CALIFORNIA CONSTITUTION REVISION COMMISSION

FINAL REPORT AND RECOMMENDATIONS TO THE GOVERNOR AND THE LEGISLATURE

1996

The California Constitution Revision Commission is no longer in existence. Further information on the report of the commission can be found on the world wide web on the California Home Page at www.ca.gov. For future activity on the commission's recommendations, contact the Forum on Government Reform, P.O. Box 22550, Sacramento, CA 95822.

The cover includes a representation of the first California Constitution, adopted in 1849. The back of the report are the signatures of some of those who signed the Constitution at the first constitution convention.

California Constitution Revision Commission

Final Report and Recommendations to the Governor and the Legislature

"All great changes are irksome to the human mind, especially those which are attended with great dangers and uncertain effects."

John Adams

April 22, 1776

CCRC

CALIFORNIA CONSTITUTION REVISION COMMISSION
1994 to 1996

Dear Governor Wilson and
Members of the California Legislature:

Three years ago, the legislature and the governor agreed that a fundamental review of California government was imperative. The result was the creation of the 23-member California Constitution Revision Commission.

The Commission, consisting of gubernatorial and legislative appointments and selected state officers, met for the first time in May 1994. The governor and legislative leaders addressed the Commission and urged it to be bold and creative and to consider all relevant issues—however controversial. The Commission's recommendations reflect those admonitions. Thirty public meetings were held including four formal public hearings, plus five workshops and, along with the League of Women Voters, 39 community forums and video conferences. The Commission completed its work and went out of business on June 30, 1996. During the course of our work, it became very clear that we needed to change the way state and local governments operate.

For reasons the Commission quickly figured out, the status quo is no longer acceptable. Principal among the reasons is that the state's population with its varied public service needs continues to grow while the resources needed to provide services do not grow as fast. Neither the voters nor state and local officeholders are anxious to raise taxes.

The conclusion is obvious. We must find ways to provide needed services with existing resources. This means that government must operate more efficiently. The state's governmental system developed in the nineteenth century will not be adequate for the twenty-first century.

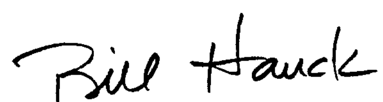
It is well known to each of you that many voters do not believe that their taxes are being used wisely or efficiently. And, perhaps equally important, it is not clear to our citizens who is responsible for public decisionmaking. With 7,000 units of local government in the state and at least 15,000 elected officials, it seems clear that California has considerably more government than it needs.

Accomplishing needed changes will mean upsetting public institutions, many of which were organized when the state's population was smaller and when public policy issues were far less complex.

Naturally, this is not an easy process. The Commission has made a series of recommendations that would begin this process of change. The advocates for the status quo are more numerous and better organized than those who will support these needed changes. As a consequence, it will be up to state and local political leaders to bring about a more workable and efficient system of government that will be appropriate for the next century.

It is for these reasons that the Commission urges the legislature to begin the process of reviewing our governmental and finance system and placing these issues before the voters. It is critical that we begin to require our governmental organizations to work better and more effectively for the citizens of California.

Sincerely,



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* The membership list includes all members who served on the Commission. For the dates of appointment and length of service, see the member biographies at Appendix 1, page 105.

ACKNOWLEDGMENTS

The Commission would like to acknowledge the work of the many people who assisted their deliberations. Thousands of hours of volunteer time were provided to the Commission by many people. Contributions of time included writing background papers, articles for the monthly newsletter, and organizing and conducting community forums. Over 1,500 people attended the community forums organized by the League of Women Voters. All of this happened under the guidance of Gail Dryden and the members of local Leagues who gave countless hours to ensure that the issues discussed by the Commission were also being discussed in communities throughout the state.

We appreciate the help and energy of Bruce Cain, Director of the Institute of Governmental Studies at Berkeley and Roger Noll, Professor of Public Policy in the Department of Economics at Stanford University, for bringing together a group of public policy scholars who contributed to the book ''Constitutional Reform in California.''

Local government officials from cities, counties and special districts were particularly helpful in assisting the Commission in rethinking the current structure of local government. On education issues, Bill Whiteneck, who for many years served K–12 education at the local and state level, and Ray Reinhard, Deputy Secretary of the Office of Child Development and Education, were invaluable to the Commission's discussion of education governance and finance issues.

The staff of the legislative committees, the Legislative Analyst's Office and the Department of Finance were of great assistance throughout the life of the Commission. From the Legislative Analyst's Office particular thanks goes to Marianne O'Malley on local government issues and Dan Rabovsky on budget issues, and from the Department of Finance, Diane Cummins for assisting on local government and budget issues. Senate and Assembly Fellows were also involved in the Commission projects; Julie Wong, with Senator Lucy Killea's office, and Scott Bain, with Assemblymember Phil Isenberg's office, provided background material on a number of issues.

The Office of Legislative Counsel, under the direction of Bion Gregory provided assistance in drafting the language necessary to accomplish the recommendations of the Commission. The staff of Legislative Counsel had the difficult task of taking concepts developed by the Commission and transforming them into constitutional language. The work of all of the staff of Legislative Counsel is greatly appreciated. In particular, we wish to thank Jeff Deland, Deputy Legislative Counsel who provided assistance to the Commission throughout the course of its deliberations. On specific topics special thanks goes to Christopher Zirkle, Lori Ann Joseph and Romulo Lopez for their work on governance issues; C. David Dickerson and Sharon Reilly for their work in education; Tracy Powell and Richard Weisberg for their work on local government issues; and James Marsala and Maria Hanke for their work on tax issues.

Ideas as complex as revisions to the state constitution must be expressed clearly. We appreciate the work of Suzanne Stone who assisted in the review and edit of the Commission's final report.

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Introduction

In a letter to James Warren on April 22, 1776, John Adams wrote, ‘‘All great changes are irksome to the human mind, especially those which are attended with great dangers and uncertain effects’’. Today, Californians are seeking change in the way their government operates. Voter-approved initiatives of the last 20 years show a citizenry frustrated with their government. Proposing a new way to do things is never easy. The reality we do not like often looks better than a new way that might bring a better, yet uncertain future.

As we prepare for the next century, it is clear that the public agenda must include a review of the way our government works. Our current state and local government structure is the outgrowth of a constitution that was adopted in 1879. At that time, the state’s population was about 800,000. Today, the population tops 32 million, and all of the forecasts show continued growth. As the state’s population continues to grow and become more diverse, the private sector changes and adjusts to new environments and conditions. But our governmental structure has not changed. We have basically the same governmental structure we had in the nineteenth century and that government has grown significantly. Today, California has more than 7,000 units of government—including school districts, cities, counties and single purpose agencies—led by more than 15,000 local elected officials.

The year 2000 is approaching quickly. We must prepare for the next millennium and begin reviewing and revising our governmental institutions to meet modern conditions. This will not be simple. But despite the uncertainty that change brings, it is clear that changes in California’s system of state and local government are necessary.

In 1994, in an effort to develop reasonable and workable ways to reform our government, the governor and legislature appointed the 23-member California Constitution Revision Commission. The Commission was asked to do the following:

- **Examine** the structure of state government and propose modifications that will increase accountability.
- **Analyze** the current configuration of state and local government duties and responsibilities and review the constraints that interfere with the allocation of state and local responsibilities.
- **Review** the state budgetary process, including the appropriate balance of resources and spending; the fiscal relationship between federal, state, and local governments; and the constraints and impediments that interfere with an orderly and comprehensive consideration of fiscal issues.
- **Consider** the feasibility of integrating community resources in order to reduce duplication and increase the productivity of local service delivery.

In May 1994, the California Constitution Revision Commission began holding meetings, hearings, and community forums across the state. The Commission received comments and proposals from both the general public and experts with knowledge of specific issues. Those comments focused on the problems with current government structures and procedures and possible solutions to alleviate those problems. After eighteen months of hearings and analysis, the Commission is proposing an agenda for changing the ways in which our state and local governments operate. The Commission's primary objectives in making these recommendations are as follows:

- Improve accountability and responsiveness of government at all levels from the state to the smallest community.
- Eliminate barriers to efficiency and increase flexibility.
- Assure that the state keeps its fiscal house in order by maintaining a balanced budget.

Indeed, change can be irksome, and we cannot completely predict the outcome. But we do know that the current system is in dire need of change. The Commission believes these recommendations represent an opportunity for positive change in California's governance system. Only through major changes can we hope to create a better system and a better state for all Californians.

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Summary of Recommendations

I. Improving Accountability in State Government: Knowing Who Is in Charge

California's state government structure is often described as "divided"—split up among a dozen directly elected public officials with a mixture of authority and few direct lines of accountability. The primary objective of the organization of executive functions should be to promote efficiency and responsiveness in the implementation of state policy. California should review its legislative structure, including the length of legislative terms (which are too short) and the length of legislative sessions (which are too long).

The authority of the executive and legislative branches is limited by the adoption of initiatives which are often enacted in response to legislative inaction. The initiative process, which was originally intended to break the grip of special interests on the legislative process, has been used in place of the legislature for major public policy decisions. Currently, there is a process for a public discussion of the legal and technical issues of proposed initiatives, but there is no formal process for revising qualified initiatives before they are placed on the ballot.

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The Executive Branch: Improving Responsiveness and Efficiency

1. ***The governor and lieutenant governor should run on the same ticket and work as a team.***

   The governor and lieutenant governor should run on the same ticket at the general election, and the governor should be authorized to appoint the lieutenant governor to an executive branch responsibility.

2. ***The superintendent of public instruction, treasurer, and insurance commissioner should be appointed by the governor instead of being elected.***

   The offices of the superintendent of public instruction, the state treasurer, and the state insurance commissioner should be appointed by the governor, rather than being elective, and should be subject to legislative confirmation.

3. ***Abolish the Board of Equalization, merge state tax administration functions, and appoint a tax appeals board.***

   The Board of Equalization should be abolished. Its regulatory and executive functions, along with the functions of the Franchise Tax Board and other major revenue agencies should be combined into a Department of Revenue. Additionally, a state tax appeals body should

be established, appointed by the governor and subject to senate confirmation.

4. ***Shorten the terms of the University of California Board of Regents.***

The term of office for members appointed to the University of California Board of Regents should be reduced from 12 years to 10 years. Reappointment should be prohibited unless the appointee has served less than a full term. The number of appointed members should be reduced from 18 to 15, and the superintendent of public instruction should be removed as a member of the board.

5. ***Shorten the terms and limit the functions of the State Personnel Board.***

The probationary and classification functions of the State Personnel Board (SPB) should be transferred to the Department of Personnel Administration (DPA). Additionally, the terms of SPB members should be shortened from ten years to six years.

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The Legislative Branch: Improving Efficiency and Effectiveness

6. ***Lengthen the limit on legislative terms of office to three four-year terms.***

Legislative terms should be extended so that members can serve three four-year terms in each house. The terms would be staggered so that one-half of each house would be elected every two years. This provision would be implemented so that no current member of the legislature would benefit.

7. ***Shorten legislative session to six months.***

The length of legislative sessions for considering and acting on bills should be reduced from eight months to six months per year. Additionally, the legislature should be able to begin work on a bill ten days after the bill is introduced.

8. ***Give the legislature the power to veto administrative regulations.***

The legislature should be given constitutional authority to review and reject administrative regulations.

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9. Provide limited retirement benefits to legislators.

Under the revised term limits, legislators would be able to participate in the regular Public Employee Retirement System.

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The Initiative Process: Improving Public Review

10. To provide fuller public review, place constitutional amendments on the November ballot, except in special circumstances.

All proposed initiative constitutional amendments should be placed on the November ballot. Constitutional amendments proposed by the legislature may be placed on primary or special election ballots with a two-thirds vote of the legislature and the approval of the governor.

11. Allow amendment of statutory initiatives after six years.

Allow the legislature, with gubernatorial approval, to amend statutory initiatives after they have been in effect for six years.

12. Allow the legislature to add technical and clarifying changes to initiatives that have qualified for the ballot.

After an initiative has qualified for the ballot, the legislature would have a short period of time to hold hearings on the initiative and to adopt technical or clarifying amendments. If the proponents of the initiative agree, the measure would be submitted to the voters as revised by the legislature.

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II. Improving the State Budget and Fiscal Process: Developing a Long-term Vision with Increased Fiscal Discipline

The state's budget process contains few constitutional standards. For example, there is no constitutional requirement that the state enact or maintain a balanced budget. Once a budget becomes unbalanced, there is no formal system for rebalancing the budget. An annual budget provides limited opportunities for establishing and implementing long-term strategic plans. Such plans would provide more direction for overall spending, facilitate the systematic evaluation of programs by the public, and increase accountability.

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Adopt a Long-term Vision and Have the Flexibility to Respond to Changing Conditions

13. Require the governor to submit, and the legislature to adopt, long-term goals for the state and performance measures for the budgetary process.

The governor should be required to submit a four-year strategic plan to the legislature for deliberation and adoption. The plan would include:

- Policy and fiscal priorities.
- Performance standards to gauge the productivity of state expenditures.
- A capital facilities and financing plan.
- A description of the programmatic relationship between the state and local governments.

14. Require a four-year capital outlay plan.

A four-year capital outlay plan should be included in the state's long-range strategic plan proposed by the governor and approved by the legislature.

15. Change the fiscal year from one to two years.

The current annual budget process should be replaced with the enactment of a two-year budget.

16. Provide a budget rebalancing mechanism.

The constitution should provide a rebalancing process for the state budget. Midway through the fiscal period, the governor would be required to provide an update on the state's fiscal condition and recommend budgetary adjustments to accommodate any changes in revenue or expenditures.

Increase Fiscal Discipline

17. Require the state's budget to be balanced.

For each fiscal period, expenditures must not exceed revenue and reserves. After the enactment of the budget bill, no other bill could be enacted that caused expenditures to exceed estimated revenue and reserves.

18. Require a three percent general fund reserve.

The state budget should include a three percent reserve. Initially, the reserve would be phased in over several budget periods.

19. Prohibit borrowing to finance a deficit.

In order to prevent the state from borrowing to finance deficits, the state should be prohibited from borrowing from non-governmental resources across fiscal periods.

20. Require a majority vote to enact the budget and budget-related legislation.

A majority vote should be required for the adoption of the state budget, the budget implementation bill, and any bill enacted to rebalance the budget.

21. Allow for multiple subject budget implementation legislation.

Authorize the legislature to include in a single implementation bill, any statutory changes needed to implement the budget bill.

22. Link budget passage to salaries.

The constitution should require the budget to be passed by the prescribed deadline or the governor and the legislature forfeit their pay.

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III. Changing K–12 Education: Focusing Accountability at the State and Local Levels

The governance structure of elementary and secondary education is divided among several state, county, and local authorities. Lines of accountability are blurred. Although elementary and secondary education are a shared local and state responsibility, local K–12 districts have little authority to raise taxes to provide additional funds for education. Additionally, cities, counties, and many special districts provide services that affect a child's education and health, yet there are few formal incentives for the collaborative delivery of services that might lead to more efficiency and cost savings.

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Identifying Who Is in Charge

23. Make the governor responsible for K–12 education.

The governor should appoint the superintendent of public instruction. The existence, roles, and responsibilities of the superintendent of public instruction should be outlined in statute rather than in the constitution. The governor should be responsible for the state's role in the elementary and secondary public school system. The office of the superintendent of public instruction should be made appointive, rather than elective and subject to senate confirmation.

24. The role of the state Board of Education should be determined by statute.

Constitutional references to the state Board of Education should be deleted. Its roles and responsibilities should be determined by statute.

25. The role of county superintendents of schools and county boards of education should be determined locally or by statute.

Constitutional references to county superintendents of schools and county boards of education should be deleted. School districts could organize areawide services in a manner that most effectively and efficiently meets local and areawide needs.

26. Establish an accountability system for public schools.

An accountability system including standards for public schools should be adopted by the legislature.

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27. Maintain Proposition 98 and provide additional flexibility to the legislature and the governor.

The statewide funding guarantee for K–12 education should be maintained. Additionally, the legislature and governor should be given greater flexibility in determining how to appropriate additional funds to K–12 education in excess of the minimum funding guarantee. Specifically, education spending in excess of the guarantee would be for one-time purposes, unless the legislature and the governor chose to increase the base for the funding guarantee.

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Enhancing Local Control in the Management and Financing of K–12 Education

28. Increase local control and authority.

Local control and the authority of local school boards should be increased.

29. Give communities the power to supplement revenue to local schools.

Communities should have the power to raise revenue in addition to the state guarantee. Unified K–12 districts could increase the property tax with a two-thirds vote of approval by the voters. All districts within a county could raise additional revenue by increasing the sales tax with a majority vote.

30. Capital outlay planning and development should involve all local agencies.

School districts should participate with other public agencies that provide services and infrastructure in the territory served by the school district. A multi-agency capital facilities planning process would be established as part of the Community Charter (see Recommendation 33). If a proposed project is consistent with a multi-agency plan, the vote required for general obligation bonds is a majority of voters.

31. Community colleges should be part of higher education.

Community colleges should be removed from the Proposition 98 funding guarantee and be part of the funding of higher education.

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IV. State-Local Relations: Straightening Out the Responsibilities of State and Local Government

The assignment of governmental responsibilities between the state and various local governments, particularly counties, is fragmented and confused. The absence of clearly assigned responsibilities for operating and financing government services has weakened the accountability of government officials to the public. Functions that are clearly state (e.g., higher education) or clearly local (e.g., library services) are not the problem. Rather, functions shared by state and local government produce the most confusion. Counties play a dual role: they are considered local government for providing municipal services outside of cities, and they are treated as agents of the state for state purposes. Often, a county must use the local tax base intended to support local services to fund programs over which the county has little programmatic or operational control. Finding the right mix of program responsibilities and financing for shared programs must be a high priority for the legislature and the governor.

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Changing the State-Local Relationship: Knowing Who Is in Charge

32. Develop and adopt a state-local realignment plan.

The governor would be required to submit a State-Local Realignment Plan proposing the alignment of state and local services. A plan must be adopted by the legislature. The state-local relationship, along with the strategic plan, would be reviewed and updated at least every four years. The plan should provide assignment of responsibilities for program policy authority, administration, and finance.

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V. Strengthening Local Government

The present structure of 7,000 local government bodies (counties, cities, special districts, and school districts) has resulted in a confusing array of governmental entities. Many of these entities have overlapping—if not conflicting—duties and responsibilities. While there is a general public policy interest in improving and streamlining local governance and service delivery and increasing local accountability, local agencies have few tangible incentives for reform. The existing local government structure and division of governmental responsibilities were conceived during a time in the state's history when there were fewer people and fewer demands for services. Moreover, the current diversity of California's regions makes it difficult for a uniform approach to local governance to be responsive to every area's needs.

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Strengthening Local Government: Clarifying Roles and Enhancing Collaboration

33. Evaluate local governance structures and develop a community charter.

Each county (or multi-county area) would be required to initiate a process to examine their current governance structure, methods of service delivery, and assignment of responsibilities and powers. From this examination, each area would develop a Government Services Plan for the area covered by the charter. The plan could also include subcounty areas. A Home Rule Community Charter would then be developed to implement the Government Services Plan. Citizens in each area would vote on the Home Rule Community Charter. The countywide charter and/or sub-county charters would include the following components:

- Identify the territory to be covered by the charter.
- Provide methods for reducing the number and cost of local government.
- Allocate local services and regulatory responsibilities.
- Provide for the organization and reorganization, as well as the boundaries, of local agencies.
- Develop a collaborative capital improvement program process for all of the agencies covered by the community charter.
- Establish a process for the allocation of general purpose state-authorized local revenue.

The provisions of the Home Rule Community Charter could not abrogate or interfere with the power provided to charter cities by the constitution. All local government agencies will be required to disclose their revenue and expenditures in a uniform manner as required by statute.

34. Vote requirements for local taxes and general obligation bonds.

The authority to raise taxes would be subject to a majority vote of the governing board and a majority of the voters *unless* the charter provided for a higher threshold. This would apply to all locally levied taxes except the ad valorem property tax which would continue to be limited by Proposition 13. Additionally, general obligation bonds for projects consistent with a multi-agency capital outlay plan for the area covered by the charter could be approved by a majority of the voters.

35. Strengthening home rule.

The home rule provisions of the constitution should be strengthened. One of the benefits for general law cities, counties, and other local entities to participate in the Home Rule Community Charter is that home rule powers, previously limited to charter cities would be extended to agencies covered by the new charter. This provision will strengthen local governments' ability to govern local affairs. Additionally, once the charter for a given area is adopted, the state would be prohibited from reallocating the non-school share of the property tax or other general purpose local taxes allocated by the charter.

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Improving Accountability in State Government: Knowing Who Is in Charge

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I. Improving Accountability in State Government: Knowing Who Is in Charge

California's state government structure is often described as "divided"—split up among a dozen directly elected public officials with a mixture of authority and few direct lines of accountability. Executive branch functions should be better organized to promote responsiveness and efficiency in the implementation of state policy. California should review its legislative structure, including the length of legislative terms; which are too short, and the length of legislative sessions; which are too long. The authority of the executive and legislative branches is limited by the adoption of initiatives which are often enacted in response to legislative inaction. The initiative process should be reformed to improve public review.

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The Executive Branch: Improving Responsiveness and Efficiency

What is the Problem?

- **California State Government is divided into too many parts.**
- **Administrative, policy and quasi-judicial functions are mixed together.**

What Change is Needed?

- **Decrease fragmentation**
- **Increase responsiveness**
- **Maintain checks and balances**

The current organization of the state's executive branch does not promote responsiveness or efficiency in the execution of state policy. The executive branch is divided among a dozen directly elected public officials with few direct lines of accountability. This dispersion of power creates inflexibility and fragmentation and reduces responsiveness and efficiency. There are few lines of responsibility—limiting the ability of the public to hold officials accountable for policy decisions. Officials blame each other for public policy failures. The state's problems go unresolved, and the electorate cannot determine whom to hold accountable. Fragmentation exists in every policy area in which an official is directly elected and his or her role is policymaking in nature rather than providing a check on the exercise of executive power. Fragmentation also occurs when executive branch agencies have overlapping responsibilities. In addition to creating accountability problems, such fragmentation leads to inefficient operation of the agencies.[1]

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The state needs a clearer definition of who is in charge of state policies and the overall direction of state government. Reform of the executive branch should reduce fragmentation and provide a balance between responsiveness and efficiency. Responsiveness and accountability can be increased by focusing more responsibility for the state's policy direction with the governor. Efficiency can be increased by eliminating overlapping and duplicative responsibilities between executive branch agencies.

Only one state—North Dakota—has as many state-level elected officials as California. Five other states—Georgia, North Carolina, Oklahoma, South Carolina, and Washington have more than nine elected officials. The trend across the nation is to move away from electing state regulators and chief education officers. For example, since 1992, four states have eliminated elected superintendents of public instruction. Only fifteen states now have elected school superintendents.[2]

What Does the Commission Recommend?

- **Elect officials who have an independent or check and balance function.**
- **Appoint officials who are part of executive branch policymaking.**

In proposing reforms to the Executive Branch, the Commission sought to achieve the following objectives:

- Decrease fragmentation and duplication of responsibilities.
- Increase responsiveness, accountability, and efficiency.
- Maintain an appropriate level of checks and balances within the executive branch.

California currently has 12 elected officials responsible for state government functions:

- Governor
- Lieutenant Governor
- Attorney General
- Secretary of State
- Controller
- Treasurer
- Superintendent of Public Instruction
- Insurance Commissioner
- Four members of the Board of Equalization, elected by district

All of these officials are elected constitutional officers, with the exception of the insurance commissioner, who is designated by initiative statute (Proposition 103, November 1988). The lieutenant governor is elected independently of the governor, and assumes the duties of the chief executive when the governor is absent from the state.

OFFICES HAVING AN INDEPENDENT OR CHECK AND BALANCE FUNCTION	OFFICES HAVING A POLICY OR ADMINISTRATIVE FUNCTION
Governor	Treasurer
Lieutenant Governor	Superintendent of Public Instruction
Attorney General	Insurance Commissioner
Secretary of State	Board of Equalization (4 members)
Controller	

The Commission determined that an executive branch position should be directly elected if it either:

- Has clearly independent responsibilities, which for policy reasons should be separate from the general executive functions of the governor; or,
- Performs independent oversight of the actions of elected officials and provides a check and balance function to limit the excessive use of power.

For example, the secretary of state oversees the elections process, which as a matter of policy should be independent of other executive functions. The state controller performs financial audits that are a check on executive power. The attorney general is the chief law enforcement officer of the state.

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On the other hand, an executive branch position should be a gubernatorial appointment if the primary responsibility involves regulatory oversight or policy implementation as set by the legislature, the governor, and/or the voters. Additionally, placing executive authority with the governor will allow more flexibility in the implementation of policies because the governor—with the consent of the legislature—will be able to determine the best method for implementation.

Thus, the Commission concluded that of the state's 12 elective officers, five should continue to be elected. The remaining officials should be appointed by the governor, subject to senate confirmation.

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What Does the Commission Recommend?

1. The governor and lieutenant governor should run on the same ticket and work as a team.

The Commission recommends that the governor and lieutenant governor run on the same ticket at the general election; that the governor be authorized to appoint the lieutenant governor to executive branch responsibility; and that the governor's executive powers not pass to the lieutenant governor when the governor leaves the state.

Under current law, Article V of the California Constitution vests executive power in the governor of the State of California and requires the governor to see that the law is faithfully executed. The governor is authorized by statute to assign and reorganize functions among executive officers (except elective officers) and agencies. Currently, the lieutenant governor assumes the responsibilities of chief executive when the governor is absent from the state, serves as the presiding officer of the senate, voting only in the case of a tie vote, serves on the three-member State Lands Commission, and serves on the Board of Regents of the University of California and on the Board of Trustees of the California State University System.

California's voters have frequently elected a governor and lieutenant governor from different political parties. At times, the governor and lieutenant governor have been visibly at odds over various issues. As now designed, the office of the lieutenant governor lacks substantial responsibility. In the case of incapacitation or death of a sitting governor, succession by a lieutenant governor of a different political party could result in sudden and dramatic changes and inconsistencies in public policy. Five times in California's history, the lieutenant governor has succeeded the governor due to the death or resignation of the governor. In each case, the governor and the lieutenant governor were of the same political party.[3]

The people of California would be better served by a governor and lieutenant governor who run as, and are elected as, a ticket. Having a governor and lieutenant governor of the same political party would improve managerial effectiveness and political legitimacy in the event that succession is necessary. If the lieutenant governor is of the same political party as the governor, the governor might be more willing to appoint the lieutenant governor to an executive branch function. This would give the lieutenant governor a significantly greater role in policymaking.

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Forty-three states have a lieutenant governor. Only nineteen states elect governors and lieutenant governors separately. The current trend is to elect the two officers on the same ticket. Since the 1950s when only New York elected the governor and lieutenant governor jointly, the number of states with joint elections has increased to 24.[4]

Section 10 of Article V transfers the governor's powers to the lieutenant governor when the governor leaves the state. The Commission found that this provision was useful in the nineteenth century, but it is no longer necessary due to modern transportation and communications technology. The governor should be able to retain his or her powers when absent from the state.

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2. The superintendent of public instruction, treasurer, and insurance commissioner should be appointed by the governor instead of being elected.

Executive branch officials should be elected if they have either clearly independent responsibilities which should be separate from the general executive functions of the governor or if they perform independent oversight, providing a check and balance function to limit the excessive use of power. The Commission concluded that the functions of the superintendent of public instruction, state treasurer, and state insurance commissioner are administrative and policymaking and should be the responsibility of the governor. Therefore, these officials should no longer be elected but should be appointed by the governor, subject to senate confirmation.

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a. Superintendent of Public Instruction

The Commission recommends that the existence, roles, and responsibilities of the superintendent of public instruction be outlined in statutes rather than in the constitution. The office of the superintendent of public instruction should be appointive, rather than elective and subject to senate confirmation. The governor should be responsible for the state's role in the elementary and secondary public school system.

The position of the superintendent of public instruction is vitally important, but as currently defined, it is organizationally untenable. Since the duties of the superintendent of public instruction are policymaking in nature, the office should be part of the executive branch administrative structure. Only 15 states separately elect a chief education officer.[5] By giving the responsibilities of the superintendent to the governor's appointee to head the Department of Education, the governor will become more accountable for the public education agenda. Education policy cannot be separated from education finance. Giving the governor responsibility for education policy will force him or her to pay more attention to education policy when making budget decisions. This will clarify for the public that state-level executive branch authority and responsibility to change or improve public elementary and secondary education rest with the governor. This issue is discussed in more detail in the section dealing with K–12 education.

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The state treasurer provides banking services for the state government with the goals of minimizing interest and service costs and maximizing yields on investments. The principal functions of the treasurer are:

- The custody of all monies and securities belonging to or held in trust by the state.
- Investing temporarily idle state monies.
- Preparing, selling, and redeeming the state's general obligation and revenue bonds.

The principal job of the treasurer is to manage state debt and investments. This requires expert knowledge rather than political responsiveness. All citizens can agree that the state should pay as little as possible for debt, and earn as much as possible on financial investments. Making this position appointive will clarify for the public that the governor bears ultimate responsibility for management of state debts and investments.

b. Treasurer

The Commission recommends that the state treasurer be appointed by the governor, rather than being elected, subject to senate confirmation.

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The insurance commissioner is California's most recently created elected official. Proposition 103, a 1988 initiative statute, provided for the popular election of an insurance commissioner at gubernatorial elections. Proposition 103 cites accountability as the principal reason for having an elected insurance commissioner. Specifically, the purpose of Proposition 103 is, "to protect consumers from arbitrary insurance rates and practices, to encourage a competitive insurance marketplace, to provide for an accountable insurance commissioner, and to ensure that insurance is fair, available, and affordable for all Californians." [6]

c. Insurance Commissioner

The Commission recommends that the insurance commissioner be appointed by the governor, rather than being elected, subject to senate confirmation.

The insurance commissioner oversees the Department of Insurance. In addition to the activities mandated by Proposition 103, the department performs traditional responsibilities that include: 1) examining and regulating insurance companies and producers to ensure that operations are consistent with the requirements of the Insurance Code; 2) reducing insurance fraud; 3) collecting and transmitting the annual gross premiums tax and retaliatory taxes on insurers; and, 4) collecting fees, reimbursements, fines, and penalties.

The insurance commissioner differs from other statewide elective officials who either develop policy or independently review the activities of other elective officials. The office is primarily regulatory in nature. The insurance commissioner is most analogous to the appointed heads of other regulatory bodies such as the Public Utilities Commission or the State Water Resources Control Board. These agencies enforce the policies developed by the legislature and governor rather than acting independently of overall state policy. Returning the insurance commissioner to an appointed position

makes for more consistent government. Only eleven states currently elect an insurance commissioner.

The existence of an elective insurance commissioner blurs responsibility for policymaking. Voters have difficulty determining who is accountable for state insurance policies. The primary benefit of Proposition 103 is that it provided new rules for the regulation of insurance rates. There do not appear to be any particular benefits derived from electing an insurance commissioner. Changing the status of the insurance commissioner from elective to appointive will not have an impact on insurance legislation and policies, which will continue to be set by the legislature and governor through statute or initiative.

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3. Abolish the Board of Equalization, merge tax administration functions, and appoint a tax appeals board.

The Commission recommends abolishing the Board of Equalization and the Franchise Tax Board and combining their regulatory and executive functions and those of other major revenue agencies into a new Department of Revenue. Additionally, a state tax appeals body should be established, appointed by the governor and subject to senate confirmation.

The Board of Equalization was established in the 1879 constitution. The BOE is comprised of five board members, including the state controller and four members who are elected geographically. The BOE essentially acts as a regulatory and appellate body for a variety of state tax policies.

In the late 1920s, the state began to examine the growing number of agencies—including the Board of Equalization—that had a responsibility for the administration of the tax system. In 1929, the California Tax Commission recommended: "that the elective State Board of Equalization be abolished and that in its place a permanent professional tax commission be established consisting of three members appointed by the Governor for terms of six years." [7] Since then, eleven additional studies under six governors have concluded that the state's tax administration system should be revised. Eight of these studies called for the elimination of the Board of Equalization.

