduction resources, and employing an adequately sized, well-trained utility workforce, including contracting for maintenance of generation facilities.

400.3. (a) The Public Utilities Commission shall establish a process of resource selection and procurement that achieves the best value for ratepayers as its primary goal.

(b) The commission shall ensure that each electrical corporation achieves the best value for its ratepayers by maintaining a diversified portfolio of non-utility generation under contract with the utility and utility-owned generation, consistent with the electrical corporation's approved long-term integrated resource plan, taking into account price, reliability, stability, efficiency, cost-effectiveness, system impacts, resource diversity, financial integrity of the utility, risk, and environmental performance.

(c) The resource selection process may achieve the best value for ratepayers, as described in subdivisions (a) and (b), by utilizing the following approaches to compare the benefits and costs of alternative resource options:

(1) Competitive solicitations for non-utility generation.

(2) Bilateral contracts for non-utility generation.

(3) Cost-based utility-owned generation that is regulated by the commission.

(d) For purposes of this act, "non-utility generation" means facilities for the generation of electricity owned and operated by an entity other than an electrical corporation; and "load serving entity" does not include a local publicly owned electric utility as defined in Section 9604, the State Water Resources Development System commonly known as the State Water Project, or customer self-generation.

400.4. (a) The commission, in consultation with the Independent System Operator, shall establish resource adequacy requirements to ensure that adequate physical generating capacity dedicated to serving all load requirements is available to meet peak demand and planning and operating reserves, at or deliverable to such locations and at such times as may be necessary to ensure local area reliability and system reliability at just and reasonable rates.

(b) The commission shall implement and enforce these resource adequacy requirements in a nondiscriminatory manner on all load serving entities.

(c) Resource adequacy requirements established by the commission shall provide for and assure all of the following:

(1) System wide and local area grid reliability.

(2) Adequate physical generating capacity dedicated to serve all load requirements, including planning and operating reserves, where and when it is needed.

(3) Adequate and timely investment in new generating capacity to meet future load requirements, including planning and operating reserves.

(4) Market power mitigation.

(5) Deliverability.

(6) Resource commitments by load serving entities at least three years in advance of need, in order to assure that new resources can be constructed if necessary to meet the need.

(d) Pursuant to its authority to revoke or suspend registration pursuant to Section 394.25, the commission shall suspend the registration for a specified period, or revoke the registration, of an electric service provider that fails to comply with the rules and regulations adopted by the commission to enforce resource adequacy requirements.

Section 12. The Legislature may amend this act only to achieve its purposes and intent, by legislation receiving at least a two-thirds vote of each house and signature by the Governor.

Section 13. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

# VOTER BILL OF RIGHTS

1. You have the right to cast a ballot if you are a valid registered voter.

A valid registered voter means a United States citizen who is a resident in this state, who is at least 18 years of age and not in prison or on parole for conviction of a felony, and who is registered to vote at his or her current residence address.

2. You have the right to cast a provisional ballot if your name is not listed on the voting rolls.
3. You have the right to cast a ballot if you are present and in line at the polling place prior to the close of the polls.
4. You have the right to cast a secret ballot free from intimidation.
5. You have the right to receive a new ballot if, prior to casting your ballot, you believe you made a mistake.

If at any time before you finally cast your ballot, you feel you have made a mistake, you have the right to exchange the spoiled ballot for a new ballot. Absentee voters may also request and receive a new ballot if they return their spoiled ballot to an elections official prior to the closing of the polls on election day.

6. You have the right to receive assistance in casting your ballot, if you are unable to vote without assistance.
7. You have the right to return a completed absentee ballot to any precinct in the county.
8. You have the right to election materials in another language, if there are sufficient residents in your precinct to warrant production.
9. You have the right to ask questions about election procedures and observe the elections process.

You have the right to ask questions of the precinct board and election officials regarding election procedures and to receive an answer or be directed to the appropriate official for an answer. However, if persistent questioning disrupts the execution of their duties, the board or election officials may discontinue responding to questions.

10. You have the right to report any illegal or fraudulent activity to a local elections official or to the Secretary of State's Office.

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If you believe you have been denied any of these rights, or if you are aware of any election fraud or misconduct, please call the Secretary of State's confidential toll-free **Voter Protection Hotline at 1-800-345-VOTE (8683)**.

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Secretary of State  
1500 11th Street  
Sacramento, CA 95814

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[www.voterguide.ss.ca.gov](http://www.voterguide.ss.ca.gov)

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### **OFFICIAL VOTER INFORMATION GUIDE**

In an effort to reduce election costs, the State Legislature has authorized the State and counties to mail only one guide to addresses where more than one voter with the same surname resides.

You may obtain additional copies by writing to your county elections official or by calling **1-800-345-VOTE**.