The Board of Equalization (BOE) and the Franchise Tax Board (FTB) perform a variety of functions related to collecting major state and/or local taxes, including: 1) the quasi-administrative functions required to operate a program; 2) the quasi-legislative functions needed to set administrative policies to govern the programs; and, 3) the quasi-judicial functions involved in settling disputes that arise from carrying out assigned functions.

The board's administrative functions include collecting state and local sales and use taxes, and business and excise taxes and fees. This includes taxes and fees levied on gasoline and diesel fuel, insurance, cigarettes, alcoholic beverages, electricity, and hazardous and solid wastes. The board also administers taxes on behalf of other agencies, such as cities, counties, and transit agencies, which are authorized to levy sales and use taxes. Other administrative duties of the BOE include assessing public utility property in order to allocate value to each taxing jurisdiction. The BOE also adopts rules and regulations for administering business programs and for guiding and directing

the board's property tax staff, county assessors, boards of supervisors, and local assessment appeals boards in valuing property.

The board's quasi-legislative functions include adopting rules and regulations for the taxes it administers. Its quasi-judicial functions include acting as an appellate body for the review of property, business, and income tax determinations. The BOE also hears appeals of decisions made by the Franchise Tax Board and resolves disputes concerning the assessment of property that a city or county owns outside its boundaries.

The Franchise Tax Board (FTB) has an oversight function that is primarily administrative. The FTB consists of the Director of Finance, the Chair of the BOE, and the state controller. The FTB administers the state's personal income tax, the bank and corporation taxes, the Homeowners' and Renters' Assistance programs, and the Political Reform Act audit program. Over the past several years, the FTB has been given additional tax enforcement and revenue collection duties. These duties include collecting overdue motor vehicle license in-lieu taxes, child support payments, and delinquent fines, penalties, and forfeitures on behalf of any superior, municipal, or justice court.

The Employment Development Department (EDD) is a third agency that has tax-related responsibilities. The EDD administers the Unemployment Insurance Fund and the Disability Insurance Fund. Employers remit insurance premiums to the Department. In 1972, personal income tax withholding was assigned to EDD since it was more efficient to have a central place for employers to make payments of both their insurance premiums and employee withholding. Much of the work of EDD is tied to federal requirements associated with unemployment and job training benefits. The feasibility of including the EDD's revenue functions in a consolidated revenue agency should be carefully examined.

The existence of the BOE raises two questions. First, should such a body exist? Certainly the functions of the board are necessary: regulations describing how to calculate tax liability must be written, property must be assessed, county property tax assessments must be reviewed to ensure that assessment practices are consistent throughout the state, and tax disputes must be adjudicated. The second question is: Who should perform these functions? In the federal government and most state governments, a treasury department is responsible for defining and assessing tax liability, and a quasi-judicial body and the courts are responsible for resolving disputes. Only three other states elect any tax official.

California's current system blurs the responsibility of the governor and legislature for maintaining equity and efficiency in the tax collection system. Implementation of tax policy is diffused through several agencies with different governing structures. Moreover, elections for the BOE are relatively invisible because members are elected from very large districts and because the office is so

specialized. As a result, tax implementation matters are removed as election issues.

An additional problem is that the current tax administration system is fragmented and lacks accountability. Responsibilities are divided between the BOE and the FTB. Efficiency and accountability will be improved by combining the current regulatory and executive functions of both offices and assigning those functions to a new Department of Revenue. In addition to the economies of scale brought about by a consolidation of the administration of the tax system, private businesses will benefit by the consolidation of audits. The board's adjudication functions should be assigned to an independent quasi-judicial body, with members appointed by the governor and subject to senate confirmation.

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4. Shorten the terms of the University of California Board of Regents.

The Commission recommends that the term of office for members appointed to the University of California Board of Regents be reduced from 12 years to 10 years; that reappointment be prohibited unless the appointee has served less than a full term; that the number of appointed members be reduced from 18 to 15; and, that the superintendent of public instruction be removed as a member of the board.

The Regents of the University of California is the existing corporation established in the late 1800s by Article IX Section 9 and constitutes a public trust to administer the University of California. Since March 1, 1976, the term of office for an appointed regent has been 12 years; prior to that time, the term of office was 16 years. The terms of two regents expire each March 1, except in the first year of a four-year gubernatorial term. The regents include seven ex officio members and eighteen members appointed by the governor and confirmed by the senate. In addition, the regents may appoint one faculty representative and one student representative to serve as regents for a period of not less than one year, with full member status and powers. The seven ex officio members are: the governor, the lieutenant governor, the speaker of the assembly, the superintendent of public instruction, the president and vice president of the alumni association of the university, and the president of the university. Each ex officio member serves with full member status and power.

Reducing the term of office from 12 years to 10 years will increase the accountability of the regents to meet the executive policies of the governor and the legislature. By reducing the number of regents from 18 to 15, three regents will be appointed every even-numbered year, and a one-term governor would be able to appoint six regents. Three regents would be appointed in the even-numbered year following a governor's assumption of office, and three more would be appointed during a governor's last year of a four-year term. A two-term governor would be able to appoint 12 of the 15 members. Since a two-term governor could appoint 80 percent of the regents, during the campaign for the second term, the governor would be held accountable for policies concerning the university.

The prohibition against reappointment will increase the independence of regents. Once they are no longer concerned with being reappointed, regents will make decisions regarding university

policies more independently and objectively. Removing the SPI as a member of the regents will maintain the current ratio of ex officio to appointive members.

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5. Shorten the terms and limit the functions of the state personnel board.

The Commission recommends that the probationary and classification functions of the State Personnel Board (SPB) be transferred to the Department of Personnel Administration (DPA). Additionally, the terms of SPB members should be shortened from ten years to six years.

The State Personnel Board (SPB) was created by Proposition 7 in 1934. The board consists of five members appointed by the governor, with the consent of the state senate, for staggered ten-year terms. Members can be removed only by a two-thirds vote of each house. The role of the SPB is to administer the civil service system and to "enforce the civil service statutes . . . prescribe probationary periods and classifications, adopt rules authorized by statute, and review disciplinary actions." [8]

The advent of collective bargaining in the early 1980s redefined the employer/employee relationship by requiring personnel rules and policies to be bilaterally developed. Collective bargaining also required splitting personnel management duties between the State Personnel Board and the Department of Personnel Administration. Framers of the new strategy believed that splitting the duties would minimize conflict. The DPA would represent the executive branch on matters such as salaries and benefits and in negotiations with employee organizations. The SPB would administer classification proposals, selection programs, probationary periods, and disciplinary appeals.

An overlap of personnel functions currently exists between the quasi-judicial State Personnel Board and the Department of Personnel Administration. The principal redundancy in the personnel system is in the public employment issues of classifying, selecting, and disciplining employees. Transferring the responsibilities for prescribing probationary periods and performing classification functions from the SPB to the DPA would eliminate redundancies, and make state government more efficient. The SPB, acting in its quasi-judicial capacity, would retain its enforcement powers and its authority to review disciplinary actions.

The Commission also found that the ten-year terms for SPB members are too long. Shortening the terms of SPB members from ten years to six years would provide stability for the civil service system and the state's civil servants, while making it easier for the legislature and governor to hold SPB members accountable for their actions.

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The Legislative Branch: Improving Efficiency and Effectiveness

The California legislature is comprised of 120 members. The assembly has 80 members who currently serve a maximum of three two-year terms. The senate has 40 members who serve a maximum of two four-year terms. The legislature meets in a two-year session beginning in December of the year of the statewide general election. During that time, the legislature is in session for nearly 15 months. Additionally, the governor can call the legislature into special session to deal with a specific issue. A special session can run concurrently with the regular session.

Under the state's current legislative system, each member of the senate represents about 820,000 people, and each member of the assembly represents about 410,000. The Commission considered the problems of ensuring adequate representation for California voters in light of the state's increasing population and diversity.

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What is the Problem?

- **Legislative terms of office are too short.**
- **Legislative sessions are too long.**
- **There is not enough legislative oversight of the operations of state government.**

The Commission determined that California's legislature does not operate as effectively or efficiently as it might. Term limits have created instability within the legislature. Rapid turnover has resulted in large numbers of freshmen legislators who are not knowledgeable about the complexities of the legislative process. This lack of experience often results in an inability to deal with complex and difficult policy issues that involve some amount of history. Additionally, the schedule for legislative sessions is archaic. Although the legislative session begins in January, the legislature accomplishes little of consequence until March when budget discussions begin. This delay occurs because of current laws that dictate the time frame under which a bill is introduced, printed, and debated.

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What Change is Needed?

- **Increase stability of the legislature by lengthening terms of office.**
- **Enhance the role of the legislature's investigative and oversight function.**

In its preliminary recommendation, the Commission proposed converting the state's two-house legislature to a single-house (unicameral) legislature. However, during the public hearings and Commission discussions, a number of questions were raised as to how a single-house system would operate. The answers to many of those questions were not forthcoming. The Commission determined that establishing a unicameral legislature simply does not have sufficient public and legislative support. Most people believe that the current two-house system is necessary to provide adequate checks and balances. Each house is seen as preventing inappropriate use of power by the other. The current system is also deemed necessary to provide sufficient deliberation to ensure that—on any given issue—the views of all concerned citizens are heard. Many also believe that the current two-house system protects the views of minorities. For these reasons, the Commission decided not to forward this recommendation to the legislature. If these are valid reasons for retaining a two-house system, the problem of overly large districts still remains.

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Legislative branch reforms should create a process in which the legislature operates more effectively and does its work in a shorter time period. In keeping with the wishes of California voters, term limits should be maintained. However, the intent of the voters in establishing term limits can be honored while extending those limits. A change in term limits will significantly improve the stability and effectiveness of the legislature, but will continue to assure voters that legislators cannot make careers out of service in either house. Additionally, certain rules governing the introduction and debate on legislation and the time frame in which the legislature works should be changed to allow the legislature to work more efficiently.

In evaluating needed reforms to the state's legislative system, the Commission sought to achieve the following goals:

- Increase the stability of the legislature so that work is done more effectively.
- Improve the legislative process so that the legislature uses its time more efficiently and does its work within a shorter period of time.
- Improve the accountability and productivity of the legislature.

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What Does the Commission Recommend?

6. Lengthen the limit on legislative terms of office to three four-year terms.

The Commission recommends that legislative terms be extended so that members can serve three four-year terms in each house. The terms would be staggered so that one-half of each house would be elected every two years.

In 1990, California voters enacted Proposition 140, which amended the state's constitution to limit the number of terms that legislators can serve. Under the provisions of Proposition 140, members of the assembly serve three two-year terms, and members of the senate serve two four-year terms.

In the past decade, establishing legislative term limits has been a nationwide phenomenon. Since 1990, 22 states have enacted measures to limit the terms of state representatives. The tenure of California's legislators is among the shortest in the nation.[9]

The Commission acknowledges the concerns expressed by proponents of term limits. But the Commission determined that the extremely stringent term limits in California have resulted in significant instability within the legislature and the inability of the legislature to operate with any consistency. Since senators serve four-year terms and terms are staggered so that only half of the senate is elected at any time, senate term limits do not create as severe a problem. The Commission recommends retaining term limits, but extending them to provide more stability.

When a legislator first begins a term in office, he or she requires a certain amount of time to "learn the ropes." The processes and operations of the legislature are complex. Members need experience to develop legislation and develop the coalitions necessary to meet the state's long-term needs. The state's current term limits do not provide sufficient time for legislators to develop the expertise

necessary to effectively perform their responsibilities. Moreover, under present term limits, the assembly will always have one-third to one-half of its members serving in their first term. While some voters may believe this will bring a fresh perspective to the legislature, the lack of experience and knowledge of the system impairs the efficient operation of the legislature.

The Commission recommends extending term limits to 12 years in each house. The recommendation takes advantage of the important feature of staggered terms. Extending the length of assembly terms from two years to four years allows for staggered elections that will alleviate the problems created when a large number of members are serving their first term. The Commission determined that this proposal will maintain the intent of Proposition 140 to provide for frequent turnover and to prevent career politicians from becoming entrenched in the legislature.

In its discussion of the proposal to lengthen legislative terms, the Commission considered the positive effect longer terms would have on both the cost of election campaigns and the amount of time spent running for office. Under the current system, assembly elections are held every two years. This means that incumbents seeking reelection are constantly thinking about the next election and raising funds for that election. Allowing for assembly elections every four years will reduce the frequency of elections and the amount of money raised and spent for this purpose.

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7. Shorten legislative sessions to six months.

The Commission recommends that the constitution limit the length of legislative sessions to six months per year and provide for an expanded "oversight" function during the remainder of the year. The Commission also recommends shortening the time period (from the current 30 days to 10 days) during which bills must be in print prior to being considered.

Under this proposal, the legislature maintains its two-year session. However, the session schedule is limited to six months (from January to July 1). All legislative business is conducted during that six-month period. Additional session time is available to consider measures vetoed by the governor. If the need arose, the governor could call a special session of the legislature to deal with a particular issue. During the remaining six months, members could be in their districts staying in touch with constituents.

One of the basic roles of the legislative branch is to provide a public forum for the oversight and evaluation of state programs. The second half of the year (July to December) will allow time for legislative policy committees to conduct oversight hearings necessary to review the effectiveness of statutes or programs to determine if they are meeting their intended objectives.

The second part of this recommendation is to shorten the length of time a bill must be in print before it can be debated by the legislature. Currently, after a bill has been introduced, it may not be considered, amended, or heard until it has been in print for 30 days. This requirement was placed in the constitution prior to the advent of modern transportation and communication systems. The availability of those systems now permits a bill to be considered

sooner, while retaining the critical protection that its contents be available to the public prior to action. The Commission found that 10 days is sufficient for this purpose. The Commission recommends permitting the house that originates a bill to consider it 10 days after it has been introduced. This provision only allows a bill to be considered—not enacted. The bill must be in print for at least 31 days prior to enactment. This recommendation makes it easier for the legislature to hear and debate issues early in the session.

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8. Give the legislature the power to veto administrative regulations.

The Commission recommends that the legislature be given constitutional authority to review and reject administrative regulations.

In 1979, the legislature enacted AB 1111 which created the Office of Administrative Law (OAL). The OAL provides executive branch review of all regulations promulgated by state agencies. OAL has four functions: 1) review new regulations; 2) review informal regulations such as administrative guidelines, rules, orders, and standards; 3) publication of the California Regulatory Notice Register; and, 4) maintenance of the California Code of Regulations.

State agencies enact a variety of regulations. Some of these are fairly minor, such as establishing the level of reimbursement for state employees who use their personal vehicles for business travel. Other regulations often have a more significant impact, such as those established by the Air Resources Board and other administrative bodies with environmental and economic regulatory authority. State agencies are often criticized for adopting regulations that are inconsistent with, or overstep the bounds of, the authorizing legislation.

The Commission recommends giving the legislature a constitutional role in the rule making process. Under this recommendation, the legislature may review and repeal any regulations it determines to be inconsistent with the authorizing legislation. Allowing such action by the legislature increases public awareness and dialog over administrative activities. The Commission determined that providing a greater role for the legislature in reviewing regulations will provide for a legislative remedy in instances where an executive branch agency oversteps its authority.

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9. Provide limited retirement benefits to legislators.

The Commission recommends that the constitution allow legislators to participate in the regular Public Employee Retirement System.

With regard to retirement benefits, legislators elected after November 1, 1990 may participate only in the federal Social Security system. The Commission concluded that since the length of terms being proposed would allow members of the legislature to be in office for 12 years, some provision for retirement is justified. Under this proposal, members of the legislature would be eligible to participate in the Public Employees' Retirement System (PERS).

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The Initiative Process: Improving Public Review

The California constitution grants to the people the power to enact laws and amend the constitution by initiative. Proponents of statutory initiatives must obtain signatures equal to five percent of the votes cast in the last gubernatorial election. For constitutional initiatives, signatures must be equal to eight percent of the votes cast in the last gubernatorial election. Once a measure qualifies, it must be placed on the next general election ballot.

What is the Problem?

- **The legislative and initiative processes are too separate.**
- **The initiative process excuses the legislature from not acting on issues qualified for the ballot.**

The Commission identified multiple problems with the current initiative process. First, the initiative process reduces legislative accountability because it is designed to be independent of the legislative process. One of the consequences of the initiative process is the legislature's reluctance to act if there are initiative measures on the ballot. Legislators can be held accountable only if they are involved in the process of developing and enacting state laws and policies.

The initiative process also reduces the opportunity and incentive for legislators to participate in the development of initiatives or to enact laws when a particular issue begins to receive attention from initiative sponsors. Legislators may find it easier not to take a firm position on such issues and risk alienating important constituencies. Instead, they let the public decide. Sometimes legislators sincerely believe that the public is better suited to decide issues. But in other instances, legislators may embrace direct democracy out of personal self-interest or a desire to cultivate multiple constituencies that may be in opposition on an issue. As a result, some issues are framed in starker terms as initiatives, and may be more contentious and divisive in the electorate than in the legislature. In such situations, the legislature fails to provide a moderating influence and fails to help find points of agreement and compromise.

Another problem with the initiative process is that it reduces the flexibility of government laws and programs. Flexibility is the ability of policymakers to alter legislation that has unintended consequences, that is poorly written, that ceases to attract popular support, or that is no longer needed.

Initiative laws often have unintended consequences. The current initiative process has no mechanism for evaluating the effects of initiatives and revising them if they are not accomplishing their intended purpose. Initiative statutes can be amended only by the legislature placing a proposed change before the voters, by another initiative, or by courts as they rule on the constitutionality of the measure. Of the 27 states that provide for some form of initiative system, California is the only state with no provision for some type of legislative amendment.[10]

Many initiatives are written by citizens' groups with little or no legislative experience. Unlike other states that provide pre-election

administrative or judicial review, qualified California initiatives may not be amended before appearing on the ballot. As a result, many of the laws passed by California voters have been the subject of costly court battles for many years, struck down in court for technical reasons, or stripped of some important—but poorly written—provisions. When this occurs the voters are denied the outcome they tried to achieve at the polls.

A final problem with the initiative process is that when a constitutional initiative is considered at a primary election, typically only a small percentage of the state's voters participate. Constitutional initiatives usually have significant implications for Californians, and a larger percentage of the state's voters should decide whether they should be enacted.

From 1912 until 1966, California had two initiative processes available: the *direct* and the *indirect* initiative. The direct initiative allows the proponents of a policy to bypass the legislature and have an initiative placed directly on the ballot for voter approval or rejection. Under the indirect initiative, an initiative statute that qualified for the ballot could be submitted to the legislature for action. The legislature had 40 days to enact the proposal without change or amendment. If the legislature rejected the proposed law, the secretary of state had to submit it to the voters at the next general election. If the legislature accepted the measure without change or amendment, it became law and was not placed on the ballot.

Since 1912, 798 initiatives have been approved for circulation. Of these, 779 were direct initiatives and 19 were indirect initiatives. A total of 242 initiatives qualified for the ballot. Only four were indirect initiatives, and of those, only one was enacted into law and never appeared on the ballot. Of the measures that made it to the ballot, only 75 were approved by the voters; 31 were constitutional amendments, and 44 were statutory enactments. Since the indirect initiative was seldom used, the 1962 Constitution Revision Commission recommended deleting the provision and the voters agreed, ending the practice in 1966. Although the constitution has been amended 494 times, all but 33 of the amendments were placed on the ballot by the legislature.[11]

The frequent use of initiatives is a relatively new phenomenon. From the early years of the initiative until 1974, the number of measures that qualified for the ballot was relatively small. From 1912 to 1974 (with the exception of a nine year period), the number of measures that qualified was under 10, and the number making it to the ballot was under three. In some years, no measures qualified. Since 1974, the average number of initiative measures approved for circulation has been 25. The number actually making it to the ballot averaged about four. Of the 76 that have been approved over the last 84 years, 32 or about one-half have been approved in the last 15 years.[12]

During this period, most of the issues placed on the ballot promoted particular interests, and often involved a battle between opposing interests. Examples include insurance interests vs. trial lawyers, insurance industry vs. insurance industry, business vs. labor, and local government vs. tobacco industry. Table 1 illustrates the growing use of the initiative process to make public policy choices.

More than eight decades of experience has provided Californians with ample opportunity to evaluate the effects of the initiative process. Initiatives provide the public a way to apply pressure for solutions to major public problems when the legislature and governor are unresponsive. Two significant examples include the coastal protection programs stalled in the legislature during the late-1960s, which led to Proposition 20 the Coastal Zone Protection Act; and the need for property tax reform in the mid-1970s, which led to Proposition 13.

The Growing Use of the Initiative Process

What Change is Needed?

- **Improve accountability of the voters and the legislature.**
- **Improve the writing of statutory initiatives.**

The initiative process should not exclude the legislature from the lawmaking process. The legislature is a lawmaking body, and it has expertise in making laws and considering their outcomes. The legislature should—at a minimum—have a role in the initiative process to ensure that initiatives are well-written and meet the purposes for which they are designed. Additionally, once an initiative statute is enacted, there should be a mechanism for evaluating its impact. If an initiative statute is not meeting its intended purpose, or if it is having unexpected consequences, the legislature and the governor should be able to revise the law.

In other states, the initiative has been used to enhance, rather than to undermine, the legislative process. Many states allow or require the state legislature to hold formal hearings on issues that have qualified

for the ballot. The legislature may pass amendments to the initiative, recommend amendments to the initiatives' sponsors, or pass the measure itself. This review and amendment procedure provides an opportunity for the legislature to assess public support, research the issue, listen to interested parties, and enact legislation. Some states have provisions for the indirect initiative, in which citizens petition the legislature to consider a proposition. Others allow the legislature to amend initiatives after they have passed. All of these provisions allow state legislatures—which have the staff, resources, and expertise to analyze complex issues—the opportunity to make laws that reflect both broad public sentiment and the concerns of interested parties. California is one of ten states that provides for pre-election legislative review of initiatives, although it is unique in not allowing pre-election legislative amendments.

What Does the Commission Recommend?

The Commission determined that three reforms to the initiative process will result in a system that more effectively serves the needs of California's people. In reviewing the initiative process, the Commission pursued three basic goals:

- Improve accountability and efficiency by providing for greater voter participation in the process of amending the constitution.
- Increase the accountability of the legislature by involving them in the initiative process to ensure that initiatives are well-written.
- Increase the flexibility of the statutory initiative by providing a mechanism for evaluating effectiveness and changing the laws if necessary.

10. To provide fuller public review, place constitutional amendments on the November ballot except in special circumstances.

The Commission recommends that all proposed initiative constitutional amendments be placed on the November ballot. Constitutional amendments proposed by the legislature may be placed on primary or special election ballots with a two-thirds vote of the legislature and the approval of the governor.

One of the objectives of the Commission is to increase voter participation in the process of amending the constitution. Over the last 25 years, voter participation in primary and special elections has declined. Most special and primary elections have less than a "plurality" participating in the election. The 1993 special election had a turnout of only 36 percent of registered voters. Since 1984, the turnout for primary elections has not exceeded 48 percent. Participation in November elections has remained consistently above 50 percent of registered voters. This proposal will help ensure that a "public quorum" is present for the consideration of amendments to the constitution. If the governor and the legislature agree that a measure is of sufficient significance to warrant placement on a primary or special election ballot, they could do so by a two-thirds vote of the legislature and approval of the governor.

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11. Allow amendment of statutory initiatives after six years.

The Commission recommends that the constitution allow the legislature, with gubernatorial approval, to amend statutory initiatives after they have been in effect for six years.

Most initiatives establish a state priority or place a limitation on the actions of government or citizens. One of the major responsibilities of the legislature is to evaluate such programs. Under the current system, once a statutory initiative is enacted, the legislature may not change it, unless the initiative contains a provision allowing such modification.

The Commission determined that the constitution should provide for legislative evaluation of statutory initiatives and the programs they establish to determine whether they are achieving their intended result. A constitutional provision permitting the legislature and the governor to evaluate and amend initiatives would allow the state to change laws and programs in response to changing circumstances within the state. It also would provide an opportunity to correct any unintended consequences caused by an initiative.

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12. Allow the legislature to add technical and clarifying changes to initiatives that have qualified for the ballot.

The Commission recommends that the constitution establish a process for the legislature to review and make clarifying and technical amendments to initiatives that have qualified for the ballot.

Under the current system, the legislature is required to hold informational hearings on proposed initiatives. But the legislature has no role in evaluating initiatives to determine if they are written correctly and to ensure that they will not have any unanticipated consequences. Moreover, the legislature has no ability to modify a measure that has qualified for the ballot.

Initiatives are often poorly written by citizens' groups and others who are not regularly involved in the governing process. Initiatives frequently contain confusing legal requirements. The Commission found that more legislative involvement in the initiative process would alleviate the problem of poorly written initiatives.

The Commission recommends that the legislature be given the constitutional authority to hold public hearings to discuss the technical and programmatic aspects of initiatives that have qualified for the ballot. The legislature can then identify the problem the initiative is designed to remedy and determine whether the initiative serves its intended purpose. If necessary, the legislature can amend the initiative to make technical and clarifying changes consistent with the purpose of the initiative. In order for the legislature's changes to be included in the initiative, a majority of the proponents of the initiative must agree to the changes. If a majority of the proponents do not agree, the initiative would be placed on the ballot in its original form.

II

Improving the State Budget and Fiscal Process: Developing a Long-term Vision with Increased Fiscal Discipline

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II. Improving the State Budget and Fiscal Process: Developing a Long-term Vision with Increased Fiscal Discipline

The state's budget process contains few constitutional standards such as a requirement that the state enact or maintain a balanced budget. Once a budget becomes unbalanced there is no formal system for rebalancing the budget. An annual budget provides limited opportunities for establishing and implementing long-term strategic plans. Such plans would provide more direction for overall spending, facilitate the systematic evaluation of programs by the public, and increase accountability.

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California's budget and the implementing legislation that accompanies it contain the most important decisions made each year by the governor and the legislature. Although there are a variety of constraints imposed by the constitution and statute, the budget determines spending and program priorities for critical state services. Yet, as noted by the California Citizens Budget Commission, "the process by which the state makes these annual . . . decisions is encumbered with unnecessary procedural obstacles and serious informational inadequacies."[13]

The California Business-Higher Education Forum, a group of business and higher education leaders has called for a different approach to making fiscal choices. In "California Fiscal Reform: A Plan for Action" they found that there must be a process for establishing clear goals for the state's future. "California needs to recognize that its past success, measured both economically and by the level of public confidence in its institutions, depended on a shared vision and coordinated action between government and private institutions . . . . No shared vision exists today. It is time for a change."[14] The California Council on Environmental and Economic Balance a group of environmental, business, and labor leaders and many other groups have come to similar conclusions: The state is likely to experience continued pressure on its resources due to demands for higher levels of public investment and public services. Dealing with this dilemma will mean changing the budget process.

The process for considering the budget and its associated decisions has not changed in more than 30 years. For at least the last six to seven years each house of the legislature annually spends endless days over a four-month period crafting separate budgets, joining together in a conference committee to resolve differences between them, only to surrender their role at the last moment to the governor and the legislative leadership. All of this happens because the legislature's budget process is not designed to make the critical decisions that are necessary to meet the needs of the state within

What is the Problem?

- **There is a lack of long-term vision.**
- **There is a lack of performance measures to guide budget decisions.**
- **There are few constitutional standards for improving fiscal discipline.**

available resources. It is widely agreed that the result of this process is not satisfactory to any of the participants or to the people of California.

The budget process begins with executive, judicial, and legislative branches of state government developing expenditure plans as overseen by the Department of Finance. The Department of Finance submits the total expenditure plan to the governor based on an estimate of state revenue and property tax revenue since a portion of the property tax is used to finance K–12 education and community colleges. The governor is constitutionally required to submit an itemized budget proposal to the legislature by January 10 of each year. The governor is also required to suggest additional revenue sources in the event that estimated expenditures exceed revenue when the budget is introduced. Once the budget bill is introduced, the Legislative Analyst's Office evaluates the budget and provides the legislature with recommendations. Legislative committees then begin discussing the budget in early March. During May, the governor submits an updated budget proposal. By the end of May, the budget bill arrives on the floor of both houses for a vote. A two-house conference committee is organized to resolve the differences and to take into account the proposals made by the governor.

The state constitution requires the legislature to enact the budget bill by a two-thirds vote of each house, no later than June 15. The governor may veto the entire bill, or strike out or reduce individual items of expenditure in the budget using the "line-item veto." The legislature can overturn a line-item veto by a two-thirds vote in each house. Once the governor signs the budget bill, it becomes law. Even prior to the enactment of the budget, the budget process for the next year begins.

The Commission concluded that the current budget process has three shortcomings. First, there is no organized way to develop and adopt a long-term vision for the investment of public resources and also be able to have a budget that can be adjusted to meet changing economic and social conditions. A sense of shared vision or strategic direction is missing from the budget process. As Casey Stengel once observed, "If you don't know where you are going you're sure to end up somewhere else." The state lacks any process for establishing a strategic direction to guide programs and funding priorities. Any such process must not be so rigid that it becomes a barrier to change. Once the long-term direction is established, the implementation process must be flexible enough to respond to changing conditions.

Second, the current process is organized and operated to protect the status quo and, as such, is insulated from change. One of the primary features of the budget process is that each budget is based on the programs and activities contained in the last adopted budget. For members of legislative budget committees or citizens frustrated

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with the operation of state government, making changes to the status quo is extremely difficult. Try as one might, the natural law that governs the budget process is: *"You get what you got in the prior year, plus growth."* Although attention is given to changing caseload requirements for many programs, limited attention is given to program evaluation, improving the performance of a program, or eliminating a program that is no longer needed.

There are a few changes on the budget process horizon that seemed promising to the Commission. The state has begun several experiments with the integration of performance measures into the budget process. Four state departments are involved in a new budget process that will tie performance to their budget request.

Third, fiscal discipline is not one of the values that governs the budget process. Fiscal discipline has less political support than maintaining the status quo. Throughout much of the state's history, fiscal prudence has been less of a standard than maintaining the level of state interest in a particular program. In the Great Depression of the 1930s and the recent recession of the early 1990s, flexibility in meeting the needs of the state was seen as a higher value than fiscal discipline. As the state lived through the Great Depression of the 1930s, the level of spending steadily increased. Although the state's revenue base was reformed in 1933, producing a growth in resources, the steady growth in revenue was not sufficient to keep up with increasing rates of spending. To cover growing deficits, the state borrowed money and secured the loans with future years' resources.[15] A similar condition existed during the recession of 1990. The state had major obligations for state and local spending, particularly K–12 education. The state kept spending flat and financed year-end deficits with resources from the next fiscal year. On several occasions external borrowing was used to finance year-end deficits.[16]

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What Change is Needed?

- **Develop a long-term vision for California.**
- **Measure the performance of the state budget.**
- **Balance the state's checkbook.**

The Commission reviewed the current process and concluded that two basic changes are necessary. First, the budget process must have a long-term vision and not simply be guided by the status quo. At the same time, the process needs to be more responsive to changing economic and social conditions. The state should develop a long-term vision by:

- Adopting a long-term strategic plan to guide the state.
- Adopting a formal performance-based budgeting system.
- Adopting a two-year budget.
- Providing for a budget "rebalancing" process to meet changing conditions.

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Second, the governor and the legislature have a basic duty to balance the state's finances and to ensure that the state's resources are spent efficiently. Ultimately, the state must return to its traditional role of organizing and financing state operations and ensuring that statewide programs are meeting the state's needs. The state should enhance fiscal integrity by:

- Adopting and maintaining a balanced budget.
- Requiring a reserve to deal with unanticipated emergencies.
- Prohibiting external borrowing to finance deficits.
- Providing for a majority vote for the budget which will limit special interest groups from leveraging budget negotiations.

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What Does the Commission Recommend?

Adopt a Long-term Vision and Have the Flexibility to Respond to Changing Conditions

13. Require the governor to submit, and the legislature to adopt, long-term goals for the state and performance measures for the budgetary process.

The Commission recommends that the governor be required to submit a four-year strategic plan to the legislature for deliberation and adoption.

The state currently has a number of long-range plans that address a variety of single purpose program areas. Some argue that they conflict and need resolution. Additionally, California's current budget process consists of short-term incremental decisions often made without regard to long-term program objectives and fiscal trends. Annual solutions to the state's fiscal imperatives have resulted in long-term budget-balancing problems. The long-term has simply become a series of short-term decisions laid end to end. The investments that are needed to meet future state objectives are debated within the narrow perspective of individual programs, rather than as part of an overall priority-setting process.

The state needs a strategic plan to have a better sense of where it is going and how resources should be spent. The existence of a plan is particularly important when resources are scarce. The planning process would provide policymakers with projections of future program costs associated with policy and demographic changes. The process also would provide a way to focus public policy decisions, alternatives, and tradeoffs that the governor and legislature need to make. Once in place, the plan would provide an overall strategy for providing state services. As part of the strategic planning process, performance measures should be established to allow the legislature to measure program outcomes against concrete standards to determine if state programs are effective. By focusing on program outcomes, policymakers can determine what works and redefine priorities and funding as necessary. The strategic plan should also establish the program and fiscal relationship between state and local governments. Once adopted the strategic plan should guide both the operating budget and the longer term capital outlay budget.

The strategic plan would include:

- Policy and fiscal priorities.
- Performance standards to gauge the productivity of state expenditures.
- A capital facilities and financing plan.
- A description of the programmatic relationship between the state and local governments.

The enactment of the budget is the expression of the public policy priorities identified in the plan. When the budget is considered, the legislature can evaluate how each item relates to priorities and objectives and determine whether a particular spending proposal is consistent with the strategic plan. Additionally, the legislature can use the performance measures to determine if programs are effective and are meeting the goals outlined in the strategic plan.

The Commission's objective in making this recommendation is to increase the accountability of elected officials by clearly identifying expectations. These expectations take the form of measurable policy goals to which officials can be held accountable.

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14. Require a four-year capital outlay plan.

The Commission recommends that a four-year capital outlay plan be included in the state's long-range strategic plan proposed by the governor and approved by the legislature.

Adequate investment in public facilities is fundamental to the state's economic productivity and prosperity. One of the hallmarks of California history is the successful series of long-term investments that were made during the state's two decades of growth after World War II. At that time, the state invested in building our infrastructure, which today provides significant quality-of-life benefits to our citizens. Examples include: the state's transportation, water, parks, higher education, and elementary and secondary school system. Californians have a long tradition of investing for the future. Today, we take pride in the systems and facilities that were developed in earlier decades.

In recent years, infrastructure investments that are necessary for the future have been a secondary priority behind meeting the current needs of the people. But in an era of scarce resources, a capital plan is critical so that the state can maintain and enhance its premier public facilities. Adequate investment in public facilities is basic to the state's economic productivity. Most of the state's capital facility planning programs are directed toward specific functions such as transportation, water, higher education, and prisons. However, the state lacks an integrated, multipurpose capital facilities budgeting system that will address long-term public facility needs.

The Commission recommends that the governor propose, and the legislature adopt, a four-year capital outlay plan. The plan would evaluate state objectives and economic growth to determine the

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overall priorities for building the state's infrastructure. The plan would: 1) define investment priorities for building public facility infrastructure; 2) assign responsibilities between levels of government for implementing the capital outlay plan; and, 3) determine the financing methods to be used. The plan would provide the state a framework to build for the future, while also providing a means for reviewing annual state spending in relation to current and future needs.

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15. Change the fiscal year from one year to two years.

The Commission recommends that the current annual budget process be replaced with the enactment of a two-year budget.

Under current law, the governor and legislature consider the state's fiscal choices on an annual basis. California is one of 31 states that operates on an annual budget cycle. The remaining 19 operate with a two-year budget.[17]

Major state responsibilities, such as education and criminal justice, require a long planning horizon and a greater level of certainty to provide for program stability. The current budgetary timetable does not provide sufficient time for program review, evaluation, and change, nor does it allow for long-term planning. With a two-year budget, the legislature will be able to spend more time evaluating program outcomes and effectiveness. A two-year budget will also provide the governor and legislature the ability to take a longer view of the state's financial needs and to adjust to economic and caseload changes in a more organized manner. As a result, cities, counties, and schools will be able to do a better job of planning and using state funds.

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16. Provide a budget rebalancing mechanism.

The Commission recommends that the constitution specify a "rebalancing" process for the state budget. Midway through the fiscal period, the governor would be required to provide an update on the state's fiscal condition and recommend budgetary adjustments to accommodate any changes in revenue or expenditures.

Failure to maintain a balance of revenue and expenditures often has led to year-end deficits. Adopting a balanced budget is an important step in stabilizing financial planning for state services and living within our means. With the two-year budget period the Commission recommends, it is vital to have a provision for making mid-course corrections. Such corrections might be required if caseloads change. For example, the budget forecast of the number of children estimated to attend school in the year the budget is adopted is often different than the actual number who attend. The same is true for the budget forecast of the economy. Fluctuations in the economy may have an effect on projected revenue. Under this proposal, if the governor believes it is necessary to change the budget to keep it in balance, he or she will submit a rebalancing bill to change appropriations. A budget implementation bill will also be submitted to make any statutory changes necessary in the rebalancing bill. As noted in the section on the vote requirement, the budget rebalancing bill would require a majority vote of the legislature.

Increase Fiscal Discipline

17. Require the state's budget to be balanced.

The Commission recommends that for each two-year fiscal period, expenditures must not exceed revenue and reserves. After the enactment of the budget bill, no other bill could be enacted that cause expenditures to exceed estimated revenues and reserves.

Most states have some form of balanced budget requirement. In 44 states, the governor must submit a balanced budget proposal to the legislature. In 37 states, the budget adopted by the legislature and signed by the governor must be balanced. Thirteen states, including California, do not require an adopted budget to be in balance or be maintained in balance.[18]

For most of the state's history, California has relied on fiscal flexibility to maintain the state's expenditure priorities during difficult times. For example, from 1932 to 1942—when the budget was on a two-year schedule—California consistently closed its books with deficits. Contemporary history is similar. Since 1981, the state has ended eight out of fifteen fiscal years with operating deficits. In most cases the deficits were not anticipated. The state has used four methods to deal with fiscal imbalances; 1) reduce expenditures; 2) raise taxes; 3) use resources of the following year to bring the budget into balance; and, 4) shift the cost of a service to some other agency—either to the federal government or to counties—or shift resources between entities in order to save resources for other state programs. As Table 2 illustrates, it is not a simple task to keep the state's books balanced through changing economic conditions.

A critical issue for the Commission was the need for fiscal integrity. The Commission's objective is to prohibit spending in any fiscal period that will exceed the revenue that will be received. Adopting a balanced budget requirement will enhance the state's fiscal integrity and accountability and impede carrying over deficits to the next fiscal period.

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The Commission's recommendation regarding a balanced budget applies only to General Fund expenditures, not to Special Funds or bond funds used for capital projects. General Funds are raised primarily by the state income tax, sales tax, and bank and corporations taxes. The state has greater discretion over the use of these funds. Special Funds are those funds that are earmarked by law to be used for specific purposes such as gas taxes for transportation projects. Bond funds finance capital projects such as school construction, university facilities, prisons, and park acquisitions.

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18. Require a three percent general fund reserve.

The Commission recommends that the state begin each two-year budget period with a three percent reserve. Initially, the reserve would be phased in over several budget periods.

In 1988, California voters enacted a constitutional requirement to establish a "reasonable and necessary" prudent reserve. However, it did not specify the amount of the reserve. Failure to provide a reserve leaves the state vulnerable to small-scale emergencies, natural disasters, or unexpected economic shocks. The purpose of a reserve is to have the resources available to respond to normal but unforeseen changes in the economy, caseloads, or small-scale emergencies.

The Commission determined that the legislature must set aside a reserve and that a three percent reserve within each two-year period is a reasonable amount. Initially, the reserve will be phased in at a rate of one percent each year. The rules governing the reserve and its use will be specified in statute. A two-thirds vote of both houses would be required to spend funds from the reserve. As the reserve is expended, it must be replenished within two fiscal periods.

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19. Prohibit borrowing to finance a deficit.

The Commission recommends that the state be prohibited from borrowing from non-governmental resources across fiscal periods.

Due to the cyclical nature of tax receipts and expenditure allocations during a fiscal year, the state may have legal spending obligations that exceed the amount of cash in the treasury at any given time. To meet these obligations, the state borrows money. Borrowing can be in two forms; internal and external. Internal borrowing involves using the money of one state spending area to temporarily pay for another. Such borrowing is often necessary to deal with fluctuations in when certain areas of the state receive their revenue. External borrowing uses the private capital markets to obtain needed funds.

California is one of only 14 states that allow actual deficits to be carried over into the next fiscal year. It has also been argued that California has one of the least restrictive provisions protecting the state from deficit financing.[19]

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The constitution does not directly address the state's ability to borrow money from capital markets to finance deficits. To be consistent with the requirement for a balanced budget, the Commission recommends specific language in the constitution to prohibit the state from borrowing externally to finance a deficit across a fiscal period. This recommendation does not limit the state's ability to borrow to meet cash flow needs *within* a fiscal period.

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20. Require a majority vote to enact the budget and budget-related legislation.

The Commission recommends that a majority vote be required for the adoption of the state budget, the budget implementation bill, and any bill enacted to "rebalance" the budget.

Currently, all General Fund appropriations, except those for public schools, must be approved by a two-thirds vote of both houses of the legislature. This requirement dates back to a 1933 amendment that required a two-thirds vote on the budget bill if General Fund appropriations grew by more than five percent. Since budget growth after 1933 almost always exceeded five percent, the practical effect was to routinely require a two-thirds vote for passage of budget bills. A 1962 amendment removed the five percent formula, and simply required a two-thirds vote on the budget.

Only seven states require some form of a supermajority voting requirement for legislative passage of revenue or budget bills. Four states require a supermajority vote for budget approval if the budget contains emergency clauses or if the final budget exceeds the governor's original proposal. In Illinois, a majority vote is required to pass the budget unless the state's budget has not been enacted by June 30, then the budget bill requires a three-fifths vote.[20]

In theory a two-thirds vote should force a compromise between the majority and minority parties. For a number of years, the system worked in this manner. Recently, however, it has permitted those who have specific interests, which may or may not be related to the budget, to delay passage of the budget by leveraging their issue into the budget debate. The Citizens Budget Commission found that long budget delays, where a small group of legislators were able to stall budget adoption, caused higher levels of spending.[21] The Commission agreed with that finding. Although conventional wisdom indicates otherwise, the two-thirds vote requirement does not seem to limit higher levels of spending. In practice, it encourages it.

The Commission concluded that requiring a majority vote is the most equitable way to deal with increasing demand in an era of scarce resources. The Commission believes that with its recommendations related to balancing the budget, restricting borrowing, and requiring a reserve built in to the budget process to provide more fiscal discipline, a majority vote for enactment of the budget is appropriate. The majority vote recommendation applies to enactment of the budget, budget implementation bill, and rebalancing bill. The Commission recommends maintaining the

requirement for a two-thirds vote for any tax increase. Therefore, program expenditures may be adjusted by a majority vote and the taxpayers maintain their protection of a two-thirds vote on the imposition of new taxes.

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21. Allow for multiple subject budget implementation legislation.

The Commission recommends that the legislature be authorized to include in a single implementation bill, any statutory changes needed to implement the budget bill.

The budget bill often requires changes in state law in order for the provisions of the budget to take effect. Legislation needed for those changes is included in budget trailer bills or budget implementation bills. But the constitution contains a provision that limits legislation to a "single subject." All bills, other than the budget bill itself, may deal with only one subject. Because of the "single subject" rule, the budget-related changes cannot be combined into one bill. Consequently, the budget implementation bills must be submitted and voted on as separate pieces of legislation. To implement changes in law required by the budget, the legislature frequently must consider 20 to 30 different bills. Inevitably, one or more of these bills fails to pass the legislature, and thus throws the budget out of balance soon after enactment.

In order for the state to have an effective spending plan, the budget and all the provisions in the budget implementation bills must be enacted together. Without the implementation bills, the budget bill cannot operate, and the state does not have an effective spending plan. This recommendation authorizes multiple subject budget implementation bills, but does not require them. Allowing the legislature to pass a single budget implementation bill will protect the fiscal integrity of the budget by making it easier to pass legislation essential to keeping the budget balanced. If the budget implementation bill includes a tax increase, a two-thirds vote would be required for enactment.

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22. Link budget passage to salaries of legislators and the governor.

The Commission recommends that the constitution require the budget to be passed by the deadline or the governor and the legislature forfeit their pay.

Currently, the legislature and the governor are paid even if the budget is not enacted on time. This is not true for those who rely on the state for the timely payment of its obligations, including nursing homes, some state employees, and suppliers who provide services to the state. The Commission recommends that the governor and legislators forfeit their pay during any period that the budget is not enacted following the June 30 deadline.

III

Changing K–12 Education: Focusing Accountability at the State and Local Levels

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III. Changing K–12 Education: Focusing Accountability at the State and Local Levels

The governance structure of elementary and secondary education is divided among several state, county, and local authorities. Lines of accountability are blurred. Although elementary and secondary education are a shared local and state responsibility, local K–12 districts have little authority to raise taxes to provide additional funds for education. Additionally, cities, counties, and many special districts provide services that affect a child's education and health, yet there are few formal incentives for the collaborative delivery of services that might lead to more efficiency and cost savings.

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Perceptions of how the K–12 education system operates do not coincide with reality. In fact, several myths exist as to just how California's education system operates and who bears ultimate responsibility for K–12 education policies. First, there is a myth that the superintendent of public instruction is responsible for the state's education system. The reality is many officials make decisions concerning the state's education system. The current system provides education roles for the governor, superintendent, state Board of Education, county offices and local school district boards, administrators, and teachers. Citizens have difficulty knowing whom they should hold accountable for educational quality and results.

What is the Problem?

- **At the state level, no one is in charge.**
- **There are few standards to measure performance.**
- **Local policy and financing authority is limited.**

As described in the section on executive branch organization, at the state level California's public education system is administered by the Department of Education under the direction of the state Board of Education and the Superintendent of Public Instruction. Presently, the superintendent has three roles: 1) Director of the State Department of Education; 2) Executive Secretary to the State Board of Education; and, 3) Superintendent of Schools. The primary responsibilities of the superintendent and the department are to provide education policy direction to local school districts and to work with the educational community to improve academic performance. Any governing or administrative authority over the schools is derived from state laws and not the constitution.

Conflicts frequently occur over who has jurisdiction in a particular educational policy area. For example, the 1993 court decision State Board of Education v. Honig involved a number of issues relating to the roles and responsibilities of the board and the superintendent. The California Appellate Court ruled in favor of the board, and the California Supreme Court let the decision stand. The decision states: ". . . the constitution allows the Legislature to specify roles and responsibilities for both the board and the superintendent." Therefore, any lack of clarity of authority rests in legislation. "The Legislature has delegated certain powers to the board and the

superintendent. The board shall determine all questions of policy within its power. The Legislature has delegated to the superintendent the power to execute, under direction of the state board, the policies which have been decided upon by the board." Therefore, each has regulatory authority dependent upon the assignment of that authority by the Legislature for a particular program or education function. "Although the superintendent is a constitutional officer whose office cannot be extinguished by the Legislature, the powers and duties of that office may, and have been, increased and diminished by the Legislature under its authority."[22]

Another myth concerning California's educational system is that local communities fund their own schools and that local school boards operate their schools as they choose. The reality is that the state provides well over half of all funding for K–12 education (the remainder of the funds are local property tax revenue) and prescribes how certain funds must be spent. For the 1996–97 fiscal year an estimated $28.1 billion will be spent educating 5.4 million school children. Seventeen billion dollars comes from the state General Fund, $8.6 billion comes from the local property tax, and the remaining $2.5 billion comes from the federal government. The state controls the allocation of state funds as well as the local property tax.

Local school boards make decisions about how to spend their general purpose state funds and property tax revenue. However, the state also provides categorical funds and dictates how those funds must be spent. The Commission concluded that the current K–12 financing system and the lack of opportunity for communities to raise revenue locally for schools has resulted in people being disconnected from their local schools.

The Commission found that California has an educational system that provides no real focal point for responsibility, no flexibility for local districts, and has widely scattered responsibilities, resulting in no single official or entity being accountable for the state's education system either at the state or local level. The system has no organized method for ensuring that California's pupils are well-educated or that education funds are spent in the best way for each local area.

What Change is Needed?

- **Clarify responsibility.**
- **Focus control of education locally.**
- **Eliminate barriers to efficient operation.**
- **Give communities power to supplement the state funding guarantee.**

The Commission found that several reforms are needed to resolve problems with the state's education system. First, the state must stop micro-managing local school districts, and must delegate to local districts responsibility for meeting state education objectives. The state should ensure access to—and equity of—education and it should establish academic standards for local districts to meet. Local school boards should then be empowered to meet those standards using the methods that work best for their communities. Second, the state must clarify education roles and define which state official bears ultimate responsibility for California's educational policies.

In the area of school finance, the Commission concluded that the current education funding system is too centralized at the state level. This has fostered a disconnect between citizens and their local education system. The Commission's recommendations for a shared state-local school finance system have two basic underpinnings. Local school boards should be empowered to operate in a manner that will meet both the state's interest in education and the needs of their pupils on a local level. School districts should have the option—with local voter approval—to supplement the funds they receive from the state and the basic allocation of property tax revenue. This authority will provide local boards with greater control and flexibility in meeting the education needs of each community. Education has been a vital state interest since the first constitution was adopted in 1849. The 1849 constitution provided that the legislature should "encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvements," and should maintain a system of free common schools. During the 1879 convention, considerable debate occurred about education issues. The general attitude at the convention was one of distrust of the state government. The delegates gave local governments considerably more control over the schools than had been previously enjoyed. Now, 117 years later, it's once again time to shift more power, authority, and revenue control from the state to local school districts.

What Does the Commission Recommend?

In evaluating needed reforms to the state's elementary and secondary education system, the Commission established the following goals:

- The state must provide the public with a clear system of accountability.
- The responsibility for providing elementary and secondary education services should be shared between the state and local communities.
- The focus of control of education should be as close to the pupil as possible.

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- Reforms should eliminate barriers to the efficient operation of the elementary and secondary school system.
- Communities should have the ability to supplement the statewide K–12 funding guarantee.

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Identifying Who Is in Charge

23. Make the governor responsible for K–12 education.

The Commission recommends that the governor should be responsible for the state's role in the elementary and secondary public school system. The roles and responsibilities of the superintendent of public instruction should be outlined in statute rather than in the constitution. The superintendent of public instruction should be appointed by the governor, subject to senate confirmation.

This requirement was discussed in the section on Executive Branch reform, and the information bears repeating here. The general public and many in the education community perceive that the superintendent of public instruction has more authority over the schools than actually exists. Although the superintendent has policymaking authority, the position lacks fiscal and managerial control. Personnel and practice decisions are made by local boards. Overall budget control lies with the governor and the legislature, or often is mandated by initiatives. Decisions about textbooks, testing, and standards rest with a state board appointed by the governor, of which the superintendent is the executive secretary, not a voting member.

Responsibility for the state's education system is further complicated by the lack of constitutional reference to the authority of the governor for elementary and secondary education. Despite that, the historical prominence of the governor in education policy and budget decisions leads the public to presume a certain level of gubernatorial responsibility. The dispersion of responsibility within the education system means that no one has the authority to implement reforms, and citizens don't know whom to hold accountable for educational quality and results.

The Commission's goal is to establish efficient and effective governance for elementary and secondary public education by clearly defining the power and authority of the governor and locally elected school boards. To attain this goal, it is necessary to remove the constitutional status of some offices and boards. If a function is truly necessary, statutes can establish any offices and entities that are required to meet specific needs.

Deleting the constitutional status of the superintendent and giving responsibility for education policy to the governor, would remove a perceived layer of authority between local school boards and the governor. It would also clarify that the governor is ultimately responsible for the state's education policies.

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Currently, the state Board of Education has two constitutional responsibilities: approval of textbooks for use by pupils through the eighth grade, and approval of four executive appointments made by the superintendent of public instruction to the state Department of Education. All other policy development and regulatory responsibilities are based in statutes.

24. The role of the state Board of Education should be determined by statute.

The Commission recommends deleting constitutional references to the state Board of Education.

The Commission recommends that the governor be given clear constitutional responsibility for elementary and secondary education. The governor and the legislature should have the authority to determine whether a state board is necessary and—if it is necessary—whether its functions should be advisory or regulatory. If such a board is needed, its establishment, roles, and responsibilities should be outlined in statute rather than in the constitution. Establishing the board in statute will allow for more flexibility in its duties and will better allow for changes in those duties to meet current needs. If the constitutional reference is removed, the board's existing structure and duties could remain or change.

This proposal, coupled with the recommendation to delete the superintendent of public instruction from the constitution, will remove yet another perceived—and sometimes real—layer of governance between local school boards and the governor.

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County superintendents of schools and county boards of education are provided for in the constitution but their roles and responsibilities are spelled out in statute. According to statute, counties provide many educational programs for pupils. The nature of these programs is such that they are often better organized and provided on a regional or areawide basis. This includes programs such as special education for disabled pupils, vocational/occupational skills training, and juvenile court schools. In addition to these programs, statutes require the counties to perform fiscal, organizational, and attendance functions for school districts.

25. The role of county superintendents of schools and county boards of education should be determined locally or by statute.

The Commission recommends that constitutional references to county superintendents of schools and county boards of education be deleted. School districts could organize areawide services in a manner that most effectively and efficiently meets their needs.

Existing statutes permit local units of government—in this case school boards—to form county, regional, or areawide administrative units and joint powers authorities. Under the Commission's recommendation, these units could continue existing practices or cooperative services, or they could establish new arrangements, if local school boards need such an entity.

If school districts had more local control, they could use their authority to organize regional or areawide services in a manner that most effectively and efficiently meets their needs. If the state requires an intermediate unit to carry out a specific state function, a regional or county unit could be authorized in statute, or the function could be performed by an entity created as a unit in the state Department of Education.

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This recommendation is not a negative reflection on the programs and services provided by counties, rather, it is intended to improve organization and accountability. The recommendation meets a Commission goal of placing program operations closest to the local community and allowing maximum local flexibility for program governance. Additionally, it removes a layer of bureaucracy—both perceived and real—between local school boards and the governor.

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26. Establish an accountability system for public schools.

The Commission recommends establishing an accountability system and standards for public schools.

The constitution mentions education accountability only in section 8.5 of Article XVI (added by Proposition 98), and the reference is very brief. The provision requires school districts to issue accountability report cards for each school. However, there is little statewide uniformity of design for ease of public understanding, and there are no consequences imbedded in the system. In 1995, the state enacted a new statute that establishes new pupil testing and education standards. The legislation created the Commission for the Establishment of Academic Content and Performance Standards to develop educational standards and create a testing program for certain elementary and secondary grades.[23] The goal is to determine and describe what pupils should know and be able to do. Local school districts should then be given authority to decide how to educate children to accomplish those goals.

Current state law requires school districts to adhere to particular fiscal controls, but there is no accountability process or requirement that focuses on pupil achievement or the non-fiscal aspects of school district operations. State laws hold school districts accountable for fiscal operations, particularly if a district has fiscal difficulties. Districts are required to have a fund reserve, account for expenditures in a specified manner, subject financial transactions to an annual audit, and have fiscal documents reviewed by county offices of education and the state Department of Education. Lack of adherence to required forms, procedures, and standards can result in a state "takeover" of the fiscal affairs of a school district.

The Commission recommends that the constitution be amended to require the state to adopt a statute outlining an accountability system for education content, pupil performance, and financial and managerial responsibilities. Under such a provision, the state could enact fiscal accountability and pupil testing provisions that are similar to those contained in current statutes. A constitutionally required system developed in statute will maintain the state's interest in K–12 education, while permitting periodic statutory changes to allow for new conditions. Of equal importance, such a system would provide a clear statement to the public regarding the degree to which pupils are learning and the efficiency and effectiveness of local districts.

Proposition 98 is a constitutional amendment approved by voters in 1988 and revised in 1990, that established a minimum school funding guarantee—calculated on an annual basis—for elementary and secondary education and the community colleges. The guarantee is a state level aggregate commitment of funds; the proposition does not spell out the process or prescribe how much of the total guarantee dollars will go to elementary and secondary education or community colleges. All distribution decisions are made each year by the governor and legislature. As is true in the educational governance area, the system for financing local schools has become so complex that it is understood only by a limited number of experts. A frequent question is: Why has financing our elementary and secondary schools become so complex?

Over the past 25 years, court cases, constitutional initiatives passed by the electorate, and numerous bills have changed the method and amount of school funds a district receives each fiscal year. This complexity relating to school funding began with the 1968 Serrano v. Priest court case, which was not completely settled until the mid-1980s. When the Serrano case began, funding for elementary and secondary schools was a shared state-local arrangement. The state basically assured each school district a foundation or base level of general purpose funds for each pupil, and local districts used their control of property taxes to raise per pupil funding to the amount the district wanted to spend.

In the original Serrano decision, the court held that the school finance system that existed at the time was unconstitutional because a community with high property values could raise a lot of local money with a low tax rate. Conversely, a community with low property values needed a high tax rate to raise the same amount of money. This violated the equal opportunity and equal protection provisions of the California Constitution. The original Serrano decision permitted a different amount of funds to be spent on pupils, but ruled that property tax revenue based on property wealth could not be the reason for the difference.

After 15 years of court discussions, decisions, and new laws, the final Serrano judgment determined that the early-1980s version of school finance was in compliance with the constitution. However, that decision didn't simplify matters. In 1978, prior to the final Serrano judgment, the passage of Proposition 13 modified all school finance formulas relative to local property taxes for elementary and secondary education. Specifically, Proposition 13 removed the power of local communities to control the amount of property tax revenue they wanted for their schools. A limited number of school districts have been able to obtain voter approval of a parcel tax generating additional revenue, but the amount of money generated is quite small. For all practical purposes, school finance has been centralized with the governor and legislature. As a result, the state's General Fund is now the primary source of any new dollars for schools.

27. Maintain Proposition 98 and provide additional flexibility to the legislature and the governor.

The Commission recommends maintaining the statewide funding guarantee for K–12 education. The Commission also recommends that the legislature and governor be given greater flexibility in determining how to appropriate additional funds to K–12 education in excess of the minimum funding guarantee. Specifically, education spending in excess of the guarantee would be for one-time purposes unless the legislature and the governor chose to increase the guarantee.

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In any fiscal year, the governor and the legislature have the authority to augment the minimum Proposition 98 funding guarantee by appropriating funds above the minimum for schools. When the legislature appropriates funds for schools above the minimum guarantee, the current Proposition 98 language requires that any appropriation made during one year will become part of the base level of funding for the subsequent fiscal year. This provision can have a "chilling effect" on any consideration to provide funds above the minimum in a given year because such an increase will result in that new amount setting a new minimum for the following year. Future augmentations might be considered more favorably if any augmentation "over the minimum" Proposition 98 funding guarantee could be a one-time practice rather than being built into the future minimum base.

The Commission concluded that the legislature and the governor should have greater flexibility to determine how to appropriate funds to K–12 education in excess of the funding guarantee. Therefore, the Commission recommends that Proposition 98 be revised so that, unless the legislature specifies otherwise, additional funding over the guarantee would be for one-time purposes and would not be built into the base funding for the subsequent year's guarantee.

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Enhancing Local Control in the Management and Financing of K–12 Education

28. Increase local control and authority.

The Commission recommends increasing local control and the authority of local school boards.

The state's constitution provides that the legislature may "authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established." The legislature enacted the authorization in 1976, but subsequent statutes, federal and state court decisions, and voter initiatives have constrained the prerogatives of local school boards and shifted more power than necessary to the state.

The Commission acknowledges that the state is ultimately responsible for elementary and secondary education. But the Commission also determined that locally elected board members should be given as much authority as possible. The Commission recommends that school districts be given the constitutional power to make decisions that do not conflict with state law. Providing local school boards with direct constitutional authority gives them the power to act unless a statute prevents them from taking a particular action or requires them to do something else. This may decrease the state's role and its tendency to micro-manage school districts. The state would continue to have ultimate educational authority, and the legislature could enact a statute to assert a state interest that overrides local authority.

Perhaps the most notable example of the disconnection between the local taxes paid and the services received is the relationship between the local taxpayer and the school district. As mentioned earlier, the state has centralized the financing of K–12 education to the extent that there is little opportunity to supplement the statewide funding guarantee with local resources that communities may wish to provide to their schools. Many people believe that lottery revenue has solved the state's education funding problem. In reality, lottery revenue account for about three percent of the funds for elementary and secondary education. School districts are often forced to resort to begging, borrowing, and badgering to increase their financial resources. Some districts have received corporate and foundation support, while others have gone to their local electorate for approval of parcel taxes. These efforts have helped many districts, but they are not long-term solutions, and they have not generated significant amounts of money.

29. Allow supplementary local voter-approved taxes for education.

The Commission recommends allowing supplementary local voter-approved taxes for K–12 education.

The Commission recommends that if local communities want to supplement the state guarantee, they should be permitted to raise additional local funds by either or both of the following methods:

- An increase in the property tax with approval of two-thirds of the voters within the district. This authority would apply only to unified districts, and there would be limitations on the amount of the increase to comply with the Serrano decision.
- An increase of up to one-half cent on the sales tax on a countywide basis with majority approval of the voters. These funds would be allocated to all districts in the county on an equal per pupil basis.

The Commission recommends that any funds raised by these methods should be constitutionally protected from any "take-away" or supplanting by state law. The revenue would be supplemental, locally derived revenue that remain in the community. This recommendation is based on the premise that the combination of the state General Fund expenditures and the regular property tax allocated to schools will satisfy the state's funding interest in public elementary and secondary education. If communities want to provide additional funds over the amount provided by the basic guarantee, they should have the authority to seek voter approval for such funding. The Commission determined that local communities will be better connected with their schools if they are able to raise and retain some revenue for education above the level of funding provided by the state and general property tax revenue. This action would shift the source of the additional funding over the state guarantee for schools from the state General Fund to local communities.

30. Capital outlay planning and development should involve all local agencies.

The Commission recommends that school districts participate with other public agencies in a capital outlay planning program. For a proposed project that is consistent with a multi-agency plan, the vote required for general obligation bonds should be a majority of voters.

School districts have a backlog of capital construction projects totaling more than seven billion dollars. These projects include new school construction and the renovation and remodeling of existing facilities. Both are necessary to meet enrollment increases and program requirements into the twenty-first century. The most common methods of financing capital projects for school districts are general obligation bonds passed statewide by the electorate and local general obligation bonds passed by a two-thirds majority vote of the local electorate.

At the state level, school general obligation bond issues compete with other state capital outlay needs such as colleges and universities, prisons, and other infrastructure projects. State bonds currently provide less than one billion dollars per year to meet local needs, and it is not practical to expect every school's needs to be met by state bonds. Some communities charge a construction fee which provides a portion of the needed capital. Other districts have been successful in obtaining gifts of land or other capital assets. These methods do not meet all the local capital outlay needs. School districts often place bond requests before their local communities, but the two-thirds vote threshold for local bonds has proven to be an insurmountable barrier in some communities. Despite this, the need for capital outlay persists.

The need for capital investment in education facilities does not exist in a vacuum. As communities grow, long-term capital investment is needed in other community facilities including waste water treatment, water and transportation systems, and other facilities that make up the infrastructure of a community. Under our current local government structure, these activities are undertaken by individual agencies each asking the voters to approve particular projects. The Commission determined that it would improve the efficiency of all local agencies that invest in community facilities if they plan and develop the community's capital facility needs on a collaborative basis and then offer the voters a clear choice for the community's future.

Under this new collaborative model, the Commission recommends that the vote threshold for local general obligation bonds should be changed from the current two-thirds requirement to a majority vote. The majority vote authorization would be conditioned on all units of local government coming together to design a community-wide capital outlay plan and presenting it to the local electorate. If a school district participates with other public agencies in a capital outlay planning program implemented using a plan developed through the Commission's proposed "Home Rule Community Charter" and the proposed project is consistent with the plan, the vote requirement for general obligation bonds would be a majority vote of the voters. If the school district does not wish to be part of a local areawide plan, they can still seek local voter approval for bonds, but the vote requirement would remain at two-thirds.

Currently, California has 70 community college districts encompassing 106 campuses. Community college districts are governed by locally elected boards of trustees. According to Article IX, community colleges have the same constitutional status as state universities; both are authorized to exist as statutory entities. The state university system is financed by the state budget. Community colleges are part of the state's Master Plan for Higher Education and are funded similarly to elementary and secondary education. Through statutory changes made after the Master Plan's review in the mid-1980s, community college funding was changed from an average daily attendance system, which mirrored elementary and secondary education, to a full-time equivalent student basis that is somewhat similar to the state universities.

31. Community colleges should be part of higher education.

The Commission recommends that community colleges be removed from the Proposition 98 funding guarantee and be given the same funding status as the California State University.

For the last ten years, the funding system for community colleges has been a combination of local property tax revenue and appropriations from the state's General Fund, plus a student enrollment fee. The state annually appropriates a specific amount of General Funds for community colleges from the statewide aggregate Proposition 98 minimum guarantee. The constitution has no required split of Proposition 98 funds between elementary and secondary education and the community colleges. Usually, community colleges receive 10 to 11 percent of each year's total. The community colleges share of local property tax revenue are estimated each year, but if the estimate is below actual receipts, the colleges are short of revenue. Unlike K–12 education, the state does not automatically make-up for funds not received because of lower property tax revenue. Therefore, community college districts seldom know their total revenue picture during a fiscal year.

The Commission determined that community colleges and state universities should have similar fiscal systems, and the community colleges should be clearly identified as institutions of higher education. The Commission recommends that Article XVI (Proposition 98) be amended to remove the community colleges. The Commission does not recommend any changes to the Article IX provision authorizing both the community colleges and the state university systems to continue as public statutory entities. The Commission also has no recommendation concerning whether the community colleges should become a state system or should remain locally governed. Decisions regarding implementation and other changes to the community colleges are left to further legislative deliberations.

The adoption of the Commission's recommendation by the electorate will result in all other aspects of the community colleges remaining the same. However, the constitutional change could open at least the following issues and questions for discussion:

- Should community colleges continue to be governed by locally elected boards of trustees, should the system move to a statewide governance entity similar to the state university, or should a combination of the two forms of governance be used?
- Should community colleges continue to be jointly funded by local property tax revenue and the state's General Fund, or should the system be 100 percent funded by the General Fund? The latter choice would result in the transfer of property tax revenue to elementary and secondary education (K–12) and/or other units of local government. If community colleges are 100 percent state funded, how will existing per student funding disparities be addressed, since no Serrano-type equalization is required for community colleges?
- Should community colleges be permitted to continue to seek approval by the local electorate for construction bonds or should they be part of a statewide construction system that includes the state university and the University of California?

IV

State-Local Relations:

Straightening Out the Relationship of State and Local Government

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IV. State-Local Relations: Straightening out the Relationship of State and Local Government

It is widely agreed by every group that has studied California state and local governments that they are not serving the people as effectively as they should. In evaluating the structure and responsibilities of state and local governments, the Commission identified a number of problems that impede state and local agencies from meeting the needs of Californians.

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What is the Problem?

- **There is an absence of clearly defined responsibilities of state and local government.**
- **Since 1978 the state has played a significant role in local government finance.**

A key problem in the state-local relationship is that there is no overarching goal or principle guiding the relationship. The resulting assignment of responsibilities between state and local governments, particularly counties, is confused and follows no objective path. As a consequence, there is no accountability for each program. In 1992, the Legislative Analyst published a report on this subject, entitled "Making Government Make Sense." The report concluded that ". . . California's existing 'system' of government is dysfunctional," and that ". . . fundamental reorganization of state and local government responsibilities is required."[24] The California Business-Higher Education Forum issued a 1993 report entitled, "California Fiscal Reform: A Plan for Action," concluded that ". . . government barely works in California." [25]

The absence of clearly defined responsibilities for operating and financing government services has weakened the accountability of government officials to the public. In many instances, the state controls the program requirements and dictates how a program operates, but often leaves little room for local flexibility and creativity. As a result, local communities have limited ability to respond to local needs and to develop innovative approaches to solving community problems.

The tension between state government's desire for statewide policy authority and the desire for local autonomy is not new. It has existed since the Bear Flag Rebellion in 1846 when a group of citizens in Sonoma expressed their frustration with the Mexican government by declaring independence. From the first days of the legislature in 1849 to the present, legislators, governors, and local officials have argued over taxation, home rule, special legislation, and the respective roles of each group. The first 30 years of statehood were marked with mistrust and meddling in the affairs of local communities by the California legislature. The Constitution of 1879 introduced the principle of "home rule."[26] Simply stated, home rule is the authority of a local government to act independent of state intervention in the control of local affairs. The extent of this authority ends where the state expresses a statewide interest. And therein lies the dilemma—who draws the line and where is it drawn?

There was a time when the roles of state and local government were clearer and more understandable. The state's responsibilities were well-defined and were supported by the income, sales, and bank and corporation taxes. These responsibilities included a higher education system, a share of K–12 education, a prison system, and a health and human services system. The latter was shared with county governments which acted as agents of the state in the delivery of certain services. Local governments, along with the schools, had the property tax as their primary source of revenue for financing local services. The framers of the 1879 constitution wanted to protect local services from what had become an intrusive state government. A prohibition was placed in the constitution providing that the legislature may not impose taxes for local purposes but may authorize local governments to impose them. This provision has remained unchanged from its original version. Its purpose was to prohibit legislative interference with local taxation and expenditures.[27]

How did such a long tradition of a strong local government change in such a short period of time? The trend toward state control began in the early 1970s and increased substantially after the passage of Proposition 13 in 1978. The landmark law placed limitations on the amount of property tax that could be levied and gave control of its distribution to the state. Without a clear understanding of the situation, voters accepted the need to limit the power of state and local government to levy taxes and handed control of the primary source of financing local services to the state.

The property tax revolt of 1978 did not occur overnight. For most of the 1970s the legislature, two governors, and tax reform groups had argued over ways to reform the property tax. During the high inflationary period of the mid- to late-1970s, rapidly increasing property values allowed the property tax burden to grow. Additionally, as the state became more involved in health and human services, the county property tax was increasingly used for nonproperty-related services. The state income tax—not adjusted for inflation—was causing the state coffers to fill to overflowing. Government income was growing faster than personal income. The legislature and the governor, in no particular hurry to solve this problem, were faced with angry voters who had their own solution. The voters took property tax reform into their own hands. Between 1965 and 1978, 29 initiatives were filed with the Secretary of State to reform the property tax. Over this 13 year period, four measures qualified for the ballot and only one passed—Proposition 13.[28]

Proposition 13 was a classic example of why the voters placed the initiative process in the constitution in 1911. It was a release valve for inaction by the state. Proposition 13 limited the property tax rate to 1% of the full value of the property and capped the amount that the property value could grow for tax purposes to 2% per year. The practical effect was to reduce the property taxes of homeowners and

businesses by 60%. Local governments lost a major portion of the revenue used to support local services. They asked the state to replace the lost revenue in order to maintain the level of local services. The significant reduction of the local revenue base resulted in the transfer of power from local communities to state government.

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The outcome was predictable. With reduced resources for local services and a state surplus of over $4 billion, a fiscal relief plan was adopted that replaced about two-thirds of the property tax lost by local governments including schools. This cushioned the effect of the initiative. In effect, the state replaced local revenue used for local services with state funds. Approximately $1 billion went to cities, counties, and special districts to prevent major local government service reductions, particularly, police and fire protection services. An additional $1.3 billion was used to ''buy out'' the county share of a variety of health and welfare programs, and $2.8 billion was used to replace the property tax lost to the schools.[29]

- **The state replaced most of the property tax lost due to Proposition 13, thereby using statewide resources to finance local services.**

By this one act, the state undertook a new obligation—a significantly larger share of funding for local services, including schools. At the time, this approach was viewed as the long-term solution to the impact of Proposition 13. The effect of the involvement of the state in financing local services was not unforeseen. In January of 1980, in a report written by Senator Albert S. Rodda, Chairman of the Senate Finance Committee, the state was warned of the obligation it was assuming.

> ''Fortunately, the state through this action (Proposition 13 fiscal relief) replaced about two-thirds of the Proposition 13 property tax loss and, as a result, local governments, including schools, were spared the economic and social disruptions which normally would have accompanied such a dramatic change in their finances. State government, however, paid a price for coming to the aid of local government because the state committed itself to spend a substantial portion of its revenue for the support of local government and the public schools and, as a consequence, diminished its ability to finance areas of public service traditionally recognized as the responsibility of the state. The response to Proposition 13 resulted, therefore, in a fundamental change in state finance.'' [30]

The seeds of destruction were planted, and a locally-controlled finance system independent of the state was at an end. According to the Legislative Analyst, by 1984 the cost of the fiscal relief program had grown to over $7 billion.[31] By the time the 1990 recession hit, the cost of local fiscal relief had topped $9 billion. Since the state had

complete control of the distribution of the property tax, it was no surprise that when the fiscal effects of the 1990 recession continued into the mid-1990s, the state would want ''its'' money back.

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- **When the 1990 recession hit California, the state was no longer able to continue the level of assistance to local government.**

To solve the state's fiscal problem, the legislature and the governor partially reversed the fiscal relief program enacted in 1979 and transferred $3.6 billion in property tax from local governments back to the schools, thereby saving the state the equivalent amount of money. State financial assistance has continued to erode the ability of local governments to make choices about how tax dollars for local services will be spent. An example of using state resources to replace lost property taxes came in 1994. At the time, the voters approved Proposition 172 which provided additional resources to local government by continuing the state's temporary half-cent sales tax levied in 1991 to help the state through the recession. The funds raised were targeted only for local public safety purposes. Additionally, the state established a ''maintenance of effort'' requirement, which had the effect of placing future controls on local spending. In effect, local discretionary revenue, in the form of the property tax, was taken by the state and a portion replaced with a statewide tax targeted for a specific purpose.

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- **The property tax, once a local tax for local purposes, is now treated as a tax for state purposes.**

The voters, by giving the state the power over the distribution of the property tax, disconnected themselves from the act of determining the level of service desired and payment for the services received. Now the state determines how much local property tax a particular local agency will receive. It can be argued that the property tax is no longer a local tax used exclusively for local services.

In 1979, an amendment was added to the constitution that required the state to reimburse local government for ''costs incurred'' when carrying out a state-mandated local program. Such a program was defined as a new program or an increased level of service required by the state. The purpose of this requirement was to provide for some level of discipline in the state-local relationship by requiring the state to pay for those activities in which it had an interest. Since that time, the number of state-mandated local programs covered by this provision has been reduced dramatically. Rather than pay for particular services, the state has simply repealed the mandate. Although local officials, particularly those representing counties, urged the Commission to strengthen the mandate reimbursement provisions, the Commission concluded that the central issue was the programmatic relationship between the state and local governments and not simply the mandate provisions. If the programmatic relationship is straightened out, the issue of which level of government finances a program will follow.

The most deficient aspect of the state-local relationship centers on the relationship between the state and counties. Since 1849, counties have been recognized as providing a dual role—they act as agents of the state as well as providing municipal services outside of cities.

- **The most difficult relationship is the one between the state and counties. The counties play two roles: first, they are agents of the state for state programs; second, they are local agencies.**

The issue does not involve those functions that are either clearly state, such as higher education, or those that are clearly local, such as library services. Rather, the problem involves: 1) shared services that have both a local and a statewide element; such as mental health and transportation; and, 2) services that are statewide in nature, but are administered on behalf of the state by another entity, such as a county. In administering these programs, counties are treated as agents of the state. Examples include indigent health care and general assistance.

What Change is Needed?

- **The governor and the legislature must develop and adopt a state-local realignment plan.**

The Commission found that there is no magic template that will neatly divide state and local programs. If there was one—someone would have found it long ago. What can and should be done is the initiation of a "realignment" process (governed by a set of constitutional principles) to straighten out the relationship between the state and local governments. This process must be an open one—involving the governor, legislature, local governments, public and private organizations involved in providing public services, and the people who use the services. Additionally, this process must be continuous. As noted in the budget section, the review and update of the state strategic plan that occurs every four years must include a review of the state-local relationship to keep it current with state and local needs and changing conditions.

What Does the Commission Recommend?

32. Develop and adopt a state-local realignment plan.

The governor would be required to submit a State-Local Realignment Plan proposing the alignment of state and local services. A plan must be adopted by the legislature. Following adoption, the plan would be incorporated into the state's Strategic Plan which would be submitted by the governor and adopted by the legislature. The Strategic Plan and the state-local relationship would be reviewed and updated at least every four years.

As noted above, shared services have been financed by both state and county governments under the assumption that there was a local component to a particular activity and that the level of local financial responsibility was generally provided by statute. Throughout most of the state's history, counties had sufficient resources to participate in shared programs. Limitations on local resources and the advent of "maintenance-of-effort" requirements (where the state requires a particular level of local financial contribution) for shared services has blurred the distinction between a shared service and a locally-administered state program. This has meant that a local agency, usually a county, must use the tax base intended to support local services to fund programs over which the county may have limited programmatic or operational control.

The constitution is not the place to tightly define the duties and obligations of each level of government. Shared program responsibilities will vary over time, and state and local governments must have the flexibility to change them. However, the Commission determined that rules for the relationship between state and local governments should be spelled out. The legislature and the governor have a basic responsibility to develop a system for providing state services that are locally-administered. Finding the right mix of program responsibilities and financing for shared programs is essential to straightening out the state-local relationship.

The realignment plan should provide for the assignment of program responsibilities at the state and local levels. To assist in developing the plan, the governor should establish an advisory committee comprised of local representatives. Local officials working on the development of community charters should also be involved in developing the realignment plan. The objectives of the State-Local Realignment Plan are as follows:

- Ensure that the roles and responsibilities for providing services and exercising regulatory authority are clear.
- Ensure that the entity responsible for a service or regulation has the resources to finance it.
- Ensure that the entity assigned to conduct an activity has the ability to organize and administer the activity.
- Ensure that program responsibilities that are shared between state and local agencies are identified and that local administrative flexibility is given priority over state administration.

The State-Local Realignment Plan should provide assignment of responsibilities for program policy authority, administration, and finance. Each program category (e.g., health, welfare, criminal justice, judiciary, transportation, and environmental regulation) should be defined as having one of the following categories of responsibility:

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- **State Responsibility:** This includes programs where the role of the state is policymaking, standards-setting, administrative, and financial. Examples of current programs include higher education, vehicle registration, and environmental regulation.
- **Shared Responsibility:** This includes programs where state and local agencies share policymaking, administration, and financing. Also included are programs for which the state sets standards, (such as maintenance-of-effort requirements) for a specific level of local financial involvement. Examples of current programs include mental health and transportation.
- **State Responsibility-Locally Administered:** This includes programs where a local agency—usually a county—is acting as an agent of the state or on behalf of the state. Current programs include—but are not limited to—indigent health care, general assistance, and the judicial system.
- **Local Responsibility:** This includes programs where a local agency has the responsibility, authority, and financial control for a program. Current programs include law enforcement, libraries, recreation and cultural activities, and other traditional municipal services such as utilities.

V

Strengthening Local Government: Clarifying Roles, Enhancing Collaboration and Strengthening Home Rule

V. Strengthening Local Government: Clarifying Roles, Enhancing Collaboration and Strengthening Home Rule

Within California, a fragmented and confusing array of local agencies provide a myriad of services. There are few incentives for collaboration. Recognizing that resources for local services remain limited, California needs to review and revise its local governments to make them more efficient and effective while reconnecting them with the people they serve.

What is the Problem?

- **Local government has become far too complex. There are 7,000 units overseen by over 15,000 elected officials.**

In evaluating local government roles, the Commission identified two key problems. First, the organization and provision of local government services is far too complex. On the local level, there are a multitude of governmental agencies providing services and regulatory activities. As is the case with state-local responsibilities, the confusing array of local government entities makes it difficult for citizens to understand which agency is responsible for providing a particular service and whom they should hold accountable. Additionally, with so many local entities involved in providing government services, redundancies often exist. A service may be provided on an areawide basis by one agency, while a similar service is also provided locally within each community. For example, in many areas of the state, both municipal water agencies and independent water districts exist side-by-side servicing the same urban area with an arbitrary boundary separating them. Other examples of overlap include fire, library, and park and recreation services. Such overlap often is inefficient and results in greater costs to taxpayers.

California has 7,000 local government agencies, including counties, cities, special districts, and school districts. California voters elect about 15,000 people to oversee these governmental agencies. Many of these entities have overlapping—if not conflicting—duties and responsibilities. The fabric that makes up the quilt of California's local government and education system includes:

- 470 cities that are general purpose governments providing municipal services.
- 58 counties providing municipal services to unincorporated areas, countywide services, and selected areawide services primarily as agents of the state.

- 5,000 special districts. These entities provide specific services within a county or across several counties. There are about 55 types of activities performed by special districts ranging from operating airports to managing zoos. Approximately 2,200 are "independent" districts. That is, they have elected or appointed boards and are independent of the cities or counties in which they provide services.
- 1,062 school districts and county offices of education.
- 70 community college districts.

The Commission concluded that the current structure of local government is confusing and fragmented. The problem is more than one of numbers. Within most counties, whether urban or rural, observers will find a multitude of agencies with separate boards operating programs and providing services. It is hard to accept that services provided through this structure are cost-effective. Although many opportunities exist for collaboration among local governments, long-established parochial interests or institutional rigidity prevent such activity. Additionally, it is often difficult for citizens to gather or make sense of information about the cost of local services. It is difficult, if not impossible to find understandable fiscal information about the cost of services from local agencies with responsibilities that overlap. Clarity in the local budgeting and taxation process could improve accountability and better connect citizens and their local governments. These problems exist within the context of an increasing state population and the limited availability of resources to meet people's needs. State and local governments must develop more efficient and effective ways of meeting public needs using existing resources.

- **The power to make decisions about local problems has been eroded over the last 20 years.**

The second problem identified by the Commission is that the power of local governments and schools to make choices about the level and quality of local services has eroded over the last 20 years. California has lost its long tradition of home rule. The home rule tradition involves the ability of a community to adopt a home rule charter. There are two aspects to this authority. The first is the power to exercise all authority with respect to local matters, without being granted such authority by state law. Thus local entities with home rule authority start out with broad powers over local matters, which are then subject to self-imposed limits as provided in their charters. The second element of home rule authority concerns the resolution of conflicts between state and local laws. Charter cities, which have home rule authority, may enact laws that are inconsistent with state law with respect to "municipal affairs." In other words, subject to any restrictions local citizens placed in their charter, these entities and their citizens have plenary authority over matters of local concern.

Currently, there is no clear dividing line for activities that constitute a "municipal affair" or activities that are of statewide concern. The courts have been the arbiters of disputes between the exercise of local and state power. However, they have no standard or constitutional principle to help resolve such disputes but have been left to drift in a sea of "ad hoc intuition informed by pragmatic common sense." [32]

What Change is Needed?

- **Local comunities should review their governmental structures and develop local government service plans.**
- **Local communities should be given more control over locally levied taxes including the property tax.**

Clearly, there is a need to reevaluate our local governments. The Commission examined several models for local government organization. One model provided that the municipal services function of counties be eliminated and that counties act only as agents of the state. Under this plan, all local services would be delivered by cities. A second model called for the elimination of counties as agents of the state and required the state to determine how locally-administered state programs would be handled. The Commission concluded that the diversity of California's regions makes it impossible for any uniform approach to local governance to be responsive to the needs of every area. The solutions that work in a rural, sparsely populated area may not be effective in an urban, more densely populated area. Local areas are best suited to determine the most efficient and effective way to serve local needs. Consequently, the Commission believes that the best solution is a flexible approach that allows communities to adapt government structures to their own needs and desired level of public services.

In conjunction with realigning the state-local relationship and providing local entities with more responsibilities, the entities within each county or multi-county area should reevaluate their organization and functions to ensure that local services are being provided in an effective and efficient manner. In conducting this evaluation, consideration should be given to which services are areawide in nature and which are more local (community-based). Wherever possible, duplication of responsibilities among local entities, including cities, counties, special districts, and schools, should be eliminated. To the extent that responsibilities are to be shared, each entity's responsibilities should be clearly known. This will also provide an opportunity to increase collaboration between governmental and non-governmental organizations involved in providing public services. Finally, once the citizens of a community evaluate, reconnect, and reorganize their governments, their ability to control local affairs should be strengthened.

What Does the Commission Recommend?

33. Evaluate local government structures and develop a community charter.

The local government agencies within each county (or multi-county area) would be required to initiate a process to examine their current governance structure, methods of service delivery, and assignment of responsibilities and powers. From this examination, each area would develop a Local Government Services Plan. Following the development of the Local Government Services Plan, each local area would develop a "Home Rule Community Charter" to implement the Local Government Services Plan. The charter would be placed before the voters in each area for approval.

As mentioned previously, over the past two decades, local control over service delivery and financing has eroded. The weakening of the local revenue base has transferred program regulatory and fiscal responsibilities from local communities to the state. This is particularly true for counties. A key goal of the Commission is to move authority for program administration and service delivery back to the local level. The Commission believes that local governments are best suited to respond to local needs and to organize service delivery in an efficient manner. In conjunction with being given more responsibility, local governments must reevaluate the ways in which they provide such services and ensure clarity as to which local entity is accountable for providing a service.

Although improving service delivery and clarifying accountability are important objectives, constitutional barriers and the lack of tangible incentives have discouraged, if not prevented, local governments from initiating reform efforts. The state constitution imposes a number of barriers to reform, including: 1) local governments have no control over the allocation of property taxes raised in their communities—the constitution requires the state to allocate these revenue; and, 2) the constitution makes it difficult for local entities to work collaboratively by prohibiting the pooling of resources to address problems that overlap jurisdictions.

Clearly, a constitutionally mandated reform effort is needed, and the barriers to reform must be removed. Meaningful incentives must be provided to encourage the adoption of bold and innovative approaches to addressing community problems and improving government efficiency, accountability, and service delivery. Change must be initiated and evaluated at all levels of government, and proposals for local change must be submitted to local voters. As noted earlier, since the diversity of California's regions makes it difficult for a uniform approach to local governance to be responsive to each area's needs, the flexible approach proposed by the Commission allows local governments to adapt their structure to the needs of their communities.

The Commission notes that this recommendation does not require local areas to change their current governance structure. The recommendation does require citizens within each county to undertake the evaluation. If it is determined, upon completion of the evaluation, that existing government structures and entities are meeting current needs, a Community Charter could be established that leaves those structures unchanged. The steps involved in this recommendation are as follows:

Establishing the Citizens Charter Commission

Each county (or multi-county area) would establish an appointed body known as the Citizens Charter Commission on Local Government Efficiency and Restructuring (CCC). The procedures for establishing the CCC would be slightly different for single-county and multi-county CCCs. Appointments would be made by elected officials from the county(ies), cities, school districts, and special districts. Further, each "type" of local government would be represented on the CCC, and each CCC would be required to reflect the diversity present within the community. The standard statutory selection process would be used for the appointments. The work of each CCC for preparing the Government Services Plan and the proposed Community Charter would be financed equally by the state and local entities. Each Charter Commission would allocate a proportionate share of the local financial obligation among the local entities.

Single-County Commission: A single-county CCC would be comprised of at least 15 members, consisting of both non-government participants (majority) and government officials. Once formed, each CCC could appoint any number of additional members, but the majority of members would have to remain non-government officials. For single-county commissions, appointment to the 15-member CCC would be apportioned as follows:

Appointing Authority	Non-Government Officials	Government Officials	Total
County Board of Supervisors	3	2	5
City Councils	3	3	6
School Boards	1	1	2
Special District Boards	1	1	2
	8	7	15

Multi-County Commission: With the passage of concurring resolutions by each county, a multi-county CCC may be formed to develop an areawide Government Services Plan and a Community Charter to be voted on by the people. For multi-county commissions, apportionment will be twice the numbers indicated in the above chart.

Developing the Local Government Services Plan and Home Rule Community Charter

Each CCC would examine the current structure of local governments and the needs of all communities within the area. The CCC would be granted the constitutional power to organize, reorganize, and change the existing boundaries of any local government agency, with the exception of an existing charter city, since it derives power from the constitution. Following the completion of their evaluation, the Charter Commission must develop and adopt a Local Government Services Plan for the delivery and financing of local services. The Local Government Services Plan would include the following:

- **Local government should be organized to be more efficient and effective:** A goal of this process is to make local government more efficient and to better connect the residents of a particular area with the government that provides services. The implementation of the plan should result in a reduction in the number of governmental agencies and in the cost of providing local services. Additionally, these changes also should result in greater accountability to the public by involving the public in the design of their local government. The plan should stress collaboration among governmental and non-governmental agencies.

  The plan may include sub-county components. A sub-county area, which includes one or more local agencies, may develop and place before the voters a charter that provides for the structure and powers of that agency or agencies. A sub-county charter may not conflict with the countywide charter.

- **Allocating local service and regulatory responsibility:** The plan must designate which local agency is responsible for the delivery of services, the governing structure responsible for the services, and the financing of the services. The plan must also designate which entities are responsible for comprehensive planning, as well as functional planning, and the exercise of land use controls. The entities assigned the function of regulating land use will be responsible for simplifying and streamlining the existing land use regulatory process.

  As part of the allocation of service responsibilities, a process for developing, adopting, and updating a comprehensive multi-year capital outlay plan will be included. The Local Government Services Plan would identify all of the agencies responsible for capital facility planning, financing, and operation. The objective of this requirement is to improve the coordination and efficiency of capital facility programming in order to meet the needs of growing communities. General obligation bonds used to finance any project that is consistent with the plan will require a majority vote of the voters.

- **Organizing state-local programs and programs administered on behalf of the state:** The charter would give local entities the ability to provide for the organization and administration of programs shared with the state (such as mental health), and programs performed as agents of the state (such as indigent health care). The objective of this authority is to provide organizational flexibility for the local government to improve efficiency and effectiveness in the delivery of public services.

Following the adoption of the State-Local Realignment Plan, each CCC would write a Home Rule Community Charter (Community Charter) to implement the Government Services Plan taking into account the need to provide for the organization of locally-administered state services. The Community Charter would be placed on the ballot at the next available election. If the voters reject the charter, a revised charter would be developed by the CCC, and submitted to the voters at the next election. The citizens of a county could place an initiative measure on the ballot creating a Community Charter. This is the same authority that citizens currently possess to place a city charter on the ballot by initiative.

An essential element of this process will be the availability of information about local finances. In order to guarantee that all relevant information is available to members of the Charter Commission, as well as the general public, the Commission recommends that the constitution require that all local government agencies disclose their revenue and expenditures in a uniform manner as required by statute.

The Commission took particular note of the position that charter cities have in the construct of the state's local government system. Since 1896, the constitution has included the power of communities to adopt charters which provide for the rules governing local activities. As discussed in the recommendations regarding the home rule power, the Commission concluded that there was a need to strengthen this provision as well as to recognize the special status of the 89 charter cities. The Commission determined that a home rule community charter could not interfere with or abrogate the authority of a charter city.

Additionally, a state technical advisory group should be established by statute to provide technical assistance and to monitor the progress of the local charter commissions. This activity would also be useful in providing a link between the local charter commissions and the state-local realignment process. The technical advisory group would go out of existence following action by the local electorate.

34. Protect locally levied taxes and provide for a majority vote on local taxes and bond measures.

The constitution should protect the property tax and other local taxes from state reallocation. Additionally, increases in local taxes, except the property tax, should be subject to a majority vote of the governing board and the voters. A higher popular vote requirement may be included in the home rule community charter.

One of the objectives of the Commission is to enhance local control and ensure that local taxes are maintained and protected for providing local services. Additionally, the Commission examined the current method of levying the local sales tax and found that it had an adverse effect on development patterns. Often described as the "fiscalization of land use," local zoning decisions are made based on the amount of sales tax that will be generated, rather than consistency with overall growth and development polices of the community. In order to accomplish these objectives—protect local taxes for local purposes and reduce the fiscal pressure on land use decisions—the Commission makes the recommendations described below:

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Allocation of the property tax

The non-school share of the property tax would be allocated by the charter. The state would be prohibited from redistributing this portion of the tax. The distribution of the local government share of the property tax would no longer be determined by state law, it would be determined by the local Community Charter.

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Allocation of the local sales tax

The general purpose locally levied 1% sales tax could be allocated by the Community Charter. The area covered by the sales tax would be determined in the charter. For example, a countywide charter may have sub-county components with the sales tax allocated to local governments within their respective areas. The objective of this recommendation is to reduce the fiscal influence of land use decisions. Currently there is extensive competition among cities for the location of retail outlets. Since the sales tax is levied on transactions that are not sensitive to the political boundaries of a city, it would make sense to allow the distribution of the sales tax to be based on a larger area covering more economic activity.

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Allocation of the vehicle license in-lieu fee

At one time automobiles were subject to property tax. When the state repealed the tax it was repealing a local revenue. An "in-lieu" fee was established in the place of the property tax. About $3 billion goes to local government on a per capita basis. The allocation of these resources could also be part of the home rule charter process.

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Local tax authority and the vote requirement

Proposition 13 attempted to distinguish between special taxes—those taxes levied on specific activities and other taxes. After 18 years of initiative measures and endless court battles, the distinctions between "special" and other kinds of taxes remains muddled. The Commission concluded that voters should play an active role in issues dealing with local taxation. In order to simplify the process, the Commission chose to require that local taxes—either special or general—be subject to a majority vote of the governing body proposing the tax and the voters unless the home rule charter contained a higher threshold. This provision will allow the charter development process to determine not only the organization of services but also the vote requirements in excess of a majority vote. The Commission concluded that approval of local taxes by a majority the voters should be the rule unless the Community Charter provides for a higher vote requirement. The restrictions on the property tax contained in Proposition 13 would remain.

Those specific local taxes could be included in the charter and the voters could adopt them as part of the adoption of the Community Charter. Some local taxes could be countywide, while others could be sub-county or community-based. The voters will have the opportunity to connect the governmental agency providing the service with the taxes levied to provide those services.

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35. Strengthening the home rule provision.

The Commission recommends that California's longstanding tradition of home rule be strengthened and provide a constitutional standard for balancing of state vs. local interest.

The need for local control was reflected in the provisions of the 1879 constitution which granted certain home rule authority to cities and to a limited extent to counties. Under Article XI and subsequent amendments, cities were authorized to enact local regulations that did not conflict with the general laws of the state and to engage in utility activities to provide services to their people. The legislature was prohibited from levying a state tax for a local purpose. Charter cities were granted protection from legislative interference in municipal affairs.

The Commission's goal in strengthening home rule authority is to eliminate the confusion over matters in which charter cities and state interests might conflict. By strengthening home rule and more clearly defining its parameters, such conflicts should be minimized. Moreover, by extending home rule authority to agencies participating in a Home Rule Community Charter, the Commission is offering a meaningful incentive.

The Commission proposes an approach in which charter entities will prevail over a state law unless one of the following conditions exists:

- **The local action has significant extraterritorial effects.** The action of the local agency would affect the health, operation, or behavior of people, businesses, or governments outside the boundaries of the area covered by the charter or the action's primary purpose is to regulate activities outside the charter's boundary.
- **The need for statewide uniformity overwhelms local differences.** In this case the policy interest in statewide uniformity outweighs a predisposition toward local control. For example the lack of uniformity might present substantial obstacles to travel, to the ordinary conduct of business in the state, or to the advancement of an important state policy that requires such uniformity. General laws relating to the state's health environmental, transportation social service and judicial systems that are matters of statewide concern and are not the purview of a local charter except to the extent that the state gave the charter the authority to act.

One of the Commission's objectives is to provide additional incentives for local agencies to participate in the Community Charter. The ability to adopt local programs without state interference is one of those incentives. The purpose of the charter is to provide for a new governance document for defining the organization and powers of local agencies. The Commission's recommendation strengthens local government authority over issues that have been viewed as "municipal affairs," and provides a constitutional standard for balancing the interests of the state and local communities.

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VI

Opposing Views

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VI. Opposing Views

A Difference of Principle: The Minority Report of the California Constitution Revision Commission

Executive Summary

The undersigned authors of this report register their opposition to the recommendations of the California Constitution Revision Commission.

We oppose the report on many specific grounds: it opens, for example, wide breaches in Proposition 13; it compromises the voters recent choices on term limits; it does nothing significant to restore the autonomy in local matters of local institutions; it provides hardly any increases in accountability of the government to the people, but more accountability of lower governments to higher; it increases control of elected officials over initiatives; it rejects a major proposal to defend the individual from invasion of his rights by government.

We think, moreover, that the specific failures in the proposal are not accidental. They stem from principles that are already breaking down the constitutional limits on government. This report, if adopted, will hasten that process.

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Framers, Then and Now

After 24 months of patient and diligent work, the California Constitution Revision Commission has produced a document. It is a faithful effort by people of good will. The nature of its product speaks volumes about the age in which we live and the barriers to sound constitutional thinking within it.

The art of making written constitutions was born and taken to its highest state of perfection here in this country. The framers of the first written constitutions—those of the United States of America and each of its constituent states built their work upon a consensus that does not exist today.

The consensus among the Framers concerned the principles, the first things, of government. They agreed that government has but one legitimate purpose: to secure the rights of its citizens. They agreed that those rights are derived from the principles of human nature and that human nature (being a nature) does not change over time or from place to place. They agreed that the need for government is written in the failings and the unique capacities natural to man. Government is necessary because it enables us to secure our rights from deprivation by one another. "One another " includes all of our fellow citizens, not least the special case of those both elected and un-elected who staff the government. "It is of great importance in a republic," wrote Madison, "not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part." [1]

[1] Federalist 51.

The Framers were agreed on the character of these fundamental rights. In the Declaration of Independence they are listed as "life, liberty, and the pursuit of happiness"; in the contemporaneous Virginia Bill of Rights, as "the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." [2] The Bill of Rights in the United States Constitution provides a more detailed list of rights, each fitting within the basic declarations of right that gave rise to the Revolution and stated its aims. That list includes the right to property, in roughly the form in which it occurs in the Virginia and Massachusetts bills of rights.

We modern "framers" who sit upon the CCRC are not agreed about the first principles of government. One of our witnesses, called to help defeat a proposal that touched most directly upon them, stated that the Declaration of Independence was written so as to demote the idea of property rights from the understanding of it in John Locke. This was part of an argument he was building that the purpose of government is to "adjust clashing interests" in society. It is a gross error to say either that the authors of the Declaration were attempting merely to state the opinions of John Locke, or that they meant to demote the right to property below that of any other right, including freedom of speech, of worship, or of the press. To the Founders, as we shall argue below, the right to property is as fundamental as any right.

The witness told us less than nothing about the opinions of those who wrote the most successful constitution. He told us volumes about opinion today, of which the recommendations made by this Commission are for the most part a fine reflection. In the contemporary understanding, government is conceived as a vast engineering scheme. It is managed by a professional class of social engineers. Their job is to guide society according to a uniform and comprehensive plan, made upon a national scale, conformed and applied down to each locality, revised and reapplied continuously, in an ongoing and evolutionary process. That is why when we use the expression "accountability" in our recommendations, we mean generally government professionals at one level, reporting to their counterparts at another.

The Commission was charged to make rational the hopelessly tangled relations between state and local government. We have adopted measures that give local government wider scope, but only at the expense of private citizens through new tax powers and legislative authority. No co-opted authority, no pilfered revenue stream, is returned from state government to local. On the contrary,

[2] Adopted June 12, 1776; the Massachusetts Bill of Rights of 1780 includes the expression the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

state government is given new responsibility to rank and rate the performance of local government according to comprehensive criteria. Our recommendations continue and accelerate the movement to make local government—which remained well into this century the primary and largest agency of government in America—into subservient local administrative units.

The specific recommendations of the Commission do not all fit into this theme. Several, concentrated especially in the executive branch, are salutary and we support them. But the thrust and meaning of the Commission recommendations is plainly as we have stated it above. We proceed then to an examination of the recommendations.

Executive Branch

We begin with the section of the Commission recommendations in which there are substantial items to praise.

The proposal to reduce the number of statewide elective offices follows the thinking of the *Federalist* that unity in the executive is the best means to secure both energy and accountability. By making these offices appointive and under the direct supervision of the executive, policy-making becomes more streamlined and consistent, and the people know better whom to blame.

The recommendation to combine the Franchise Tax Board and the Board of Equalization into a single agency is also good, but carried off badly in an important detail. Two taxing agencies waste money, duplicate one another, and dissipate accountability. The new agency would be run by a director, appointed by the governor, which is fine. But the tax appeals board would also be appointed by this same process, which makes it vulnerable to political pressure to get money for the state. Woe to the taxpayer who goes before this board when the governor and the legislature are scrambling to make up a deficit.

Many of us also think that the consolidation of executive agencies goes too far when it includes the Treasurer, who has fiduciary responsibilities that might conflict with the political interest of a governor.

Legislative Functions

We do little good and much mischief with the recommendations concerning the legislative branch. In particular:

- The Commission proposes to have initiatives that amend the Constitution confined to the November general election ballot, but initiatives generated in the legislature are exempted. We see no reason for the exemption of the legislature from this restriction, except to give their proposals—and not those of private citizens—whatever political advantage is available on

the primary ballot. Anyway, the restriction of initiatives proposed by private citizens to the November ballot will only make that ballot longer than it is now. This will make it yet more difficult for voters to analyze the many proposals before them.

- The Commission proposes that any statutory initiative may be amended or repealed by the legislature after six years, provided the legislature passes the amendment by a two-thirds vote. It may amend or repeal younger statutory initiatives with the agreement of the people. Citizens who take the trouble to propose initiatives will not likely look forward to having their proposals altered by the legislature. This gives them a new motive to propose constitutional, rather than statutory, amendments. The likely result of this Commission proposal is therefore to complicate a document we are trying to simplify. In a similar vein, the Commission proposes that the legislature, via a special committee, be empowered to amend initiatives that have qualified for the ballot before they are voted upon by people. Some of us have grave reservations about allowing the legislature this avenue to enter the initiative process.

- We agree warmly with the proposal to restrict the legislature to a session of six months per year.[3] The old joke that the liberties of the people are not safe when the legislature is in session has an element of truth in it. Excessive time is a temptation to exceed the purview of the legislative office. Shorter sessions would provide an inducement to focus upon essentials. Four thousand bills a year is too many to write with any care, too many to read with any comprehension, too many to argue with any penetration—too many, in short, to be good.

- Some of us argue with the proposal that the legislature should veto regulations produced in the executive branch. They argue upon constitutional grounds. The Supreme Court has found that such oversight at the federal level constitutes a diminishment of and interference with the executive power. By blurring the distinction between execution and making of the law it concentrates power in the legislature. On the other hand, some of us argue that the proposal is good, given the fact that the administrative agencies sprawl across and penetrate deeply into every part of society. No executive can alone monitor their activities. Some elected official, who after all owes his office to

[3] Tom McClintock, who gave excellent testimony to the Commission, makes the point that legislators should also be paid only half as much as currently, if they serve only half the time. Otherwise they will spend the six out-of-session months making political hay in some other way.

the regular approval of the people (who after all are still regarded in some quarters as sovereign) should watch what these agencies do. Let the legislature help. We should say here all together that above this disagreement is a deeper agreement that the administrative state must be curtailed. See our section below on the proposal regarding property rights.

- The Commission proposes a series of reforms to the budget process. Several of these are admirable, including measures to increase the state reserve and to make firmer the existing requirement that the budget be balanced—a constraint honored as often in the breach as the observance. At the same time, these recommendations are at least partially offset by the movement to a two-year budget cycle. The Commission was informed of research showing larger spending for states with two-year cycles. This is no accident. Balancing a budget requires forecasting both revenue and expenditures, and both are tricky. Government habitually predicts more sunshine than appears, more revenue and less expenditure than is actually received and incurred. This permits more spending. In a two-year cycle, reality takes longer to impose its constraints.
- The Commission proposal to include legislators in the public employees retirement system creates a conflict of interest. Public officers can judge better, when they are not judges in their own cause. Public employees are generally higher-paid and receive better benefits including pensions than private workers. Under this proposal, legislators will now vote upon their own pensions at the same time they vote upon those of this large and highly paid class.
- Term Limits. We close this section with one of the Commission's two most spectacular offenses against the public will. The Commission proposes to double the terms of members of the Assembly and increase those of senators by 50%. This equalizes the terms in the two houses, and it eliminates thereby the difference of perspective aimed for in devising longer terms for the higher body. It alters a recent proposition approved by the voters (Proposition 140), the effect of which has not yet been fully realized. It constitutes, whether intended or not, a rank appeal to members of the legislature to vote for the whole constitutional revision package, because it gives them a thing for which they dare not ask directly, a thing that must be the heart's desire of many or most of them, a thing that comes conveniently concealed in a larger package of changes to the constitution. One need not agree with the often repeated arguments in favor of term limits to see the brazen quality of this recommendation.

Education

When we reach education and local government, we reach places where administrative power is concentrated, where vast sums of public money are invested, where interests both private and public abound. We reach, in short, the essence of modern government. The Commission report is in these areas complex, like the phenomenon it would alter. Here the jargon of government in the administrative age is rampant. Here most egregiously we say one thing and mean another. Consider first education, the domain of the strongest forces in California government and politics.

The Commission has set out to make education less centralized, but it cannot prosecute this mission with an undivided soul. Many members of the Commission believe that "the state has a fundamental interest in education." Notice the language. The state, not the people, has an "interest." This "interest" is apparently not an "authority," such as might be delegated from the people. Would the state have that interest apart from some interest of the people, or in opposition to their interests?

The members making this point do not seem to have meant the "state" in the sense of "the people acting together." For they held that the "state" that has this "interest" must be able to protect that interest against any local body that might have authority in education. Under the theory of government to which we in this minority adhere, public bodies do not have "interests." They have authority, and that only to the extent delegated from the people. If one public body has a conflict of authority with another, they must settle it according to the documents by which the people have delegated authority to each of them. As our Commission is charged to revise the most important document making these delegations of authority (which the people would have then to approve by a constitutional procedure), we were unable to see how any "fundamental interest" of the "state" could rightly stand in our way.

After a little discussion of the meaning of these terms, members of the Commission preferred to go on to other work. We adopted a plan that itself reveals the deeper principles upon which we were operating.

Two points are central, each having to do with who would gain and who would lose power. First, we give broader authority to local school boards to make rules. At the same time we qualify this expanded authority in decisive ways. First, we take no money from the state authority and give it to local authority. Similarly we rescind no state rule or power, nor contemplate that any shall be rescinded later. Instead, we place a requirement upon the state that it adopt wider performance standards against which to measure local districts.

This complex of recommendations has several implications. To start with, it means that local school boards can have more power only by

making more rules, new rules beyond those that the state has made, most likely in areas where the state has not legislated. Perhaps the whole problem has been not enough rules. If so, our recommendations will help solve it, and our children will soon be learning at a gallop. If more rules is not the answer, then we may not get that wonderful performance for which we hope.

The state itself will also be making more rules. One section of the education recommendations is headed "Accountability in Education." Recall that "accountability" is an important word to this Commission. In this section local school boards are given power to make rules that do not conflict with existing state law. At the same time, the state is required to adopt an "accountability system . . . limited to education content, pupil performance, and financial and managerial responsibilities."

Limited to? The state will set standards in the strictly confined area of what the children study, how their performance is measured, and all the money dealings of the school. If the state should choose to make use of this new power—if it should behave as it has systematically behaved for more than a generation—the way is open. The ratings will come out, and some school districts will fall short. Journalists will bemoan the fact that nothing can be done by the state to bring those districts into line. Few will remember that the children in question are raised by fathers and mothers, and taught by teachers, who are much nearer the children than the officials of the state. These parents and teachers may even care for the children more than remote officials who do not know their names. If schools fail to meet these new standards, whatever their quality or applicability to the local district, they will be labeled across the state as "bad" districts. Pressure will grow to make them conform to the mold.

As a solace to local boards, and as a complement to their new rulemaking authority, they are given a handsome present: new tax powers. Here is the first of several major breaches to Proposition 13 that the Commission recommends. The Commission would cripple Proposition 13 by altering two of its basic principles: the 1% property tax rate limit could be broken for schools with a two-thirds vote of the people; and the provision requiring a two-thirds vote for special taxes would fall to a majority vote on sales taxes for school financing within a county.

We have many objections to these proposals. Whatever is wrong with education, restrictions on government taxing authority cannot be at fault. Our Commission makes its recommendations after a generation of unprecedented government growth, a growth that now reviles all but the most partisan enthusiasts for public administration. This growth affects every level of government down to the local, which in California, under Proposition 13, has kept pace

in spending with state and federal government since the passage of Proposition 13 in 1978.

The expansion of power to raise *ad valorem* taxes will be a massive source of new revenue. The lifting of restrictions against special taxes will give rise to new assaults upon the taxpayer in the name of any and every popular cause. If crime rates soar, taxes for law enforcement will flourish. If highways clog, if drugs are rampant, if garbage piles up to the rooftops—every urgent public need will provide the occasion for another special tax.

If more taxes were the answer for our children, we would already be raising up a generation of Solomons, and these recommendations would be redundant. If we wish to liberate local districts and local people to manage education, we will have to place the means in their hands and let them use those means. We will not be able to perpetuate central bureaucracies, with interests of their own, with power to oversee and to have the final say.

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Local Government

The recommendations concerning local government are parallel to those in education. Once again we set up a presumption that the local agency may make a law where none has been made before. Once again we return no centralized authority to local hands. Once again we allow the state to keep the revenue at its command.[4] Once again we allow expanded scope for local authority only in areas now controlled by private citizens.

We do, in certain ways, allow for some form of real devolution later on, but this is a weak reed. The Commission recommendations require the governor to propose a state/local realignment plan and to submit it to the legislature. In other words, we propose that the political powers of some future day deliberate whether to upset the arrangements of that day, which will have been solidly planted by past practice, and which will be defended by the legions who have an interest in them. We command the politicians of the future to fix the problems we have not the stomach to tackle—and we then take credit for what we expect them to do.

The detailed and complicated provisions regarding ‘‘Community Charter Commissions’’ have many features to which we object. First, the Commission places its faith in the mere process of planning. If only local governments would plan ahead better, we could make

[4] The nearest thing to a restriction on state revenue power in this section is a provision that the state cannot reallocate the non-school share of the property tax, or other general purpose local taxes, in localities where a home rule charter is made. That would hamper future predations by the state upon local trea suries. It does not alter the massive fact that localities spend huge sums, at some levels the vast majority of their budgets, in just the way the state and federal governments demand. The mandates from above and the revenue streams from above often do not match.

progress. We therefore compel every local government to form a Commission to deliberate whether to make a new charter, and to make one if they think it a good idea. To make sure they proceed, plenty of people are on board who would likely want a new charter: the Commission in each locality is to include members who are public officials, offset by a slight majority who are picked by public officials. This, the Commission pretends, will ensure that private citizens will dominate the charter commissions. Some commissioners even argued in open session that there were too few government officials on the proposed revision commissions!

Once formed and working, these commissions will have power to eliminate the two-thirds majority requirement for a tax increase. Here, as in education, new taxing powers complement new power to make law where no law has been made. This is the second major breach of Proposition 13. For any community that makes a charter, this is a breach wide enough to accommodate an entire fleet of city vehicles.

The Commission also proposes that the current two-thirds vote for passage of local general obligation bonds be lowered to a simple majority. This provision has been in the state constitution since 1879. Over that time, which included two world wars, a depression, and the incredible growth of the post-World War II period, this great state has flourished under the law requiring a two-thirds vote for local general obligation bonds. Also, about half of the bonds for schools have passed under the two-thirds requirement.

Despite the fact that they often vote for the bonds, the people of California support the two-thirds majority requirement for local bonds. When an attempt to lower the two-thirds majority for school bonds was on the ballot as Proposition 170 in 1993, it was defeated by nearly 70% of the voters. An attempt to lower the two-thirds vote requirement for bonds to a three-fifths vote in 1966 for schools and libraries was also defeated. They understand that bonds must be repaid, repaid with taxes, taxes that must continue for the years or decades for which the bonds are issued.

One of the hallmarks of successful government in America has been the primacy and preponderance of local institutions. This success was built upon local discretion in all matters administrative, and upon local responsibility for funding local matters. No state mandates encouraged local spending and taxing. Restraint and economy, built upon voluntary labor and local responsibility, were the rule. This gave rise to a wonderfully various and adaptable system. It was a marvel. We have lost it. Our Commission does nothing to restore it, except to rationalize the top-down system, to urge more consolidation locally, to give local government more power to be the tax collector for the state. More of the same.

Property Rights

The unpopularity of government in America dates back about 30 years, to the time of its transformation. As it has grown in relation to the rest of society, as it has become more centralized and less responsive to the public will, people have come to resent it. Today, government and most of its activities are held in slight regard. At the same time, each of its major programs has its constituents who are deeply attached and will fight to preserve their own foothold in power. As a group, the people would restrain and even contract the power of government; at the same time each particular policy has its constituency. Divided by this paradox, the people are unable to act. Meanwhile government grows, and no force can stand in its way.

If the people are to retain control of this formidable engine, it must be made to operate within limits that are agreed and observed as a matter of law. The Commission considered one major proposal that would have set such a limit. It was a proposal to rewrite Article 1, section 19 of the Constitution. That article defends property rights. We proposed to alter the provision to prohibit a modern method of taking property without compensation, a method characteristic of the new bureaucratic state.

The right to property is ranked in several of the Founding documents alongside the right to life and to liberty. It is seen in the Founding as a bulwark of those other rights. If one is entitled to what he earns, he is then able to build by his labor the material conditions of his independence. The Founders believed and argued that nature was so arranged as to enable everyone with diligence to earn a living. Those unable by physical impediment or misfortune would be aided by local charity and public support, which would distinguish carefully among cases of need to prevent subsidy of idleness or immorality. Otherwise, each would provide for himself, entitled to labor, entitled to keep what he earns. Thomas Jefferson and Abraham Lincoln condemned slavery upon this ground, and they supported limited and frugal government upon the same ground.

Jefferson, who was cited by a witness against our proposal as only a weak defender of property rights, wrote:

> “To take from one, because it is thought his own industry and that of his fathers has acquired too much, in order to spare to others, who, or whose fathers have not, exercised equal industry and skill, is to violate arbitrarily the first principle of association, the guarantee to everyone the free exercise of his industry and the fruits acquired by it.” [5]

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[5] Letter to Milligan, April 6, 1816.

Madison, too, was said by our witness to have only a qualified commitment to the right of property. If this is true, how are we to interpret his statement that "The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government." [6]

Property to the Founders is, as we said, the bulwark of the other rights, and in its broad application a synonym for them. Madison wrote:

> This term in its particular application means that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual.
>
> In its larger and juster meaning, it embraces everything to which a man may attach a value and have a right; and *which leaves to everyone else the like advantage. . .*
>
> In the former sense, a man's land, or merchandise, or money is called his property.
>
> In the latter sense, a man has a property in his opinions and the free communication of them.
>
> He has a property very dear to him in the safety and liberty of his person.
>
> He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them.
>
> He has an equal property in the free use of his faculties and free choice of the objects on which to employ them.
>
> In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights. Where an excess of power prevails, property of no sort is duly respected. No man is safe in his opinions, his person, his faculties, or his possessions.
>
> Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a just government, which impartially secures to every man, whatever is his own.[7]

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[6] The Federalist, 10.
[7] "Property," March 29, 1792, in Philip B. Kurland and Ralph Lerner, *The Founders' Constitution* (Chicago: University of Chicago Press, 1987), I:598.

Today we often hear the claim that the Founders built a nation devoted to pursuit of wealth as its highest aim. In truth, they understood the right to property as necessary to all liberty; they saw that any government powerful enough to violate that right, would violate the others, too. They understood feudalism, in which control of property is centralized, in which the right to build or to alter, to sell or divide property remains with the crown even when the deed has changed hands. They understood that this system demotes all but the privileged to a dependent station. Forgetting that danger, we implement a kind of feudalism in our own day.

What else would one call the experience of Mr. Erlich? He built and ran a fitness center in one of our California cities. He found over many years that it was difficult to make money in that business at that place. He asked the city if he might build condominiums (in the court case that followed, these are called "luxury" condominiums, to emphasize that Mr. Erlich was proposing something questionable). The city asked Mr. Erlich to mitigate the harm the city would incur by the loss of these "recreational facilities." The city was after all in acute need of such facilities, being "land locked " (its western border is about eight miles from the sea). The theory here seems to be that Mr. Erlich, in accepting his original permit to build his fitness center, took on an obligation to provide "recreational facilities" to the people of this city, whether they were prepared to purchase them or not. Erlich was asked to pay $280,000.

The facts in this particular case and many others like it have been established in court, this one before the California Supreme Court in March of this very year. These cases were before the Commission when it considered the proposal regarding property rights. The chairman himself found these facts regarding Mr. Erlich "outrageous." He and others wondered how often such things happened. Members seemed to feel that the rights of citizens should be protected only when they are frequently abused. Otherwise, place no shackles on government, which values its prerogatives highly.

In the face of these outrageous and established facts from court cases, the Commission voted down the proposal, eight to eight. Members were not yet "comfortable" with the proposal. They needed more time, as it was all very complicated. Some suggested that although we should not make any specific recommendation, we should recommend that the legislature look into the issue and come up with one. A meager little sop.

Here, then, is a clear matter. The government is invading people's rights. Courts are saying so, consistently. The California Supreme Court has itself said so in the past ninety days. These court cases are very clear, almost as clear as the plain common sense that calls these takings "outrageous." But the court alone cannot stop them. Only the few with the money and the dedication to sue for many years, with little or no hope of return of their money, in litigation with

people who are spending tax dollars on their side, can win in that manner. To stop this practice only one thing will do: a law that is outside the reach of the political forces of the day.

Our country, during its birth, invented a way to make such a law and write it down for everyone to read. It is called a written constitution. In voting down the protection of property rights, our Commission exhibits its ignorance or repudiation of the thing it was organized to revise and improve.

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Contracting Out and Redistricting

We can name other significant omissions in this report that would have served to limit the government and protect the rights of citizens, including their right to control the government. The Commission considered for example "contracting out," a mild form of privatization in which the government contracts with private firms, upon a competitive basis, for work that is currently done by the monopoly of state employees. This idea has broad support, including the solid support of the governor who appointed ten members to the Commission. Contracting out will save money and strengthen the private sector, and it will reduce government payrolls. When some members insisted that we should adopt language that was not a mere sham, seeming to support but actually forbidding contracting out, the idea was exiled to a sub-committee that never met.

The Commission considered redistricting, the drawing of district lines for elections. The decennial re-districtings in this state have become increasingly scandalous exercises in incumbent protection and partisan aggrandizement. The opposition of one powerful member of the legislature was apparently sufficient to deter the Commission from considering even the most modest reforms. Either an independent commission to draw district lines, or some criteria that limits partisan abuse, are necessary to make sure districts are drawn to represent the people and not the incumbents. The Commission report is silent on this issue.

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Conclusion

Our opposition to this report is based, then, on grounds both specific and general. We do not like the overturning of term limits that the people have lately adopted. We do not like the invasion of Proposition 13, which has stood as a bastion of tax resistance in our state and nation for almost twenty years. We do not like many other specific items noted above.

In recognizing the good will and ability of those who differ from us, and in thanking the chairman for his work if not for his product, we must still make the general point. Free government is rare, and

rarely successful. Where it abides over time, it operates in recognition of the principles informing our own precious Constitution of the United States. Every nation must vindicate those principles for itself. Our own nation must vindicate them for itself, in each generation. That is the urgent work that faces California and America today.

This report of this Commission obstructs more than advances that highest work. We here register our firm opposition.

Larry P. Arnn	Senator William Leonard
Edward J. Erler	Joel Fox
Alan Heslop	Richard Rider
Steven Frates	George Babikian

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An Opposing View on Recommendations by the California Constitution Revision Commission

by Joel Fox, Member
California Constitution Revision Commission

Taxpayer protections will be sacrificed if certain recommendations of the California Constitution Revision Commission are adopted. As proposed, the recommendations: make it easier to raise taxes; set up confusing Charter Communities which entice local governments to join by offering easier routes to tax increases but offer little incentive for the taxpayers; and take away the people's ability to vote for important officers who oversee tax revenue. Further, the important initiative process is weakened under the CCRC plan.

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Changes to Proposition 13

The Commission would cripple Proposition 13 by altering two of its basic principles. The 1% property tax rate limit could be broken for schools with a two-thirds vote of the people; and Proposition 13's provision requiring a two-thirds vote for special taxes would fall to a majority vote on sales taxes for school financing within a county. In addition, a majority vote for special taxes for other services will likely be the result of the CCRC's Charter Communities proposal.

Altering the 1% ad valorem property tax rate is not only designed as a new revenue source for schools, but as a way to raise great amounts of tax dollars. Schools currently have the power to increase property tax revenue with a two-thirds vote of the people for a parcel tax. The parcel tax is a flat charge levied against properties. The ad valorum property tax is based on the percentage of the property's value and can bring in a large amount of revenue at deceptively low percentage rate increases.

Aside from its potential to drain the property taxpayer, there are further dangers in cracking the 1% property tax rate for education.

Other public agencies will seek a property tax override if one is granted for schools.

If public safety is the first responsibility of local government, police and fire officials will ask why they cannot have the same property tax override, (or majority vote sales tax), that schools are granted. Once the limit is pierced, additional public agencies will make similar demands and soon the tax limitations of Proposition 13 will become meaningless.

Two-thirds Vote

The two-thirds vote to raise special taxes is under attack in the CCRC recommendations. The proposal seeks to allow a majority vote for sales taxes for schools within a county. Further, the recommendations allow for Charter Communities to seek a majority vote for all taxes if the Charter Commission, made up of elected officials and those appointed by elected officials, so choose.Majority vote selection by the Charter Commissions is a foregone conclusion. These majority votes could apply to all types of taxes, including property taxes in the form of parcel taxes.

In certain circumstances, the two-thirds vote is a necessary protection for taxpayers.

The argument against the two-thirds vote is that this is a democracy, therefore majority rules. With the two-thirds vote, one-third of the voters plus one can block the will of the majority. Thus, it is argued, with a two-thirds vote we have a tyranny of the minority.

However, the concept of the two-thirds vote has always been part of our democratic republic, it appears ten times in the United States Constitution. The purpose is to give certainty to important decisions.

There is no more important power of government than the power to levy taxes. Chief Justice John Marshall reminded us that the power to tax is the power to destroy. We live in a country that sets up extraordinary safeguards to protect us in life, liberty, and property. The two-thirds vote is a protection against a tyranny of a majority to take property . . . that is taxes . . . from the people.

The two-thirds vote is a safeguard against historian Alexander Tytler's oft-quoted plaintive lament: "A democracy cannot exist as a permanent form of government. It can only exist until a majority of voters discover that they can vote themselves largess out of the public treasury."

On the practical side, the two-thirds vote discourages earmarked taxes, called special taxes. Earmarked taxes take away discretionary decision making from elected officials. If a majority vote is granted for all tax increases, every tax increase on the ballot will be earmarked taxes for popular services. These taxes will be dedicated and elected officials will not be able to direct this tax money for other uses. In an emergency, they cannot shift earmarked revenue away from its intended purpose. If too much earmarked revenue is coming in for a particular service, officials cannot reduce the revenue without first going to the ballot. To prevent ballot box budgeting that will tie government into knots, maintaining the two-thirds vote for special taxes is necessary.

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Majority Votes For Bonds

The Commission also is recommending the two-thirds vote for local general obligation bonds be lowered to majority. This provision has been in the state constitution since 1879. Over that time, which included two world wars, a depression, and the incredible growth of the post-World War II period, this great state has flourished under the law requiring a two-thirds vote for local general obligation bonds.

The people of California support the two-thirds vote for local bonds. When an attempt to lower the two-thirds vote for school bonds was on the ballot as Proposition 170 in 1993, it was defeated by nearly 70% of the voters. An attempt to lower the two-thirds vote requirement for bonds to a three-fifths vote in 1966 for schools and libraries was also defeated.

Taxes which repay bonds are paid over a long period of time. While other taxes can be altered or eliminated from year to year, once a bond contract is in place, the tax to repay the bond is an obligation for two to three decades. Local general obligation bonds are backed by the collateral of an individual's home or property. If someone cannot pay the tax, the home or property can be forfeited. This extraordinary tax demands an extraordinary vote for approval.

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Community Charters

The goal of eliminating some of the 7,000 local government entities as proposed by the CCRC is an admirable one. However, the method chosen is a muddled concept of Charter Communities that offer some vague notion of reform and efficiency while promising, with near certainty, that taxes will increase.

The question that goes unanswered is this: Why do we need to offer governments easier access to tax dollars if the ultimate goal of the reform is more efficiency which means the need for less tax revenue?

The Charter Community process would begin with the establishment of a Citizens' Charter Commission made up of at least seven elected officials and eight appointees of elected officials. There is danger here. Bias toward more government and turf wars over government powers can be the only result.

One task given the Charter Commission is to establish the vote requirement for tax increases within the Charter Community with a majority vote being the floor. I see no elevator to raise that requirement above the floor, meaning, if approved, tax increases will be more easily achieved than under current requirements.

Furthermore, charter cities, where half the population of California resides, will be exempt from vote requirements for general tax increases.

Where is the incentive for taxpayers to accept such a plan?

While the stated purpose of the Charter Community reform is to eliminate some of the current number of governments and taxing authorities, there is a suspicion that we will end up with new levels of government in the form of sub-counties and the like.

Charter Communities will be allowed to pass general obligation bonds by a majority vote. For the reasons discussed above, I oppose this plan.

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Election of Revenue Officials

The CCRC recommends that the State Treasurer become an appointed position; and that the Board of Equalization be abolished, with the Board's functions merged with the functions of the Franchise Tax Board in a new combined Department of Revenue.

While the merging of the functions of two agencies into one is a good plan, the new agency's top officials must be elected. The Treasurer should remain an elected position, also.

The people want direct control over officials who manage their tax dollars. By keeping these positions elective, these officers will be more responsive to the people, rather than to the person who appoints them.

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The Initiative Process

The initiative process grants the people equal law-making power to the legislature. The constitution declares that, "All political power is inherent in the people." Proposed changes by the CCRC will make the legislative power more equal than the people's power in making law.

A proposal to allow initiative constitutional amendments to appear only on the November ballot allows an exemption for the legislature to put legislative constitutional amendments on primary and special election ballots with a two-thirds vote. There is no reason for this special dispensation. All constitutional amendments should be treated equally and given access to any ballot. By putting all initiative constitutional amendments on the same ballot, a long ballot may likely result. Long ballots often discourage voters, and they may not give certain initiatives the attention they deserve.

The recommendations propose that any statutory initiative may be amended by the legislature after six years. Those who believe the legislature should not have this power, will most likely turn to qualifying a constitutional amendment which cannot be amended directly by the legislature. The end result will mean more amendments to the constitution, burdening a document the CCRC hoped to condense.

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Taxpayer Bill of Rights

When the federal constitution was written in Philadelphia over two centuries ago, the new constitution did not meet the approval of the people until a Bill of Rights was added guaranteeing the citizens protection from government.

The first consideration of any constitutional change must be an enumerated Bill of Rights for taxpayers—beginning with the right of the people to vote on local tax increases—no matter what aliases these tax increases go under.

The right to vote on taxes is the only protection taxpayers have from being drained by the combined force of all the taxing authorities in this state.

There must be a vote on all local tax increases. All tax increase elections should appear on general election ballots to avoid the practice of holding special elections at off-times when only supporters of a tax increase are mobilized and motivated to vote.

If the people want to reduce or eliminate a tax in the future, they should have that right through an amendment to the constitution which recognizes the people's power of initiative to change any long standing tax. Referendum power should also be added for measures that would not be covered by automatic votes, such as certain fees or assessments; or new types of revenue raising devices which courts may rule fall outside the automatic vote requirement.

The initiative and referendum powers must be reasonably attainable. That means the number of petition signatures required for a measure to qualify for the ballot should be five percent of the number of people who voted in the last election, the same as the state requirement for initiatives. The current standard for local initiatives is signatures from ten percent of registered voters, an unrealistic total.

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Appendix 1

Biographies of Commission Members

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Governor Wilson Appointees

William Hauck, Chairman, is President of the California Business Roundtable. He has also served as Executive Vice President, and member of the Board of Directors for Information for Public Affairs, Inc. since 1975. Hauck has also served as a Deputy Chief of Staff to Governor Wilson, in various capacities in the State Assembly, as the Chief of Staff to former Speaker of the Assembly Bob Moretti, and as director of the Assembly Office of Research.

Donald C. Benninghoven, Vice-Chairman, of Sacramento, has been employed by the League of California Cities for the past 37 years and has served as the League's executive director since 1972.

Patricia E. Castillo, was the mayor of Sunnyvale from 1991 to 1993 and has served on the City Council since 1985. From 1992 to 1993, Castillo served as the president of the League of California Cities, and also served as the League's vice president from 1991 to 1992.

Joel Fox, of Granada Hills, has been the President of the Howard Jarvis Taxpayers Association, a 200,000 member taxpayer association in California since 1986. As President, Fox serves as the association's chief of policy and spokesman reporting to the Board of Directors (served from March 25, 1996 to June 30, 1996).

Russell S. Gould, of Sacramento, recently joined Metropolitan West Securities as director of Financial Advisory Services. He served as the director of the California Department of Finance from 1993 to March, 1996.

Alan Heslop, Ph.D., of Claremont, has been a professor at Claremont McKenna College since 1967, where he is also the director of the Rose Institute, a Claremont McKenna College research center. He has also taught political science at the University of Texas and Texas A&M.

Gary H. Hunt is Executive Vice President, Corporate Affairs and Administration of the Irvine Company. He is currently responsible for entitlement, regional infrastructure planning, and strategic governmental and communications efforts to enable the company to develop the nation's largest master planned urban environment in Orange County, California (served from March 25, 1996 to June 30, 1996).

Senator Bill Leonard, of Upland, was first elected to the California state senate in 1988 and was re-elected in 1992. Prior to his election to the senate he served five terms as a state assemblyman, representing California's Inland Empire.

Jane G. Pisano, Ph.D., of Los Angeles, is Vice President for External Relations at the University of Southern California. In addition, she is Dean of the School of Public Administration, a position she has held since 1991.

Leon L. Williams, of San Diego, has spent three decades in public service, first as a member of the San Diego City Council and then as a Supervisor on the San Diego County Board of Supervisors. He has been active in transit development for many years and currently serves as the chairman of the Board of Directors for the Metropolitan Transit Development Board.

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Senate Rules Committee Appointees

Anne Bakar, of San Francisco, currently serves as president and chief executive officer of Telecare Corporation where she is responsible for the leadership, management and development of a $70 million behavioral health care corporation.

Andrew R. Baron, served as the California political and legislative director of the American Federation of State, County and Municipal Employees (AFSCME).

Lewis Coleman is Senior Managing Director and co-head of Investment Banking at Montgomery Securities.

Betty Tom Chu was the Founding Chairman of the Board of Directors and Chief Executive Officer for the Trust Savings Bank from 1975 to 1995. Chu has also served as the Principal Deputy County Counsel for Los Angeles County Counsel's Office, Schools Division.

Senator Lucy Killea, of San Diego, was first elected to the state senate in 1989 as a Democrat after serving three and one-half consecutive terms in the state assembly. Killea also served on the San Diego City Council from 1978 to 1982.

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Assembly Speaker Appointees

Dr. Larry Arnn has served as President of The Claremont Institute since 1985, and he currently serves as the co-chairman of the California Civil Rights Initiative campaign (Served from January 31, 1996 to June 30, 1996).

George Babikian, of Palos Verdes Estates, is president of Los Angeles 2000 Partnership. He retired from ARCO in June 1993, after serving for eight years as President of ARCO Products Company, the corporation's refining and marketing division.

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Dr. Edward Erler is a Professor of Political Science at California State University, San Bernardino and a member of the California Advisory Commission on Civil Rights. He has also served as the director of the National Endowment for the Humanities Office of the Bicentennial of Constitution in 1983 to 1984 (Served from January 31, 1996 to June 30, 1996).

Dr. Steven Frates served as the Executive Director of the San Diego County Taxpayers Association from 1990 to 1994. Currently, he is the Second Vice President of Girl Scouts of San Diego and Imperial Counties. He has held teaching positions at several universities including the University of Southern California, San Diego State University, and California State University, Fullerton (Served from January 31, 1996 to June 30, 1996).

Richard Rider is a retired stockbroker and financial planner, who has been active in several taxpayer-advocacy organizations. These include the National Taxpayers Union, San Diego Taxpayers Association and Paul Gann's Citizens Committee (served from January 31, 1996 to June 30, 1996).

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Ex-Officio Members of the Commission

Craig L. Brown, Director, Department of Finance, of Citrus Heights, served as the Director of the California Youth Authority from June 1995 until March 1996. He also served on the California Task force to Review Juvenile Crime and Juvenile Justice Response. Previously, he was the undersecretary of the Youth and Adult Correctional Agency from 1987 to 1995 (served from March 4, 1996 to June 30, 1996).

Elizabeth G. Hill, Legislative Analyst, was appointed state Legislative Analyst by the Joint Legislative Budget Committee in 1986. As Legislative Analyst, she oversees the preparation of annual fiscal and policy analyses of the state of California's budget and its various programs.

Judge Ronald B. Robie (for Supreme Court Chief Justice, Malcolm M. Lucas), of Sacramento, was presiding judge of the consolidated Superior and Municipal Courts for 1994 and 1995. He has also served as a member of the Appellate Department, Superior Court. Robie also served as the Director of California's Department of Water Resources from 1975 to 1983. Robie received his J.D. from McGeorge School of Law (Served from March 25, 1996 to June 30, 1996).

Former Members of the Commission

Elizabeth Cabraser, of Santa Rosa, is an attorney and Partner with Lieff, Cabraser and Heinmann law offices in San Francisco. Cabraser holds a J.D. from the University of California, Berkeley, Boalt Hall (served from April 11, 1994 – January 31, 1996).

Kamala Harris, of Oakland, is a deputy district attorney for Alameda County. Harris holds a J.D. from Hastings College of Law (served from April 11, 1994 – January 31, 1996).

Assemblyman Phil Isenberg formerly served as a city councilmember and later as mayor of the Sacramento. He was first elected to the Assembly in 1982 (served from April 11, 1994 – January 31, 1996).

Dr. Chui Tsang is the Dean of Vocational Education for the John O'Connell Campus at San Francisco City College. Tsang received his Ph.D. from Stanford University (served from April 11, 1994 – January 31, 1996).

Judge Roger Warren (for Supreme Court Chief Justice, Malcolm M. Lucas), formerly a Sacramento Superior Court Judge. Warren left the Courts in March of 1996 to become the President of the National Center for State Courts, based in Williamsburg, Virginia (served from April 11, 1994 – February 22, 1996).

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APPENDIX 2

Chapter 1243 of the Statutes of 1993

Senate Bill 16

Senator Lucy Killea

An act to add and repeal Article 1.5 (commencing with Section 8275) of Chapter 3.5 of Division 1 of Title 2 of the Government Code.

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SECTION 1. The Legislature finds and declares the following:

(a) California's budget process has become crippled by a complex entanglement of constraints that interfere with an orderly and comprehensive consideration of all fiscal matters. A complete review of the process by an independent citizens' commission would provide the Legislature a basis for considering changes that would result in a more thoughtful and deliberative process.

(b) The legislative process has at times become mired in gridlock. Rivalries between the two houses of the Legislature and the executive branch have deterred the state's ability to make significant policy changes in response to the changing times. Changes to existing government organizational structures may provide a more responsive and productive form of governance for California than the current system.

(c) California's existing "system" of government is dysfunctional and does not work together sufficiently to achieve the public's goals. The various components have no common conception of mission and often work at cross-purposes.

SEC. 2. Article 1.5 (commencing with Section 8275) is added to Chapter 3.5 of Division 1 of Title 2 of the Government Code, to read:

Article 1.5. California Constitution Revision Commission

8275. There is created in state government the California Constitution Revision Commission.

8275.1. (a) The commission shall consist of 23 members, as follows:

(1) Ten members appointed by the Governor. No more than six members may be registered with the same political party.

(2) Five members appointed by the Speaker of the Assembly. No more than three members may be registered with the same political party. Two members shall be appointed in consultation with the Assembly Minority Caucus.

(3) Five members appointed by the Senate Committee on Rules. No more than three members may be registered with the same political party. Two members shall be appointed in consultation with the Senate Minority Caucus.

(4) The Chief Justice of California, or his or her designee.

(5) The Legislative Analyst, or his or her designee.
(6) The Director of Finance, or his or her designee.

The Governor, the Senate Committee on Rules, and the Speaker of the Assembly may each appoint no more than one Member of the Legislature to the commission. No lobbyist, as defined in Section 82039, may serve as a member of the commission. The membership of the commission shall broadly reflect the ethnic, racial, cultural, geographic, and gender diversity of the state.

(b) The initial appointments to the commission shall be made not later than 90 days after this article becomes operative.

8275.2. Each member of the commission shall serve without compensation, but each member other than an elected officer shall receive one hundred dollars ($100) for each day while on official business of the commission. In addition, each member shall also be entitled to receive necessary expenses actually incurred in the performance of his or her duties.

8275.3. (a) The Governor shall select one of the members as the chair of the commission.

(b) The commission may appoint an executive secretary and fix his or her compensation in accordance with law. The commission may employ and fix the compensation, in accordance with law, of any professional, clerical, and other assistants that may be necessary.

(c) The Legislative Counsel, Legislative Analyst, State Auditor, and the Department of Finance shall assist the commission in the performance of its duties.

8275.4. The commission shall assist the Governor and the Legislature by doing the following:

(a) Examining the process by which a budget is formulated and enacted by state government, the manner in which the budget serves the future needs of the state, the appropriate balance of resources and spending by the state, and the fiscal relations of the state, federal, and local governments, and any constraints and impediments that interfere with an orderly and comprehensive consideration of all fiscal matters that impact upon the development of a budget for the state.

(b) Examining the structure of state governance and proposed modifications that may increase accountability and improve the process of formulation, consideration, and approval of policy determinations and a budget for the state.

(c) Examining the current configuration of state and local government duties, responsibilities, and priorities; the fiscal relations of state and local governments; the types of services delivered; mechanisms of service delivery; desired program outcomes; and methods of performance measurement; and any constraints or impediments that interfere with the most effective allocation of state and local responsibilities.

(d) Examining the feasibility of integrating community resources into service delivery mechanisms in order to reduce duplication and increase efficiency, and the feasibility of community coalitions making recommendations to local entities regarding a community's vision and goals.

8275.5. The commission shall submit a report to the Governor and the Legislature no later than August 1, 1995, that sets forth its findings with respect to the mandate in Section 8275.4. The commission should submit interim reports before that date whenever it makes a finding and recommendation on a specific topic.

8275.6. In carrying out its duties and responsibilities, the commission shall have the following powers:

(a) To meet at times and places as it may deem proper. The commission is 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).

(b) To issue subpoenas to compel the attendance of witnesses and the production of books, records, papers, accounts, reports, and documents.

(c) To administer oaths.

(d) To contract, as it deems necessary, for the rendition of services, facilities, studies, and reports to the commission as will best assist it to carry out its duties and responsibilities.

(e) To cooperate with and to secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of its duties and responsibilities, and to direct the sheriff of any county or any marshal to serve subpoenas, orders, and other process.

(f) To secure directly from every department, agency, or instrumentality full cooperation, access to its records, and access to any information, suggestions, estimates, data, and statistics that it may have available.

(g) To do any and all things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the powers expressly granted to it.

8275.7. This article shall become inoperative on July 1, 1996, and, as of January 1, 1997, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1997, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. The sum of two hundred thousand dollars ($200,000) is hereby appropriated from the General Fund for the 1993–94 fiscal year to the California Constitution Revision Commission established by this act to carry out its duties and responsibilities under this act.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the California Constitution Revision Commission, created by this act, to carry out its functions and duties as soon as possible, it is necessary that this act take effect immediately.

Appendix 3
Commission Votes on the Recommendations *

I. Improving Accountability in State Government

	Yes	No	Abstain
Executive Branch			
The Governor and the Lieutenant Governor should run on the same ticket	18	0	0
Reduce the number of elective statewide offices			
- Governor appoints Treasurer	11	5	2
- Governor appoints Superintendent of Public Instruction	15	1	2
- Governor appoints Insurance Commissioner	14	1	3
Abolish the BOE, merge tax admin. functions and appoint appeals board	16	2	0
Shorten the term sof the University of California Board of Regents	14	2	2
Change the Responsibilities and Terms of the State Personnel Board	9	5	4
Legislative Branch			
Lengthen the terms of Legislators	12	6	0
Shorten legislative sessions	17	0	1
Give legislature the power to veto administrative regulations	9	6	2
Provide limited retirement benefits	11	7	0
Initiative Process			
Place initiative constitutional amendments on the November Ballot	15	1	2
Allow amendment of statutory initiatives after six years	13	3	2
Provide a role for the legislature in the initiative process	11	6	0

II. Improving the State Budget and Fiscal Process

	Yes	No	Abstain
Adopting a longer vision			
Require strategic planning and performance measures in the budgetary process	16	2	0
Outcome-based performance measures	11	3	4
Authorize the adoption of a two-year budget	10	5	3
Provide a budget rebalancing mechanism	14	2	0
Increasing fiscal discipline			
Require state's budget to be balanced	18	0	0
Require a three percent general fund reserve	13	2	3
Prohibit external borrowing across fiscal periods	18	0	0
Require a majority vote to enact the budget and budget-related legislation	15	3	0
Allow multiple subject implementation legislation	10	7	1
Tie budget passage to salaries	16	0	2

* Commission actions were taken at meetings held on February 5, 6, and 25, 1996.

III. Changing K–12 Education

	Yes	No	Abstain
Accountability In Education			
Provide local boards with greater authority	14	0	0
Establish a K–12 accountability system	14	0	4
Constitutional/Statutory Nature of Education Governance			
Change constitutional nature of the Superintendent of Public Instruction	15	1	2
Change constitutional nature of the state Board of Education	16	0	2
Delete constitutional references to county Superintendents of schools and school boards	17	0	1
Financing Education			
Maintain the current guarantee with excess funding to be one time unless legislature puts it into the base	12	2	0
Allow property tax increase for unified districts with a two-thirds vote of the voters	16	1	0
Allow an increase of up to one-half cent on the sales tax with a majority vote for school districts	10	6	0

IV. State and Local Relations

	Yes	No	Abstain
State-Local Realignment Process			
Require a state-local realignment process	9	8	1

V. Strengthening Local Government

	Yes	No	Abstain
The Structure of Local Government			
The Home Rule Community Charter	10	7	1
Establish Citizens Charter Commission	10	6	0
Contents of the Charter	10	6	0
Straightening out the state/local relationship	17	1	0
Fiscal Disclosure requirements	9	8	0
Local Tax Authority and Vote Requirement			
Require that local taxes (except property) be approved by a majority vote of the governing board and the electorate unless a higher vote requirement is provided for by the Community Charter	11	7	0

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Appendix 4

Reference Material

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III. Changing K–12 Education

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Appendix 5

Constitutional Language Implementing the Commission's Recommendations

- Guide By Subject -

NOTE: The effective dates included on this table assumed placement and approval by the voters at the November 1996 ballot. For placement on future ballots, the effective dates would change to conform to the date of the election and the desired effective date.

I Improving Accountability in State Government

	Article #	*Page #*	*Effective Date*
Executive Branch			
• Governor maintains powers when absent from the state	V Sec 10	145	1/1/97
• Governor and Lt. Governor run on the same ticket	V Sec 9.5	145	1/1/98
• Governor may appoint Lt. Governor to executive branch position	V Sec 10.5	145	1/4/99
• Governor has a 60 day veto period at end of legislative session	IV Sec 10	141	1/1/97
• Reduce the number of elective statewide offices	V Sec 12 & 14(f)	145	1/4/99
- Governor Appoints Treasurer			
- Governor Appoints Superintendent of Public Instruction			
- Governor Appoints Insurance Commissioner			
• Abolish the Board of Equalization, provide for an appointed tax appeals body, and consolidate tax administration duties	V Sec 14(f) XIII Secs. 3(j), 11, 17, 18, 18.5, 19, 28(h)	145 153	1/4/99
• University of California Board of Regents terms and membership	IX Sec 9	147	1/1/97
• State Personnel Board terms and functions	VII Sec 2 & 3	145	1/1/97
Legislative Branch			
• Six month legislative sessions	IV Sec 3	138	1/1/97
• Term limits	IV Sec 2.1	138	1/1/2002
• Allow legislation to be heard sooner than 31 days	IV Sec 8	139	1/1/97
• House of origin bill deadline	IV Sec 10	141	1/1/97
• Oversight of the regulatory process	IV Sec 29	144	1/1/97
• Retirement	IV Sec 4.5	139	1/1/97

	Article #	Page #	Effective Date
• Place constitutional amendments on the November ballot	II Sec 8	137	1/1/97
	XVIII Sec 1	161	1/1/97
• Amending statutory initiatives	II Sec 10	137	1/1/2002
• Legislative review and enactment of statutory and constitutional initiatives	II Sec 8.5	137	1/1/97
• Referendum provisions (conforming to the budget revisions)	II Sec 9	137	1/1/97

II Improving the State Budget and Fiscal Process

NOTE: The revisions to the budget process are phased in over two periods. Section 12 of Article IV includes all of the changes that begin 1/1/97. The 2 year budget and rebalancing process begins in 2001. Section 21.1 of Article IV includes all of the budget provisions that will be in effect after 2001.

	Article #	Page #	Effective Date
• Balanced budget requirement	IV Sec 12(f)	141	1/1/97
• Phase in Three Percent Prudent Reserve	IV Sec 12(g)	142	1/1/97
• Multiple subject budget implementation bill	IV Sec 9	140	1/1/97
• Majority vote on budget bills	IV Sec 12(d)	142	1/1/97
• Two-year budget process	IV Sec 12.1	142	1/1/2001
• Budget rebalancing bill	IV Sec 8 & 9	139	1/1/2001
• Limitations on state borrowing	XVI Sec 1.2	158	1/1/97
• Governor and legislature forfeit salary/per diem if budget not passed on the deadline	IV Sec 12(h)	142	1/1/97
• Strategic planning/four-year capital outlay plan	V Sec 3	144	1/1/2001
• Outcome-based performance measures	IV Sec 12	141	1/1/99
• Changes to the spending limit to conform to the two-year budget	XIII B	155	1/1/2001

III Changing K–12 Education

Accountability in Education

	Article #	Page #	Effective Date
• Provide for local school boards and grant greater authority	IX Sec 13.5	149	1/1/97
• Establish an accountability system and standards for Public schools	IX Sec 14	149	1/1/97

Constitutional/Statutory Nature of Education Governance

	Article #	Page #	Effective Date
• Change constitutional nature of the Superintendent of Public Instruction	V Sec 12	145	1/1/99
	IX Sec 2	146	
• Change constitutional nature of the State Board of Education	IX Sec 2.1, 7 & 8	146	1/1/97
• Delete constitutional references to county superintendents of schools and school boards	IX Sec 3, 3.1, 3.2, 3.3	146	1/1/99
• Organization of Community Colleges	IX Sec 12	148	1/1/97
• Organization of the State University	IX Sec 13	149	1/1/97

	Article #	Page #	Effective Date
Financing Education			
• Revisions to Proposition 98	XVI Sec 8 & 8.5	159	1/1/97
- Property Tax	XIIIA Sec 1	154	1/1/97
- Sales Tax	XIIIA Sec 4	155	1/1/97 bond vote requirements
	XI A Sec 4	152	HRCC
	XVI Sec 18	161	adoption

IV State-Local Relations

	Article #	Page #	Effective Date
• Straightening out the state/local relationship	V Sec 3, 5	144	1/1/97

V Strengthening Local Government

	Article #	Page #	Effective Date
• Citizen Charter Commission	XIA Sec 1	151	1/1/97
• Governmental Service Plan and Home Rule Community Charter	XIA Sec 2	152	CC Adoption
• Sub-county charters	XIA Sec 3	152	CC Adoption
• New Authority for HRCC			CC Adoption
- Vote requirements for local taxes	IXA Sec 5	152	CC Adoption
	XIIIA Sec 4	155	
- Vote requirements for GO bonds	IXA Sec 4	152	CC Adoption
	XVI Sec 18	161	
- Authority to allocate local revenue	XIA Sec 2(f)	152	CC Adoption Home Rule Authority
- Charter cities	XI Sec 5	150	1/1/97
- Counties	XI Sec 7	150	1/1/97
- Home Rule Community Charters	XIA Sec 6	152	CC Adoption

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Constitutional Language Implementing the Commission's Recommendations

- Guide By Article -

Article	Page #
Article II **Voting, Initiative and Referendum, and Recall**	137

- Place initiative constitutional amendments on November ballot (Sec. 8)
- Legislative review and amendment of qualified statutory and constitutional initiatives (Sec. 8.5)
- Amendment of statutory initiatives (Sec. 10)

Article III — 138
State of California

- Conforming change to eliminate Insurance Commissioner, Superintendent of Public Instruction, Treasurer, and members of the Board of Equalization from the list of state officers (Sec. 8)

Article IV — 138
Legislative

- Legislative term limits (Sec. 2.1)
- Shorten legislative sessions (Sec. 3)
- Allow legislators to participate in state retirement system (Sec. 4.5)
- Shorten in-print requirement for legislation in house of origin (Sec. 8)
- Forfeiture of pay by Governor and Legislature for failure to reach a budget agreement (Sec. 12 (h))
- Multiple subject budget implementation bill (Sec. 9)
- Phased in three percent reserve (Sec. 12 (g))
- Balanced budget requirement (Sec. 12(f))
- Majority vote on budget (Sec 4(d)
- Two-year budget (Sec 12.1)
- Budget rebalancing process (Sec. 21.1)
- Legislative oversight of the regulatory process (Sec. 29)
- Performance budget measures (Sec 12 (a)

Article V — 144
Executive

- Strategic planning (Sec. 3)
- State-local government realignment plan (Sec. 3.5)
- Governor and Lieutenant Governor shall run on a single ticket in primary election (Sec. 9.5)
- Governor retains power when absent from the state (Sec. 10)
- Treasurer, Superintendent of Public Instruction, and Insurance Commissioner shall be appointed by the Governor (Sec. 12)

Article	Page #

Article VII 145
Public Officers and Employees

- Conforming change eliminating Insurance Commissioner, Superintendent of Public Instruction, Treasurer, and members of the Board of Equalization as elective statewide offices Sec. 11)
- Reduction of Personnel Board terms (Sec. 2)
- Personnel Board Duties (Sec 3)

Article IX 146
Education

- Conforming changes removing constitutional references to state Board of Education, Superintendent of Public Instruction, and Deputy Superintendent of Public Instruction (Sec. 2 & 2.1)
- Provide local boards with greater authority
- Establish accountability system and standards for public schools
- Reduction of the terms of the UC Regents and reduction of the number of members to conform with recommendations

Article XI 149
Local Government

- Strengthening of the Home Rule provision
- Procedures for governance under the Home Rule Community Charter of Article XIA

Article XIA 151
Community Charter

- Establishment of the Community Charter Commission and process for adoption of Home Rule Community Charters

Article XIII 153
Taxation

- Elimination of Board of Equalization and the establishment of a single state government entity in its place

Article XIIIA 154
Tax Limitation

- Two-thirds vote requirement for local property taxes under the Home Rule Community Charter

Article XIIIB 155
Government Spending Limitation

- Conforming changes on the limitations of state and local government spending under the two-year budget

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Article	Page #

Article XVI 158
Public Finance

- Balanced budget requirement
- Public school system finance
- Vote requirement for General Obligation bonds

Article XVIII 161
Amending and Revising The Constitution

- Legislative amendments to the Constitution shall be placed on the November ballot

Article XX 162
Miscellaneous Subjects

- Conforming changes to legislative terms

Article XXI 162
Reapportionment of Senate, Assembly, Congressional, and Board of Equalization Districts

- Elimination of references to Board of Equalization districts

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CONSTITUTIONAL LANGUAGE TO IMPLEMENT THE COMMISSION'S RECOMMENDATIONS *

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 1995–96 Regular Session commencing on the fifth day of December 1994, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First—That subdivision (c) of Section 8 of Article II thereof is amended to read:

(c) *(1)* The Secretary of State shall then submit the measure at the next general election held at least 131 days after it qualifies or at any special statewide election held prior to that general election. The Governor may call a special statewide election for the measure.

(2) Notwithstanding paragraph (1), an initiative measure that proposes an amendment to this Constitution shall be submitted to the electors only at a statewide election held on the first Tuesday after the first Monday in November of an even-numbered year.

Second—That Section 8.5 is added to Article II thereof, to read:

SEC. 8.5. (a) (1) Following certification of an initiative measure for the ballot, each house of the Legislature, at least 124 days prior to the election at which the measure is to be voted upon, shall hold and complete a committee hearing during which testimony on the initiative measure shall be received. As an alternative to committee hearings of each house for this purpose, a hearing may be held by a joint committee of the Senate and the Assembly, or a hearing may be held at which separate committees of each house meet jointly. The proponents of the initiative measure shall be given written notice of a committee hearing held pursuant to this paragraph at least three days prior to the hearing.

(2) Immediately upon the completion of the hearing or hearings both committees or, if applicable, the joint committee, shall recommend to the Legislature whether the Legislature should take a course of action described in subdivision (b), or should take no action.

(b) Notwithstanding subdivision (c) of Section 8, the Secretary of State immediately shall modify the initiative measure to include the legislative changes described in this subdivision if, not later than 117 days prior to the general election at which the initiative measure is scheduled to be submitted to the voters, both of the following occur:

(1) By concurrent resolution adopted by both houses of the Legislature, by rollcall vote entered in the journal, the Legislature proposes only clarifying or technical changes, or both, to the initiative measure.

(2) The legislative changes are endorsed in writing by the proponent or a majority of the proponents of the initiative measure, and that written endorsement is submitted to the Secretary of State.

(c) The Secretary of State shall place any initiative measure, modified as provided by subdivision (b), on the ballot of the election at which the original initiative would have been submitted to the voters.

(d) For the purposes of this section, "proponent" or "proponents" means the person or persons who submit a draft of a petition proposing the initiative measure to the Attorney General with a request that he or she prepare a title and summary of the measure as provided by law.

Third—That subdivision (a) of Section 9 of Article II thereof is amended to read:

SEC. 9. (a) The referendum is the power of the electors to approve or reject statutes or parts of statutes except ~~urgency statutes,~~ statutes calling elections, ~~and~~ statutes providing for tax levies or appropriations for usual current expenses of the State *, urgency statutes, any statute implementing a budget bill as described in subdivision (b) of Section 9 of Article IV, any statute enacting a budget bill, and any statute enacting a budget rebalancing bill.*

Fourth—That subdivision (c) of Section 10 of Article II thereof is amended to read:

(c) *(1)* The Legislature may amend or repeal referendum statutes. ~~It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval.~~

(2) The Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval. This paragraph applies only to initiative statutes approved by the electors on or before November 5, 1996.

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* NOTE: This language was included in Senate Constitutional Amendment 39 and Assembly Constitutional Amendment 49 which were introduced in the California Legislature on May 13, 1996. No action was taken. Effective and operative dates contained in this language assume adoption by the voters in November 1996. For placement on future ballots, effective dates would need to be revised accordingly.

(3) With regard to initiative statutes approved by the electors after November 5, 1996:

(A) The Legislature may amend or repeal an initiative statute that has been in effect for less than six years by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval.

(B) The Legislature, by a two-thirds vote of the membership of each house, and notwithstanding any provision in the initiative statute, may amend or repeal an initiative statute by a statute that does not become operative sooner than six years after the initiative statute took effect. A bill to enact a statute pursuant to this subparagraph shall specifically identify the affected initiative statute, and state that the initiative statute was previously approved by the electors and the date on which the approval occurred. This subparagraph does not affect the power of the electors to amend or repeal an initiative statute pursuant to Section 8.

Fifth—That subdivision (b) of Section 14 of Article II thereof is amended to read:

(b) A petition to recall a statewide officer must be signed by electors equal in number to 12 percent of the last vote for the office, with signatures from each of 5 counties equal in number to 1 percent of the last vote for the office in the county. Signatures to recall Senators, members of the Assembly, ~~members of the Board of Equalization,~~ and judges of courts of appeal and trial courts must equal in number 20 percent of the last vote for the office.

Sixth—That subdivision (*l*) of Section 8 of Article III thereof is amended to read:

(*l*) "State officer," as used in this section, means the Governor, Lieutenant Governor, Attorney General, Controller, ~~Insurance Commissioner,~~ Secretary of State, ~~Superintendent of Public Instruction, Treasurer, member of the State Board of Equalization,~~ and Member of the Legislature.

Seventh—That Section 2 of Article IV thereof is amended to read:

SEC. 2. (a) The Senate has a membership of 40 Senators elected for ~~4-year~~ *four-year* terms, 20 to begin every ~~2~~ *two* years. No Senator may serve more than ~~2~~ *two* terms.

The Assembly has a membership of 80 members elected for ~~2-year~~ *two-year* terms. No member of the Assembly may serve more than ~~3~~ *three* terms.

Their terms shall commence on the first Monday in ~~December~~ *January* next following their election *or, if that day is a holiday, then on the next day.*

(b) Election of members of the Assembly shall be on the first Tuesday after the first Monday in November of even-numbered years unless otherwise prescribed by the Legislature. Senators shall be elected at the same time and places as members of the Assembly.

(c) A person is ineligible to be a member of the Legislature unless the person is an elector and has been a resident of the legislative district for one year, and a citizen of the United States and a resident of California for ~~3~~ *three* years, immediately preceding the election.

(d) When a vacancy occurs in the Legislature the Governor immediately shall call an election to fill the vacancy.

(e) The limitations on the number of terms prescribed by this section shall not apply to any term of office as a Senator or member of the Assembly that commences on or after January 6, 2003. This section shall remain in effect only until January 6, 2003, and as of that date is repealed.

Eighth—That Section 2.1 is added to Article IV thereof, to read:

SEC. 2.1. (a) The Senate has a membership of 40 Senators elected for four-year terms, 20 to begin every two years. No Senator may serve more than three terms.

The Assembly has a membership of 80 members elected for four-year terms, 40 to begin every two years. No member of the Assembly may serve more than three terms.

Their terms shall commence on the first Monday in January next following their election or, if that day is a holiday, then on the next day.

(b) Election of members of the Assembly shall be on the first Tuesday after the first Monday in November of even-numbered years unless otherwise prescribed by the Legislature. Senators shall be elected at the same time and places as members of the Assembly.

(c) A person is ineligible to be a member of the Legislature unless the person is an elector and has been a resident of the legislative district for one year, and a citizen of the United States and a resident of California for three years, immediately preceding the election.

(d) When a vacancy occurs in the Legislature the Governor immediately shall call an election to fill the vacancy.

Ninth—That Section 3 of Article IV thereof is amended to read:

SEC. 3. (a) The Legislature shall convene in regular session *in each odd-numbered year* at noon on the first Monday in ~~December of each even-numbered year~~ *January or, if that day is a holiday then on the next day,* and each house ~~shall~~ immediately *shall* organize. *The Legislature shall not meet in regular session on or after July 8th of any calendar year, except*

that, immediately following the conclusion of the 60-day period described in paragraph (1) or (2) of subdivision (b) of Section 10, the Legislature may meet for a period of not more than five consecutive days to reconsider any bill returned by the Governor in that calendar year. Either house of the Legislature may authorize the introduction of bills at any time during a regular or special session, including during any recess of the house. Each session of the Legislature shall adjourn sine die by operation of the Constitution at midnight on ~~November 30~~ *December 31* of the following even-numbered year.

(b) On extraordinary occasions the Governor by proclamation may cause the Legislature to assemble in special session. When so assembled it has power to legislate only on subjects specified in the proclamation but may provide for expenses and other matters incidental to the session.

Tenth—That Section 4.5 of Article IV is thereof amended to read:

SEC. 4.5. Notwithstanding any other provision of this Constitution or *other* existing law, a person elected to or serving in the Legislature on or after November 1, 1990, shall participate in the Federal Social Security (Retirement, Disability, Health Insurance) ~~Program~~ *System,* and ~~the~~ *may elect to participate in the Public Employees' Retirement System. The* State shall pay only the employer's share of the ~~contribution~~ *contributions* necessary to ~~such~~ *that* participation. No other pension or retirement benefit shall accrue as a result of service in the Legislature, ~~such~~ *that* service not being intended as a career occupation. This ~~Section~~ *section* shall not be construed to abrogate or diminish any vested pension or retirement benefit ~~which~~ *that* may have accrued under an existing law to a person holding or having held office in the Legislature, but upon adoption of this ~~Act~~ *act* no further entitlement to nor vesting in any existing program shall accrue to any such person, other than *the* Social Security *System and the Public Employees' Retirement System* to the extent herein provided.

Eleventh—That Section 8 of Article IV thereof is amended to read:

SEC. 8. (a) At regular sessions no bill other than the budget bill may be heard or acted on by committee or either house *until the 11th day after the bill is introduced, nor may any such bill be passed by the house of origin* until the 31st day after the bill is introduced ~~unless~~ *, except that* the house ~~dispenses with this requirement~~ *may dispense with either or both of these requirements* by rollcall vote entered in the journal, ~~three fourths~~ *three-fourths* of the membership concurring.

(b) The Legislature may make no law except by statute and may enact no statute except by bill. No bill may be passed unless it is read by title on 3 days in each house except that the house may dispense with this requirement by rollcall vote entered in the journal, ~~two thirds~~ *two-thirds* of the membership concurring. No bill may be passed until the bill with amendments has been printed and distributed to the members. No bill may be passed unless, by rollcall vote entered in the journal, a majority of the membership of each house concurs.

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

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

(3) Statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, ~~and~~ urgency statutes, *any statute implementing a budget bill as described in subdivision (b) of Section 9 and any statute enacting a budget bill* shall go into effect immediately upon their enactment.

(d) Urgency statutes are those necessary for immediate preservation of the public peace, health, or safety. A statement of facts constituting the necessity shall be set forth in one section of the bill. In each house the section and the bill shall be passed separately, each by rollcall vote entered in the journal, ~~two thirds~~ *two-thirds* of the membership concurring. An urgency statute may not create or abolish any office ~~or~~ , change the salary, term, or duties of any office, ~~or~~ grant any franchise or special privilege, or create any vested right or interest.

(e) This section shall remain in effect only until January 1, 2001, and as of that date is repealed.

Twelfth—That Section 8 is added to Article IV thereof, to read:

SEC. 8. (a) At regular sessions no bill other than the budget bill may be heard or acted on by committee or either house until the 11th day after the bill is introduced, nor may any such bill be passed by the house of origin until the 31st day after

the bill is introduced, except that the house may dispense with either or both of these requirements by rollcall vote entered in the journal, three-fourths of the membership concurring.

(b) The Legislature may make no law except by statute and may enact no statute except by bill. No bill may be passed unless it is read by title on 3 days in each house except that the house may dispense with this requirement by rollcall vote entered in the journal, two-thirds of the membership concurring. No bill may be passed until the bill with amendments has been printed and distributed to the members. No bill may be passed unless, by rollcall vote entered in the journal, a majority of the membership of each house concurs.

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

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

(3) Statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, urgency statutes, any statute implementing a budget bill as described in subdivision (b) of Section 9, any statute enacting a budget bill, and any statute enacting a budget rebalancing bill shall go into effect immediately upon their enactment.

(d) Urgency statutes are those necessary for immediate preservation of the public peace, health, or safety. A statement of facts constituting the necessity shall be set forth in one section of the bill. In each house the section and the bill shall be passed separately, each by rollcall vote entered in the journal, two-thirds of the membership concurring. An urgency statute may not create or abolish any office, change the salary, term, or duties of any office, grant any franchise or special privilege, or create any vested right or interest.

Thirteenth—That Section 9 of Article IV thereof is amended to read:

SEC. 9. ~~A~~ *(a) Except as provided in subdivision (b), a* statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void. ~~A~~

(b) One statute may be enacted during each calendar year that embraces more than one subject if the statute makes changes in law that are necessary to the implementation of the appropriations authorized for the fiscal year commencing that calendar year, that fact is expressed in its title, and the bill that enacts the statute is presented to the Governor at the same time as the bill that enacts the budget act. If the statute makes a substantive change in Iaw that is not necessary to the implementation of one or more of those appropriations, any section of the bill containing that change is void. The Governor, while approving other sections of the bill that enacts the statute, may eliminate one or more sections that he or she determines not to be necessary to the implementation of one or more of those appropriations. Any section of the bill eliminated by the Governor pursuant to that determination shall be separately reconsidered and may be passed over the Governor's veto in the same manner as bills.

(c) A statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is re-enacted as amended.

(d) This section shall remain in effect only until January 1, 2001, and as of that date is repealed.

Fourteenth—That Section 9 is added to Article IV thereof, to read:

SEC. 9. (a) Except as provided in subdivision (b), a statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void.

(b) (1) One statute may be enacted during each odd-numbered calendar year that embraces more than one subject if the statute makes changes in law that are necessary to the implementation of the appropriations authorized for the fiscal period commencing that year, that fact is expressed in its title, and the bill that enacts the statute is presented to the Governor at the same time as the bill that enacts the budget act. If the statute makes a substantive change in law that is not necessary to the implementation of one or more of those appropriations, any section of the bill containing that change is void. The Governor, while approving other sections of the bill that enacts the statute, may eliminate one or more sections that he or she determines not to be necessary to the implementation of one or more of those appropriations. Any section of the bill eliminated by the Governor pursuant to that determination shall be separately reconsidered and may be passed over the Governor's veto in the same manner as bills.

(2) One statute enacted during each even-numbered calendar year may embrace more than one subject if the statute is the budget rebalancing bill enacted for the purpose set forth in subdivision (h) of Section 12.1 and that fact is expressed in its title. If the statute makes a substantive change in law that is not reasonably related to the implementation of one or more of the purposes of the budget rebalancing bill enacted for the purpose set forth in subdivision (h) of Section 12.1, any section of the bill containing

that change is void. The Governor, while approving other sections of the bill that enacts the statute, may eliminate one or more sections that he or she determines not to be reasonably related to the implementation of one or more of the purposes of the budget rebalancing bill as enacted. Any section of the bill eliminated by the Governor pursuant to that determination shall be separately reconsidered and may be passed over the Governor's veto in the same manner as bills.

(c) A statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is re-enacted as amended.

Fifteenth—That Section 10 of Article IV thereof 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~~ *in July of the first* calendar year of the biennium of the legislative session *pursuant to subdivision (a) of Section 3*, and in the possession of the Governor after that date, that is not returned within ~~30~~ *60* days after that date becomes a statute.

(2) Any bill passed by the Legislature *on or* before ~~September 1~~ *the date the Legislature adjourns in July* of the second calendar year of the biennium of the legislative session *pursuant to subdivision (a) of Section 3,* and in the possession of the Governor on or after ~~September 1~~ *that date,* that is not returned ~~on or before September 30 of that year~~ *within 60 days after that date,* 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 *May 1 of that year may not be passed by the other house until the second calendar year of the biennium and, if not 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~~ *that* house. ~~No bill may be passed by either house on or after September 1 of an evennumbered 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.

Sixteenth—That Section 12 of Article IV thereof 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. *Commencing with the budget for the 1999–2000 fiscal year, the Governor shall submit to the Legislature, together with the budget, a statement, as prescribed by statute, identifying both the policy goals to be accomplished by the recommended state expenditures and outcome-based performance measures to determine the extent to which the goals are accomplished, for use by the Legislature in considering the budget bill.*

(b) 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.

(c) The budget shall be accompanied by a budget bill itemizing recommended expenditures. The bill shall be introduced immediately in each house by the persons chairing the committees that consider ~~appropriations~~ *the budget.* The Legislature shall pass the budget bill by midnight on June ~~15~~ *30* of each year. 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 *, not including salaries, or travel or living expenses, of Members 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 *or appropriations made in the budget bill or a budget implementation bill as described in subdivision (b) of Section 9,* are void unless passed in each house by rollcall vote entered in the journal, ~~two thirds~~ *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) (1) The total of all expenditures that are authorized to be made from the General Fund of the State by the budget bill or any other statute for the fiscal year for which the budget bill is to be enacted, combined with the total of all General Fund reserves required under subdivision (g) for that fiscal year and any deficit in the General Fund remaining from the preceding fiscal year, may not exceed the total of all revenues and other resources, including reserves for prior years, that are estimated to be available to the State for General Fund purposes for that fiscal year. The total amount of those expenditures and reserves authorized by the budget bill or any other statute for that fiscal year, as of the date of enactment of the budget bill, together with any deficit in the General Fund remaining from the preceding fiscal year, and the total amount of the revenues and other resources, including reserves, estimated to be available to the State for General Fund purposes for that fiscal year, shall be set forth expressly in the budget bill.

(2) After the enactment of the budget bill, no bill shall be enacted that would cause the total of all General Fund expenditures, together with any remaining deficit, as identified pursuant to paragraph (1) for the fiscal year for which the budget bill is enacted, to exceed the total of all revenues and other resources estimated for that fiscal year pursuant to paragraph (1). If any bill is enacted that makes an appropriation in violation of this paragraph, as determined by final judgment of a court of competent jurisdiction, all sections of that bill that make an appropriation are thereupon void.

(g) (1) Except as otherwise specified in paragraph (2), the budget bill for each fiscal year shall provide for a state reserve fund, to include General Fund moneys in an amount equal to 3 percent of the total of all expenditures that, as of the date of enactment of the budget bill, are authorized to be made from the General Fund of the State for that fiscal year by the budget bill and any other statute.

(2) The minimum amount required to be set aside in the state reserve fund as provided for by this subdivision for the 1997–98 fiscal year shall be an amount equal to one-third, and for the 1998—99 fiscal year shall be an amount equal to two-thirds, of the amount that otherwise would be calculated for each of those fiscal years pursuant to paragraph (1).

(h) Notwithstanding Sections 4 and 8 of Article III and Section 4 of this article, in any year in which the budget bill is not enacted by midnight on June 30, the Governor and each Member of the Legislature shall forfeit any salary or reimbursement for travel or living expenses during any regular or special session for the period from midnight on June 30 until the day preceding the date that the budget bill is enacted. No forfeited salary or travel and living expenses shall be paid retroactively.

(i) This section shall not apply to The budget or budget bill for any fiscal period commencing on or after July 1, 2001. This section shall remain in effect only until July 1, 2001, and as of that date is repealed.

Seventeenth—That Section 12.1 is added to Article IV thereof, to read:

SEC. 12.1. (a) Within the first 10 days of each odd-numbered calendar year, the Governor shall submit to the Legislature, with an explanatory message, a budget for the two-year fiscal period commencing on the ensuing July 1, 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. Together with the budget, the Governor shall submit to the Legislature a statement , as prescribed by statute, identifying both the policy goals to be accomplished by the recommended state expenditures and outcome-based performance measures to determine the extent to which the goals are accomplished, for use by the Legislature in considering the budget bill.

(b) 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.

(c) The budget shall be accompanied by a budget bill itemizing recommended expenditures. The bill shall be introduced immediately by the person chairing the committee that considers the budget. The Legislature shall pass the budget bill by midnight on June 30 of the year in which it is introduced. 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 period for which the budget bill is to be enacted, except emergency bills recommended by the Governor or appropriations for the expenses of the Legislature, not including salaries, or travel or living expenses, of Members of the Legislature.

(d) No bill except the budget bill, or the budget rebalancing bill enacted for the purpose set forth in subdivision (h), may contain more than one item of appropriation, and that for one certain, expressed purpose. Appropriations from the General Fund

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of the State, except appropriations for the public schools or appropriations made in the budget bill , the budget implementation bill as described in subdivision (b) of Section 9, or the budget rebalancing bill, are void unless passed by the Legislature 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) (1) The total of all expenditures that are authorized to be made from the General Fund of the State by the budget bill or any other statute for the ensuing fiscal period for which the budget bill is to be enacted, combined with the total of all General Fund reserves required under subdivision (g) for that fiscal period and any deficit in the General Fund remaining from the preceding fiscal period, may not exceed the total of all revenues and other resources, including reserves for prior years, that are estimated to be available to the State for General Fund purposes for that ensuing fiscal period. The total amount of those expenditures and reserves authorized by the budget bill or any other statute for that ensuing fiscal period, as of the date of enactment of the budget bill, together with any deficit in the General Fund remaining from the preceding fiscal period, and the total amount of the revenues and other resources, including reserves, estimated to be available to the State for General Fund purposes for that ensuing fiscal period, shall be set forth expressly in the budget bill.

(2) After the enactment of the budget bill, no bill shall be enacted that would cause the total of all General Fund expenditures, together with any remaining deficit, as identified pursuant to paragraph (1) for the fiscal period for which the budget bill is enacted, to exceed the total of all revenues and other resources estimated for that fiscal period pursuant to paragraph (1). If any bill is enacted that makes an appropriation in violation of this paragraph, as determined by final judgment of a court of competent jurisdiction, all sections of that bill that make an appropriation are thereupon void.

(g) (1) The budget bill for each fiscal period shall provide for a state reserve fund, to include General Fund moneys in an amount equal to 3 percent of the total of all expenditures that, as of the date of enactment of the budget bill, are authorized to be made from the General Fund of the State for that fiscal period by the budget bill and any other statute.

(2) Notwithstanding any other provision of this subdivision, if, at the conclusion of any fiscal period, the balance of the state reserve fund is less than the amount required to be provided for in that fund for that fiscal period pursuant to paragraph (1), at the election of the Legislature, as declared in the budget act, the minimum amount that shall be required to be provided for in that fund by the budget act for the next succeeding fiscal period shall be an amount equal to that remaining balance. Regardless of the concluding balance for that succeeding fiscal period, the minimum amount required to be provided for in the state reserve fund by the budget act for the fiscal period following a fiscal period for which that election is made shall be determined pursuant to paragraph (1).

(h) (1) No later than February 1 of each even-numbered calendar year, the Governor shall submit to the Legislature a budget rebalancing plan containing recommendations for adjustments in expenditures or revenues, or other changes, as necessary to maintain the balance required by subdivision (f) throughout the two-year period for which the budget bill was enacted. The plan shall be accompanied, as appropriate, by a budget rebalancing bill itemizing those adjustments or other changes, as described in subdivision (b) of Section 9. The bill shall be introduced immediately by the person chairing the committee that considers the budget.

(2) If the Governor determines that no adjustments are necessary for the purpose described in paragraph (1), he or she shall submit to the Legislature by February 1 a report updating, for the current fiscal period, the totals of expenditures, reserves, deficits, and revenues and other resources identified for that fiscal period pursuant to subdivision (f).

(i) Notwithstanding Sections 4 and 8 of Article III and Section 4 of this article, in any odd-numbered calendar year in which the budget bill is not enacted by midnight on June 30, the Governor and each Member of the Legislature shall forfeit any salary or reimbursement for travel or living expenses during any regular or special session for the period from midnight on June 30 until the day preceding the date that the budget bill is enacted. No forfeited salary or travel and living expenses shall be paid retroactively.

(j) This section applies only to the budget and budget bill for fiscal periods commencing on or after July 1, 2001.

(k) Whenever, in this Constitution or any other law, reference is made to "Section 12" of this article, that reference shall be deemed to refer to this section unless that reference expressly provides that it does not apply to this section.

Eighteenth—That Section 18 of Article IV thereof is amended to read:

SEC. 18. (a) The Assembly has the sole power of impeachment. Impeachments shall be tried by the Senate. A person may not be convicted unless, by rollcall vote entered in the journal, ~~two thirds~~ *two-thirds* of the membership of the Senate concurs.

(b) State officers elected on a statewide basis ~~, members of the State Board of Equalization,~~ and judges of state courts are subject to impeachment for misconduct in office. Judgment may extend only to removal from office and disqualification to hold any office under the State, but the person convicted or acquitted remains subject to criminal punishment according to law.

Nineteenth—That Section 29 is added to Article IV thereof, to read:

SEC. 29. (a) The Legislature may, by adoption of a concurrent resolution, repeal any state agency regulation. Regulations repealed by the Legislature shall thereafter have no force or effect.

(b) Any concurrent resolution to repeal a regulation shall identify specifically the regulation to be repealed or, if an entire title, part, division, chapter, or article is to be repealed, a specific reference thereto shall be made.

(c) Any concurrent resolution introduced pursuant to this section shall be subject to the same procedural rules, including, but not limited to, rules regarding public notice, printing, and committee referral, that apply to bills.

(d) Every regulation, to be effective, shall include a citation to the statute or constitutional provision that is being interpreted, carried out, or otherwise made more specific by the regulation.

(e) As used in this section, the term "state agency" includes every state office, officer, department, division, bureau, board, and commission, whether created by the Constitution, statute, or initiative, but does not include the courts, any agency in the judicial or legislative branch of state government, the University of California, or the Hastings College of the Law.

(f) As used in this section, the term "regulation" includes every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any of those rules, regulations, orders, or standards adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one that relates only to the internal management of the state agency. "Regulation" does not mean or include any form prescribed by a state agency or any instructions relating to the use of the form, except that this provision is not a limitation upon any provision of law governing the adoption of any regulation that is needed to implement the law under which the form is issued.

Twentieth—That Section 3 of Article V thereof is amended to read:

SEC. 3. *(a)* The Governor shall report to the Legislature each calendar year on the condition of the State and may make recommendations.

(b) In addition to the report prepared pursuant to subdivision (a), in 2001 and every fourth year thereafter the Governor shall submit a strategic plan to the Legislature, no later than February 1, that sets forth all of the following:

(1) Policy and fiscal priorities of the State.

(2) Outcome-based performance measures that gauge the productivity of state expenditures.

(3) A capital facilities and financing plan that includes a state policy for infrastructure investment, an assignment of responsibilities for implementing the capital outlay plan, and the financing methods to be used for each program area.

(4) Proposed programmatic relationships between the State and local government agencies.

(c) In each calendar year specified in subdivision (b), the Legislature shall adopt a concurrent resolution containing findings and declarations of the Legislature, with regard to the issues set forth in the strategic plan submitted that year by the Governor.

Twenty-First—That Section 3.5 is added to Article V thereof, to read:

SEC. 3.5. (a) By October 1, 1997, the Governor shall submit a state-local government realignment plan to the Legislature. To assist in preparing the plan, the Governor shall establish an advisory committee including representatives of local government. The plan shall include the assignment of program responsibilities of state and local government, assigning program responsibility, to the extent possible, to the agency of government having the authority to organize, administer, and finance the program. In the case of a program that is shared among government agencies, the plan shall provide for administrative flexibility at the local level.

(b) The realignment plan shall be submitted to the Legislature in the form , as appropriate, of a bill setting forth any necessary statutory changes, a measure proposing amendment or revision to the Constitution, or both. The bill or measure shall be introduced immediately in each house by the chair of the committee that considers local government matters and, subject to amendment, shall be passed by the Legislature and presented to the Governor by June 30, 1998, or, in the case of a measure proposing amendment or revision to the Constitution, shall be submitted to the voters at the general election held on November 3, 1998.

(c) Following the adoption of the realignment plan statute, the constitutional amendment or revision, or both, as appropriate, the state-local government realignment plan, as reviewed and updated, shall be incorporated into the state strategic plan described in subdivision (b) of Section 3.

Twenty-Second—That subdivision (b) of Section 5 of Article V thereof is amended to read:

(b) Whenever there is a vacancy in the office of the ~~Superintendent of Public Instruction, the~~ Lieutenant Governor, Secretary of State, Controller, ~~Treasurer,~~ or Attorney General, ~~or on the State Board of Equalization,~~ the Governor shall nominate a person to fill the vacancy who shall take office upon confirmation by a majority of the membership of the Senate and a majority of the membership of the Assembly and who shall hold office for the balance of the unexpired term. In the event the nominee is neither confirmed nor refused confirmation by both the Senate and the Assembly within 90 days of the submission of the nomination, the nominee shall take office as if he or she had been confirmed by a majority of the Senate and Assembly ~~, provided, that if such.~~ ~~However, if the~~ 90-day period

ends during a recess of the Legislature, the period shall be extended until the sixth day following the day on which the Legislature reconvenes.

Twenty-Third—That Section 9.5 is added to Article V thereof, to read:

SEC. 9.5. (a) The Governor and the Lieutenant Governor shall be of the same political party. With respect to each political party, the person receiving the highest number of votes in a primary election for Governor and the person receiving the highest number of votes in a primary election for Lieutenant Governor shall jointly represent that political party at the general election.

(b) The candidate for Governor shall appear on the ballot jointly with the candidate for Lieutenant Governor and each shall be elected by the casting by each voter of a single vote applicable to both offices.

Twenty-Fourth—That Section 10 of Article V thereof is amended to read:

SEC. 10. The Lieutenant Governor shall become Governor when a vacancy occurs in the office of Governor.

The Lieutenant Governor shall act as Governor during the impeachment ~~, absence from the State,~~ *of the Governor* or ~~other~~ *during any* temporary disability of the Governor or of a Governor-elect who fails to take office.

The Legislature shall provide an order of precedence after the Lieutenant Governor for succession to the office of Governor and for the temporary exercise of the Governor's functions.

The Supreme Court has exclusive jurisdiction to determine all questions arising under this section.

Standing to raise questions of vacancy or temporary disability is vested exclusively in a body provided by statute.

Twenty-Fifth—That Section 10.5 is added to Article V thereof, to read:

SEC. 10.5. (a) The Governor may appoint the Lieutenant Governor to any office or position in the executive branch of government. The Lieutenant Governor shall hold that office or position at the pleasure of the Governor. Except as specified in subdivision (b), the Lieutenant Governor shall not hold more than one office or position to which he or she has been appointed under this subdivision at any one time.

(b) The Lieutenant Governor may hold other offices or positions as provided by statute or the Constitution.

Twenty-Sixth—That Section 11 of Article V thereof is amended to read:

SEC. 11. The Lieutenant Governor, Attorney General, Controller, *and* Secretary of State ~~, and Treasurer~~ shall be elected at the same time and places and for the same term as the Governor. No Lieutenant Governor, Attorney General, Controller, *or* Secretary of State ~~, or Treasurer~~ may serve in the same office for more than 2 terms.

Twenty-Seventh—That Section 12 is added to Article V thereof, to read:

SEC. 12. The Treasurer, Superintendent of Public Instruction, and Insurance Commissioner shall be appointed by the Governor, subject to confirmation by the Senate, and shall hold office at the pleasure of the Governor.

Twenty-Eighth—That subdivision (f) of Section 14 of Article V thereof is amended to read:

(f) "State officer," as used in this section, means the Governor, Lieutenant Governor, Attorney General, Controller, ~~Insurance Commissioner,~~ *and* Secretary of State ~~, Superintendent of Public Instruction, Treasurer, and member of the State Board of Equalization~~ .

Twenty-Ninth—That Section 2 of Article VII thereof is amended to read:

SEC. 2. (a) There is a Personnel Board of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for ~~10-year~~ *6-year* terms and until their successors are appointed and qualified. Appointment to fill a vacancy is for the unexpired portion of the term. A member may be removed by concurrent resolution adopted by each house, two-thirds of the membership of each house concurring.

(b) The board annually shall elect one of its members as presiding officer.

(c) The board shall appoint and prescribe compensation for an executive officer who shall be a member of the civil service but not a member of the board.

Thirtieth—That Section 3 of Article VII thereof is amended to read:

SEC. 3. (a) The board shall enforce the civil service statutes and, by majority vote of all its members, shall ~~prescribe probationary periods and classifications,~~ adopt other rules authorized by statute ~~,~~ and review disciplinary actions.

(b) The executive officer shall administer the civil service statutes under rules of the board.

Thirty-First—That subdivision (i) of Section 4 of Article VII thereof is amended to read:

(i) The teaching staff of schools under the jurisdiction of the *State* Department of Education ~~or the Superintendent of Public Instruction~~ .

Thirty-Second—That subdivision (a) of Section 10 of Article VII thereof is amended to read:

SEC. 10. (a) No person who is found liable in a civil action for making libelous or slanderous statements against an opposing candidate during the course of an election campaign for any federal, statewide, ~~Board of Equalization,~~ or legislative office or for any county, city and county, city, district, or any other local elective office shall retain the seat to which he or she is elected, where it is established that the libel or slander was a major contributing cause in the defeat of an opposing candidate.

A libelous or slanderous statement shall be deemed to have been made by a person within the meaning of this section if that person actually made the statement or if the person actually or constructively assented to, authorized, or ratified the statement.

"Federal office," as used in this section, means the office of United States Senator and Member of the House of Representatives; ~~and~~ to the extent that ~~the provisions of~~ this section ~~do~~ *does* not conflict with any provision of federal law, it is intended that candidates seeking the office of United States Senator or Member of the House of Representatives comply with this section.

Thirty-Third—That Section 2 of Article IX thereof is repealed.

~~SEC. 2. A Superintendent of Public Instruction shall be elected by the qualified electors of the State at each gubernatorial election. The Superintendent of Public Instruction shall enter upon the duties of the office on the first Monday after the first day of January next succeeding each gubernatorial election. No Superintendent of Public Instruction may serve more than 2 terms.~~

Thirty-Fourth—That Section 2.1 of Article IX thereof is repealed.

~~SEC. 2.1. The State Board of Education, on nomination of the Superintendent of Public Instruction, shall appoint one Deputy Superintendent of Public Instruction and three Associate Superintendents of Public Instruction who shall be exempt from state civil service and whose terms of office shall be four years.~~

~~This section shall not be construed as prohibiting the appointment, in accordance with law, of additional Associate Superintendents of Public Instruction subject to state civil service.~~

Thirty-Fifth—That Section 3 of Article IX thereof is repealed.

~~SEC. 3. A Superintendent of Schools for each county may be elected by the qualified electors thereof at each gubernatorial election or may be appointed by the county board of education, and the manner of the selection shall be determined by a majority vote of the electors of the county voting on the question; provided, that two or more counties may, by an election conducted pursuant to Section 3.2 of this article, unite for the purpose of electing or appointing one joint superintendent for the counties so uniting.~~

Thirty-Sixth—That Section 3.1 of Article IX thereof is repealed.

~~SEC. 3.1. (a) Notwithstanding any provision of this Constitution to the contrary, the Legislature shall prescribe the qualifications required of county superintendents of schools, and for these purposes shall classify the several counties in the State.~~

~~(b) Notwithstanding any provision of this Constitution to the contrary, the county board of education or joint county board of education, as the case may be, shall fix the salary of the county superintendent of schools or the joint county superintendent of schools, respectively.~~

Thirty-Seventh—That Section 3.2 of Article IX thereof is repealed.

~~SEC. 3.2. Notwithstanding any provision of this Constitution to the contrary, any two or more chartered counties, or nonchartered counties, or any combination thereof, may, by a majority vote of the electors of each such county voting on the proposition at an election called for that purpose in each such county, establish one joint board of education and one joint county superintendent of schools for the counties so uniting. A joint county board of education and a joint county superintendent of schools shall be governed by the general statutes and shall not be governed by the provisions of any county charter.~~

Thirty-Eighth—That Section 3.3 of Article IX thereof is repealed.

~~SEC. 3.3. Except as provided in Section 3.2 of this article, it shall be competent to provide in any charter framed for a county under any provision of this Constitution, or by the amendment of any such charter, for the election of the members of the county board of education of such county and for their qualifications and terms of office.~~

Thirty-Ninth—That Section 4 is added to Article IX thereof, to read:

SEC. 4. (a) The Public School System includes all public kindergartens, elementary schools, and secondary schools established in accordance with law, and the school districts and other public agencies authorized to maintain those kindergartens and schools.

(b) No school or any part of the Public School System shall be, directly or indirectly, transferred from the Public School System or placed under the jurisdiction of any authority other than one included within the Public School System.

(c) Solely for purposes of subdivision (d) of Section 12 of Article IV, the "public schools" include the Public School System, the California Community Colleges, and the California State University.

Fortieth—That Section 5.5 is added to Article IX thereof, to read:

SEC. 5.5. Each school district maintaining one or more public schools shall be governed by a board of education elected, in accordance with law, by the voters in the school district.

Forty-First—That Section 6 of Article IX thereof is amended to read:

SEC. 6. ~~Each person, other than a substitute employee, employed by a school district as a teacher or in any other~~

~~position requiring certification qualifications shall be paid a salary which shall be at the rate of an annual salary of not less than twenty-four hundred dollars ($2,400) for a person serving full time, as defined by law.~~

~~The Public School System shall include all kindergarten schools, elementary schools, secondary schools, technical schools, and state colleges, established in accordance with law and, in addition, the school districts and the other agencies authorized to maintain them. No school or college or any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System or placed under the jurisdiction of any authority other than one included within the Public School System.~~

~~The Legislature shall add to the State School Fund such other means from the revenues of the State as shall provide in said fund for apportionment in each fiscal year, an amount not less than one hundred eighty dollars ($180) per pupil in average daily attendance in the kindergarten schools, elementary schools, secondary schools, and technical schools in the Public School System during the next preceding fiscal year.~~ *(a) There shall be maintained in the State Treasury the State School Fund. Appropriations by the State for the support of the Public School System shall be transferred to the State School Fund prior to apportionment.*

(b) The entire State School Fund shall be apportioned in each fiscal year in ~~such~~ *the* manner ~~as~~ the Legislature ~~may provide~~ *provides,* through the school districts and other *public* agencies maintaining ~~such~~ schools, for the support of~~, and aid to,~~ kindergarten schools, elementary schools, *and* secondary schools ~~, and technical schools except that there shall be apportioned to each school district in each fiscal year not less than one hundred twenty dollars ($120) per pupil in average daily attendance in the district during the next preceding fiscal year and except that the amount apportioned to each school district in each fiscal year shall be not less than twenty-four hundred dollars ($2,400).~~

~~Solely with respect to any retirement system provided for in the charter of any county or city and county pursuant to the provisions of which the contributions of, and benefits to, certificated employees of a school district who are members of such system are based upon the proportion of the salaries of such certificated employees contributed by said county or city and county, all~~

(c) Any amounts apportioned to ~~said~~ *a* county or city and county, or to *any* school ~~districts~~ *district* therein, ~~pursuant to the provisions of this section~~ *solely for a retirement system provided for in the charter of a county or city and county, pursuant to which the contributions of, and benefits to, certificated employees of a school district who are members of that retirement system are based upon the proportion of the salaries of those certificated employees contributed by the county or city and county,* shall be ~~considered as though~~ *deemed to be* derived from county or city and county school taxes for the support of county and city and county government and *shall* not *be deemed* money provided by the State ~~within the meaning of this section~~ .

Forty-Second—That Section 7 of Article IX thereof is repealed.

~~SEC. 7. The Legislature shall provide for the appointment or election of the State Board of Education and a board of education in each county or for the election of a joint county board of education for two or more counties.~~

Forty-Third—That Section 7.5 of Article IX thereof is amended to read:

SEC. 7.5. The ~~State Board of Education shall adopt~~ *Legislature shall provide for the adoption of* ~~textbooks~~ *instructional materials* for use in *kindergarten and* grades ~~one through eight throughout the State~~ *1 to 8, inclusive, of each school in the Public School System,* to be furnished without cost ~~as provided by statute~~ .

Forty-Fourth—That Section 9 of Article IX thereof is amended to read:

SEC. 9. (a) The University of California ~~shall constitute~~ *constitutes* a public trust, to be administered by the existing corporation known as "The Regents of the University of California," with full powers of organization and government, subject only to such legislative control as may be necessary to ~~insure~~ *ensure* the security of its funds and compliance with the terms of the endowments of the university and ~~such~~ *any* competitive bidding procedures as may be made applicable to the university by statute for the letting of construction contracts, sales of real property, and purchasing of materials, goods, and services. ~~Said~~ *The* corporation shall be ~~in form~~ a board composed of ~~seven~~ *six* ex officio members, which shall be ~~:~~ . the Governor, the Lieutenant Governor, the Speaker of the Assembly, ~~The Superintendent of Public Instruction,~~ the president and the vice president of the alumni association of the university , and the acting president of the university, and ~~18~~ *15* appointive members appointed by the Governor and approved by the Senate, a majority of the membership concurring ~~, provided, however that the present appointive members shall hold office until the expiration of their present terms~~ .

(b) ~~The terms of the members appointed prior to November 5, 1974, shall be 16 years; the terms of two appointive members to expire as heretofore on March 1st of every even-numbered calendar year, and two~~ *Two* members shall be appointed for terms commencing on March 1, 1976, and on *each* March 1 ~~of each year~~ thereafter ~~; provided that no such appointments shall be made for terms to commence on~~ *, except* March 1, 1979, ~~or on~~ *and* March 1 of each fourth year thereafter, to the end that no appointment to the regents for a newly commencing term shall be made

during the first year of any gubernatorial term of office. The terms of the members appointed for terms commencing on and after March 1. 1976, shall be 12 years. *The terms of the members appointed for terms commencing on and after March 1, 1997, shall be 10 years.* During the period of transition until the time when the appointive membership is comprised exclusively of persons serving for terms of ~~12~~ *10* years, the total number of appointive members may exceed the numbers specified in ~~the preceding paragraph~~ *subdivision (a). No member appointed on or after November 6, 1996, to serve a full term shall be eligible to serve more than one full term.*

In case of any vacancy, the term of office of the ~~appointee~~ *person appointed* to fill ~~such~~ *the* vacancy, who shall be appointed by the Governor and approved by the Senate, a majority of the membership concurring, shall be for the balance of the term for which ~~such~~ *the* vacancy exists. *A person appointed to fill the balance of a term subsequently may be appointed to fill one full term.*

(c) The members of the board ~~may~~ , ~~in their discretion,~~ following procedures established by them and after consultation with representatives of *the* faculty and students of the university, including appropriate officers of the academic senate and student governments, *may* appoint to the board ~~either or both of the following persons as members~~, with all rights of participation ~~:~~ , a member of the faculty at a campus of the university or of another institution of higher education ~~;~~ *or* a person enrolled as a student at a campus of the university for each regular academic term during his *or her* service as a member of the board , or both of those persons. Any person so appointed shall serve for not less than one year commencing on July 1.

(d) Regents shall be able persons broadly reflective of the economic, cultural, and social diversity of the State, including ethnic minorities and women. However, it is not intended that formulas or specific ratios be applied in the selection of regents.

(e) In the selection of the ~~Regents~~ *regents* , the Governor shall consult an advisory committee composed ~~as follows: The~~ *of the* Speaker of the Assembly and two public members appointed by the Speaker, the President ~~Pro~~ *pro* Tempore of the Senate and two public members appointed by the ~~Rules Committee of the~~ Senate *Committee on Rules* , two public members appointed by the Governor, the ~~chairman~~ *chairperson* of the regents ~~of the university~~ , an alumnus of the university chosen by the alumni association of the university, a student of the university chosen by the Council of Student Body Presidents, and a member of the faculty of the university chosen by the academic senate of the university. Public members shall serve for four years, except that one each of the initially appointed members selected by the Speaker of the Assembly, the President ~~Pro~~ *pro* Tempore of the Senate, and the Governor shall be appointed to serve for two years; student, alumni, and faculty members shall serve for one year and may not be regents ~~of the university~~ at the time of their service on the advisory committee.

(f) The ~~Regents of the University of California shall be~~ *regents are* vested with the legal title and the management and disposition of the property of the university and of property held for its benefit, and ~~shall have the power to~~ *may* take and hold, ~~either~~ by purchase ~~or by~~ , donation, or gift, testamentary or otherwise, or in any other manner, without restriction, all real and personal property for the benefit of the university or incidentally to its conduct ~~; provided, however, that sales~~ . *However, the sale* of university real property shall be subject to ~~such~~ *any* competitive bidding procedures as may be provided by statute. ~~Said~~ *The* corporation ~~shall~~ also ~~have~~ *has* all the powers necessary or convenient for the effective administration of its trust, including the power to sue ~~and to~~ , be sued, ~~to~~ use a seal, and ~~to~~ delegate to its committees or to the faculty of the university, or to others, ~~such~~ *any* authority or functions as it ~~may deem~~ *deems* wise. ~~The Regents~~

The regents shall receive all funds derived from the sale of lands pursuant to the act of Congress of July 2, 1862, and any subsequent acts amendatory thereof. The university shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs, and no person shall be debarred admission to any department of the university on account of race, religion, ethnic heritage, or sex.

(g) Meetings of the ~~Regents of the University of California~~ *regents* shall be public, with exceptions and notice requirements as may be provided by statute.

Forty-Fifth—That Section 12 is added to Article IX thereof, to read:

SEC. 12. (a) The Legislature shall have power to provide for a postsecondary education system of community colleges to be known as the California Community Colleges.

(b) The Legislature, by general law, may provide for the incorporation and organization of community college districts as part of the California Community Colleges. The Legislature may authorize the governing boards of community college districts to initiate and carry on any program or activity or to otherwise act in any manner that is not in conflict with the laws and purposes for which community college districts are established.

Forty-Sixth—That Section 13 is added to Article IX thereof, to read:

SEC. 13. The Legislature shall have power to provide for a system of state universities to be known as the California State University.

Forty-Seventh—That Section 14 of Article IX thereof is amended and renumbered to read:

~~SEC. 14.~~

SEC. 13.5. *(a)* The Legislature shall have power, by general law, to provide for the incorporation and organization of school districts ~~, high school districts, and community college districts, of every kind and class,~~ *in the Public School System* and may classify ~~such~~ *the* districts.

~~The Legislature may authorize the~~

(b) The governing ~~boards~~ *board* of ~~all~~ *each* school ~~districts to~~ *district in the Public School System may* initiate and carry on any ~~programs, activities, or to~~ *program or activity, or may* otherwise act in any manner ~~which~~ *, that* is not in conflict with the laws and purposes for which ~~school districts are~~ *the Public School System is* established.

Forty-Eighth—That Section 14 is added to Article IX thereof, to read:

SEC. 14. The Legislature shall provide for an accountability system to facilitate an understanding by the people of the education services provided by the Public School System in their communities. The accountability system shall be limited to the areas of the curriculum, pupil performance, financial condition of a school district, and administrative performance of a school district.

Forty-Ninth—That Section 16 of Article IX thereof is amended and renumbered to read:

~~SEC. 16.~~

SEC. 11. (a) It shall be competent, in all charters framed under the authority given by Section 5 of Article XI *and Article XIA* , to provide, in addition to those provisions allowable by this Constitution ~~,~~ and by the laws of the State *,* for the manner in which, the times at which, and the terms for which the members of boards of education shall be elected or appointed, for their qualifications, compensation *,* and removal, and for the number ~~which~~ *that* shall constitute any one of ~~such~~ *these* boards.

(b) Notwithstanding Section 3 of Article XI, when the boundaries of a school district ~~or community college district~~ extend beyond the limits of a city whose charter provides for any or all of the foregoing with respect to the members of its board of education, no charter amendment effecting a change in the manner in which, the times at which, or the terms for which the members of the board of education shall be elected or appointed, for their qualifications, compensation, or removal, or for the number ~~which~~ *that* shall constitute ~~such~~ *the* board, shall be adopted unless it is submitted to and approved by a majority of all the qualified electors of the school district ~~or community college district~~ voting on the question. Any such amendment, and any portion of a proposed charter or a revised charter ~~which~~ *that* would establish or change any of the foregoing provisions respecting a board of education, shall be submitted to the electors of the school district ~~or community college district~~ as one or more separate questions. The failure of any such separate question to be approved shall have the result of continuing in effect the applicable existing law with respect to that board of education.

(c) A home rule community charter, as provided for in Article XI A, may establish a procedure for board of education formation or reorganization without regard to the requirements of this section.

Fiftieth—That Section 1 of Article XI is amended to read:

SEC. 1. (a) The State is divided into counties ~~which~~ *that* are legal subdivisions of the State. The Legislature shall prescribe *a* uniform procedure for county formation, consolidation, and boundary change. Formation or consolidation requires approval by a majority of electors voting on the question in each affected county. A boundary change requires approval by the governing body of each affected county. *A home rule community charter for a multicounty region, adopted pursuant to Article XI A, may establish a procedure for county formation, consolidation, or boundary changes without regard to the requirements of this section.*

(b) No county seat shall be removed unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of ~~such~~ *the* removal. A proposition of removal shall not be submitted in the same county more than once in four years.

~~(b)~~

(c) The Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county. Except as provided in subdivision (b) of Section 4 of this article, each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing ~~such~~ *that* compensation shall be subject to referendum. The Legislature or the governing body may provide for other officers whose compensation shall be prescribed by the governing body. The governing body shall provide for the number, compensation, tenure, and appointment of employees.

Fifty-First—That Section 5 of Article XI is repealed.

~~SEC. 5. (a) It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.~~

~~(b) It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force (2) subgovernment in all or part of a city (3) conduct of city elections and (4) plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees.~~

Fifty-Second—That Section 5 is added to Article XI thereof, to read:

SEC. 5. (a) A city that adopts a charter may govern as to all matters with respect to municipal affairs, subject only to limitations provided in the charter.

(b) A city charter may, among other things, provide for the government of the city, including, but not limited to, the following:

(1) The selection, terms of office, and removal of city officers and employees.

(2) The conduct of city elections.

(c) An enactment or failure to act by a city governed by a charter is presumed to pertain to the city's municipal affairs. In the event a charter-city enactment or failure to act conflicts with a general law, the burden of rebutting the presumption rests with the person challenging the enactment or failure to act by the charter city. In rebutting that presumption, the challenger shall show that the Legislature, in adopting the general law, expressly declared its intention that the law apply to charter cities and supported that declaration with findings based on the criteria stated below. Furthermore, the challenger shall demonstrate to the satisfaction of the court, exercising its independent judgment, one or more of the following:

(1) The charter city's enactment or failure to act significantly and directly interferes with the State's effective administration of its health, justice, environmental, transportation, or social services systems.

(2) The enactment or failure to act has significant extraterritorial effects. To demonstrate the regulation has significant extraterritorial effects, the challenger shall demonstrate all of the following:

(A) The enactment or failure to act affects significantly the health or behavior of people, or the operation of businesses or governments outside the city's boundary.

(B) The enactment's primary, rather than incidental, effect is to regulate activities beyond the city's boundary.

(C) The effect is not merely speculative or theoretical.

(3) The State's public policy interest in statewide uniformity outweighs the presumption of local control. For purposes of this paragraph, the challenger shall demonstrate either of the following:

(A) The lack of statewide uniformity would present substantial obstacles to travel or to the ordinary and usual conduct of business throughout the State.

(B) Statewide uniformity is essential, and not merely desirable, to advance an important policy of the State, and the means selected is narrowly tailored to accomplish the enactment's purpose with the least intrusion on local control.

(d) A general law conflicts with a charter city enactment or failure to act when either the city enactment or failure to act frustrates the goals sought to be achieved by the State in adopting the law, or compliance with both the general law and the city enactment is either physically impossible or prohibitively expensive.

(e) The provisions of a home rule community charter, as provided for in Article XI A, may not interfere with or derogate the authority of a charter city with regard to its municipal affairs.

Fifty-Third—That Section 6 of Article XI thereof is amended to read:

SEC. 6. (a) A county and all cities within it may consolidate as a charter city and county as provided by statute *or as provided in a home rule community charter adopted pursuant to Article XI A.*

(b) A charter city and county is a charter city and a charter county. Its charter city powers supersede conflicting charter county powers.

Fifty-Fourth—That Section 7 of Article XI thereof is amended to read:

SEC. 7. A county or city may make and enforce, within its limits, all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. *A county or city that is not governed by a charter provided for in Section 3 or 4 that is a participant in a home rule community charter, as provided for in Article XI A, additionally shall possess the*

authority with respect to municipal affairs specified in Section 5 except as otherwise specified by the home rule community charter.

Fifty-Fifth—That Section 8 of Article XI thereof is amended to read:

SEC. 8. (a) The Legislature may provide that counties perform municipal functions at the request of cities within them.

(b) If provided by their respective charters, a county may agree with a city within it to assume and discharge specified municipal functions.

(c) Notwithstanding subdivisions (a) and (b), municipal functions may be performed, as prescribed in a home rule community charter, as provided for in Article XI A.

Fifty-Sixth—that Section 13 of Article XI thereof is amended to read:

SEC. 13. *(a)* The provisions of ~~Sections 1(b)~~ *subdivision (b) of Section 1* (except for the second sentence), ~~3(a),~~ subdivision (a) of Section 3, and Sections 4 ~~,~~ and 5 ~~of this Article~~ *, as enacted in 1970,* relating to matters affecting the distribution of powers between the Legislature and cities and counties, including matters affecting supersession, shall be construed as a restatement of all related provisions of the Constitution in effect immediately prior to ~~the effective date of this amendment~~ *June 3, 1970,* and as making no substantive change.

The terms general law, general laws, and laws, as used in this ~~Article~~ *article*, shall be construed as a continuation and restatement of those terms as used in the Constitution in effect immediately prior to ~~the effective date of this amendment~~ *June 3, 1970*, and not as effecting a change in meaning.

(b) The provisions of subdivisions (a) and (b) of Section 5 enacted in 1996 shall be construed as a restatement of all related provisions of the Constitution in effect immediately prior to November 6, 1996, and as making no substantive change.

Fifty-Seventh—That Section 14 of Article XI is repealed.

~~SEC. 14. A local government formed after the effective date of this section, the boundaries of which include all or part of two or more counties, shall not levy a property tax unless such tax has been approved by a majority vote of the qualified voters of that local government voting on the issue of the tax.~~

Fifty-Eighth—That Section 15 of Article XI thereof is amended to read:

SEC. 15. (a) ~~All~~ *Except as otherwise prescribed in a home rule community charter adopted pursuant to Article XI A, all* revenues from taxes imposed pursuant to the Vehicle License Fee Law, or its successor, other than fees on trailer coaches and mobilehomes, over and above the costs of collection and any refunds authorized by law, shall be allocated to counties and cities according to statute.

(b) This section shall apply to those taxes imposed pursuant to that law on and after July 1 ~~following the approval of this section by the voters~~ *, 1986.*

Fifty-Ninth—That Section 16 is added to Article XI thereof, to read:

SEC. 16. The Legislature shall provide for a uniform system of financial disclosure applicable to all local government agencies. This disclosure shall include, but is not limited to, revenues from all sources, expenditures for all purposes, debts, and liabilities.

Sixtieth—That Article XI A is added thereto, to read:

ARTICLE XI A

HOME RULE COMMUNITY CHARTERS

SECTION 1. (a) On or before February 1, 1997, a citizens' charter commission on local government efficiency and restructuring shall be appointed in each county. The commission shall consist of persons appointed as follows:

(1) The board of supervisors shall appoint five persons, two of whom are officers or employees of a local government agency.

(2) The cities within the county shall jointly appoint, pursuant to a procedure to be established by statute, six persons, three of whom are officers or employees of a local government agency. In any county in which there is no city, the appointments described in this paragraph shall be made by the board of supervisors.

(3) The school districts within the county shall jointly appoint, pursuant to a procedure to be established by statute, two persons, one of whom is an officer or employee of a local government agency.

(4) The special districts within the county, not excluding any special district for which the board of supervisors is the governing board, shall appoint, pursuant to a procedure to be established by statute, two persons, one of whom is an officer or employee of a local government agency.

(b) By resolution of the boards of supervisors, several counties may form a multicounty commission and adopt a multicounty charter.

(c) "Local government agency," for purposes of this article, includes any city, county, city and county, school district, special

district, authority, or other political subdivision of or within the State.

(d) The commission may appoint additional members to the commission, subject to the condition that a majority of the members of the commission consists of persons who are neither officers nor employees of any local government agency.

(e) For purposes of this article:

(1) "Citizens' charter commission on local government efficiency and restructuring" or "commission" means the body appointed pursuant to Section 1, which is responsible for developing a government services plan and community charter within a county.

(2) "Community charter" means the implementing grant of authority for the governmental services plan, which provides for greater public accountability in the delivery and financing of local governmental services. A community charter is a grant of authority for those actions required to implement the governmental services plan.

(3) "Governmental services plan" means a plan for the delivery and financing of a variety of local governmental services as described in Section 2.

SEC. 2. Each commission shall develop and adopt a governmental services plan, which shall address the delivery and financing of local government services. The government services plan shall contain the following:

(a) Changes that will result in a reduction in the number of local government agencies and the cost of local government, taking into consideration the geography, population density, and other factors that influence the operation of local government. The goal of these changes shall be to reduce the cost of local government and the number of local government agencies.

(b) Changes that will result in greater accountability to the public.

(c) Specifications that designate which local government agencies are responsible for the delivery of certain services, the local agency governing entity responsible for each service, and the method of financing that service. Specifications in the plan also shall designate which local government agencies are responsible for comprehensive and functional planning. The agencies responsible for land use regulation shall be required to simplify, and increase the efficiency of, existing land use regulation procedures.

(d) A multiyear capital outlay plan for infrastructure needs in the jurisdiction covered by the charter and the local government agencies responsible for implementation of the capital outlay plan.

(e) The organization and administration of programs administered jointly by the State and local government agencies in accordance with any state-local government realignment plan adopted pursuant to Section 3.5 of Article V .

(f) The allocation of the nonschool share of the property tax, Bradley-Burns Uniform Local Sales and Use Tax-Law revenue, and vehicle license fee revenue. The plan may impose terms and conditions under which any local government agency covered by the charter may levy any local tax otherwise authorized by state law.

(g) Procedures for the organization, reorganization, and boundaries of local government agencies covered by the charter. The governmental services plan may include subcounty components.

SEC. 3. (a) The commission shall develop a community charter that is consistent with, and provides a framework for implementing, the governmental services plan described in Section 2. The community charter shall be submitted to the voters as provided in Section 7.

(b) A subcounty region that includes one or more local government agencies may develop and propose to the voters of that region a subcounty charter that provides for the structure and authority of the agency or agencies involved. That subcounty charter shall be consistent with the charter adopted by the commission pursuant to Section 2.

(c) If a charter is not approved by the voters, as proposed by a plan pursuant to Section 2, a subcounty charter may be proposed and approved pursuant to this section that is not in conflict with the plan adopted by the commission pursuant to Section 2.

SEC. 4. General obligation bond indebtedness incurred by a local government agency, in implementing the multiyear capital outlay plan specified in subdivision (d) of Section 2, that is included under a charter adopted pursuant to this article may be incurred only with the approval of a majority of the voters voting on the proposal.

SEC. 5. (a) Any new tax or increase in an existing tax levied for general or special purposes, except any tax as described in Section 1 of Article XIII A, may be imposed by a local government agency governed by a charter adopted pursuant to this article with the approval of a majority of the governing board of the agency and a majority of the voters voting on the proposal. A charter adopted pursuant to this article may provide expressly for a higher vote requirement as to either or both of the vote requirements described in this subdivision.

(b) Where local government agencies are governed by a charter adopted pursuant to this article, taxes may be countywide or effective in a region of the county that is under the jurisdiction of one or more agencies.

(c) In the case of charter cities, the authority to levy taxes may not be reduced or restricted by this article or the community charter.

SEC. 6. (a) An enactment or failure to act by a city or county participating in a community charter is presumed to pertain to that agency's municipal affairs. In the event an enactment or failure to act is alleged to conflict with a general law, the burden of rebutting the presumption rests with the person challenging the enactment or failure to act by the city or county, as the case may be. In rebutting that presumption, the challenger shall show that the Legislature, in adopting the general law, expressly

declared its intention that the law apply to a city or county participating in a community charter and supported that declaration with findings based on the criteria stated below. The challenger shall prove to the satisfaction of the court, exercising its independent judgment, one or more of the following:

(1) The enactment or failure to act significantly and directly interferes with the State's effective administration of its health, justice, environmental, transportation, or social services systems.

(2) The enactment or failure to act has significant extraterritorial effects. To demonstrate the regulation has significant extraterritorial effects, the challenger shall prove all of the following:

(A) The enactment or failure to act affects significantly the health or behavior of people, or the operation of businesses or governments outside the agency's boundary.

(B) The enactment's primary, rather than incidental, effect is to regulate activities beyond the agency's boundary.

(C) The effect is not merely speculative or theoretical.

(3) The State's public policy interest in statewide uniformity outweighs the ordinary predisposition toward local control. To demonstrate that the public policy interest in statewide uniformity outweighs the ordinary predisposition toward local control, the challenger shall prove all of the following:

(A) The lack of statewide uniformity would present substantial obstacles to travel or to the ordinary and usual conduct of business throughout the State.

(B) Statewide uniformity is essential, and not merely desirable, to advance an important policy of the State and the means selected is narrowly tailored to accomplish the enactment's purpose with the least intrusion on local control.

(b) A general law conflicts with an enactment or failure to act when either the enactment or failure to act frustrates the goals sought to be achieved by the State in adopting the law, or compliance with both the general law and the enactment is either physically impossible or prohibitively expensive.

SEC. 7. The commission established pursuant to Section 1 shall submit the proposed plan for a charter to the voters in the county on or before the general election on November 7, 2000. Approval of the charter requires a majority vote of the voters voting in the election.

SEC. 8. Of the costs incurred by local government agencies to form the commissions specified in Section 1, to provide for the administrative costs of these commissions, and to conduct the election required by Section 7, 50 percent shall be paid by those agencies and 50 percent by the State, pursuant to procedures specified by statute.

Sixty-First—That subdivision (j) of Section 3 of Article XIII thereof is amended to read:

(j) Immature forest trees planted on lands not previously bearing merchantable timber or planted or of natural growth on lands from which the merchantable original growth timber stand to the extent of 70 percent of all trees over 16 inches in diameter has been removed. Forest trees or timber shall be considered mature at such time after 40 years from the time of planting or removal of the original timber when so declared by a majority vote of a board consisting of a representative from the State Board of Forestry, a representative from the ~~State Board of Equalization~~ *state government entity designated by the Legislature pursuant to Section 18 of Article XIII* , and the assessor of the county in which the trees are located.

The Legislature may supersede the foregoing provisions with an alternative system or systems of taxing or exempting forest trees or timber, including a taxation system not based on property valuation. Any alternative system or systems shall provide for exemption of unharvested immature trees, shall encourage the continued use of timberlands for the production of trees for timber products, and shall provide for restricting the use of timberland to the production of timber products and compatible uses with provisions for taxation of timberland based on the restrictions. Nothing in this paragraph shall be construed to exclude timberland from the provisions of Section 8 of this article.

Sixty-Second—That subdivision (g) of Section 11 of Article XIII thereof is amended to read:

(g) Any assessment made pursuant to ~~Section 11(a) to 11(d), inclusive, of this Article~~ *subdivisions (a) to (d), inclusive,* shall be subject to review, equalization, and adjustment by the ~~State Board of Equalization~~ *state government entity designated by the Legislature pursuant to Section 18 of this article,* but ~~an~~ *any* adjustment shall conform to ~~the provisions of these Sections~~ *those subdivisions.*

Sixty-Third—That Section 16 of Article XIII thereof is amended to read:

SEC. 16. *(a)* The county board of supervisors, or one or more assessment appeals boards created by the county board of supervisors, shall constitute the county board of equalization for a county. Two or more county boards of supervisors may jointly create one or more assessment appeals boards which shall constitute the county board of equalization for each of the participating counties.

~~Except as provided in subdivision (g) of Section 11, the~~

(b) The county board of equalization, under ~~such~~ rules of notice ~~as~~ the county board may prescribe, shall equalize the values of all property on the local assessment roll by adjusting individual assessments.

(c) County boards of supervisors shall fix the compensation for members of assessment appeals boards, furnish clerical and other assistance for those boards, *and adopt rules of notice and procedures for those boards as may be required to facilitate their work and to* ~~insure~~ *ensure* uniformity in the processing and decision of equalization petitions, and may provide for their discontinuance.

(d) The Legislature shall provide *by statute* for *each of the following:* ~~(a) the~~

(1) The number and qualifications of members of assessment appeals boards, the manner of selecting, appointing, and removing them, and the terms for which they serve ~~, and (b) the.~~

(2) The procedure by which two or more county boards of supervisors may jointly create one or more assessment appeals boards.

Sixty-Fourth—That Section 17 of Article XIII thereof is repealed.

~~SEC. 17. The Board of Equalization consists of 5 voting members: the Controller and 4 members elected for 4-year terms at gubernatorial elections. The state shall be divided into four Board of Equalization districts with the voters of each district electing one member. No member may serve more than 2 terms.~~

Sixty-Fifth—That Section 18 of Article XIII thereof is amended to read:

SEC. 18. The ~~Board~~ *Legislature shall designate by statute the state government entity that* shall *both* measure county assessment levels annually and ~~shall~~ bring those levels into conformity by adjusting entire secured local assessment rolls. In the event a property tax is levied by the ~~state~~ *State*, however, the effects of unequalized local assessment levels, to the extent any remain after ~~such~~ *those* adjustments, shall be corrected for purposes of distributing this tax by equalizing the assessment levels of locally and state-assessed properties and varying the rate of the state tax inversely with the counties' respective assessment levels.

Sixty-Sixth—That Section 18.5 is added to Article XIII thereof, to read:

SEC. 18.5. (a) The Legislature shall establish by statute in the state government the Board of Tax Appeals, which shall be vested with all powers and duties necessary to conduct the de novo administrative review of all tax matter determinations made by the state governmental entity designated by the Legislature pursuant to Section 18 of this article.

(b) The board shall be composed of five members appointed by the Governor, subject to confirmation by the Senate.

Sixty-Seventh—That Section 19 of Article XIII thereof is amended to read:

SEC. 19. *(a)* The ~~Board~~ *state government entity designated by the Legislature pursuant to Section 18 of this article annually* shall ~~annually~~ assess ~~(1)~~ pipelines, flumes, canals, ditches, and aqueducts lying within ~~2~~ *two* or more counties, and ~~(2)~~ property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the State, and companies transmitting or selling gas or electricity. This property shall be subject to taxation to the same extent and in the same manner as other property.

No other tax or license charge may be imposed on these companies ~~which~~ *that* differs from that imposed on mercantile, manufacturing, and other business corporations. This restriction does not release a utility company from payments agreed on or required by law for a special privilege or franchise granted by a government body.

(b) The Legislature may authorize ~~Board assessment of~~ *the state government entity designated by statute pursuant to Section 18 of this article to also assess* property owned or used by other public utilities.

The ~~Board~~ *state government entity designated by the Legislature pursuant to Section 18 of this article* may delegate to a local assessor the duty to assess a property used but not owned by a state assessee on which the taxes are to be paid by a local assessee.

Sixty-Eighth—That subdivision (h) of Section 28 of Article XIII thereof is repealed.

~~(h) The taxes provided for by this section shall be assessed by the State Board of Equalization.~~

Sixty-Ninth—That Section 1 of Article XIII A thereof is amended to read:

SECTION 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed ~~One~~ *one* percent (1%) of the full cash value of such property. The one percent (1%) tax ~~to~~ *shall* be collected by the counties and apportioned according to law to the districts within the counties, *except that a home rule community charter adopted pursuant to Article XI A may provide otherwise for the apportionment of the nonschool share of the proceeds of that tax.*

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on (1) any indebtedness approved by the voters prior to July 1, 1978, or (2) any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

(c) The limitation provided in subdivision (a) shall not apply to ad valorem taxes imposed on real property in a unified school district for the support of the unified school district approved on or after January 1, 1997, by two-thirds of the votes cast by the voters voting on the proposition. However, the total amount of revenues proposed to be generated by the ad valorem taxes pursuant to this subdivision shall not exceed an amount equal to 10 percent of the total statewide average revenue limit per

unit of average daily attendance for unified school districts in the fiscal period prior to the fiscal period in which the proposition is submitted to the voters multiplied by the average daily attendance of the unified school district for the prior fiscal period.

Seventieth—That Section 4 of Article XIII A thereof is amended to read:

~~SECTION~~

SEC. 4. ~~Cities, Counties~~ *(a) Except in the case of jurisdictions participating in a home rule community charter adopted pursuant to Article XI A, cities, counties,* and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within ~~such City, County~~ *the city, county,* or special district.

(b) Notwithstanding subdivision (a), commencing with the 1997-98 fiscal year and each fiscal year thereafter, a county, by a majority vote of the voters voting on the proposition, may impose a transactions and use tax in the county not to exceed the rate of 1/2 percent, for the purpose of making disbursements for the support of school districts within the county in an equal amount per pupil in enrollment in each such school district.

Seventy-First—That Section 1 of Article XIII B thereof is amended to read:

SECTION 1. (a) The total annual appropriations subject to limitation of the State and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided in this article.

(b) This section shall not apply to any fiscal period commencing on or after July 1, 2001. This section shall remain in effect only until July 1, 2001, and as of that date is repealed.

Seventy-Second—That Section 1 is added to Article XIII B thereof, to read:

SECTION 1. (a) The total appropriations of the State for a two-year fiscal period, as specified in Section 12.1 of Article IV, that are subject to limitation shall not exceed the appropriations limit of the State for the prior two-year fiscal period adjusted for the change in the cost of living and the change in population, except as otherwise provided in this article.

(b) The total annual appropriations subject to limitation of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided in this article.

(c) This section shall apply only to fiscal periods commencing on or after July 1, 2001.

Seventy-Third—That Section 2 of Article XIII B thereof is amended to read:

SEC. 2. (a) (1) Fifty percent of all revenues received by the State in a fiscal year and in the fiscal year immediately following it in excess of the amount ~~which~~ *that* may be appropriated by the State in compliance with this article during that fiscal year and the fiscal year immediately following it shall be transferred and allocated, from a fund established for that purpose, pursuant to Section 8.5 of Article XVI.

(2) Fifty percent of all revenues received by the State in a fiscal year and in the fiscal year immediately following it in excess of the amount ~~which~~ *that* may be appropriated by the State in compliance with this article during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years.

(b) All revenues received by an entity of government, other than the State, in a fiscal year and in the fiscal year immediately following it in excess of the amount ~~which~~ *that* may be appropriated by the entity in compliance with this article during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years.

(c) This section shall not apply to any fiscal period commencing on or after July 1, 2001. This section shall remain in effect only until July 1, 2001, and as of that date is repealed.

Seventy-Fourth—That Section 2 is added to Article XIII B thereof, to read:

SEC. 2. (a) (1) Fifty percent of all revenues received by the State in a two-year fiscal period in excess of the amount that may be appropriated by the State in compliance with this article during that period shall be transferred and allocated, from a fund established for that purpose, pursuant to Section 8.5 of Article XVI.

(2) Fifty percent of all revenues received by the State in a two-year fiscal period in excess of the amount that may be appropriated by the State in compliance with this article during that period shall be returned by a revision of tax rates or fee schedules within the next fiscal period.

(b) All revenues received by an entity of government, other than the State, in a fiscal year and in the fiscal year immediately following it in excess of the amount that may be appropriated by the entity in compliance with this article during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years.

(c) This section shall apply only to fiscal periods commencing on or after July 1, 2001.

Seventy-Fifth—That Section 3 of Article XIII B thereof is amended to read:

SEC. 3. The appropriations limit for any fiscal year pursuant to ~~Sec.~~ *Section* 1 shall be adjusted as follows:

(a) In the event that the financial responsibility of providing services is transferred, in whole or in part, whether by annexation, incorporation or otherwise, from one entity of government to another, then, for the year in which ~~such~~ *the* transfer becomes effective, the appropriations limit of the transferee entity shall be increased by such reasonable amount as the ~~said~~ *affected* entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount.

(b) In the event that the financial responsibility of providing services is transferred, in whole or in part, from an entity of government to a private entity, or the financial source for the provision of services is transferred, in whole or in part, from other revenues of an entity of government, to regulatory licenses, user charges or user fees, then, for the year of ~~such~~ *that* transfer, the appropriations limit of ~~such~~ *the affected* entity of government shall be decreased accordingly.

(c) (1) In the event an emergency is declared by the legislative body of an entity of government, the appropriations limit of the affected entity of government may be exceeded, provided that the appropriations limits in the following three years are reduced accordingly to prevent an aggregate increase in appropriations resulting from the emergency.

(2) In the event an emergency is declared by the Governor, appropriations approved by a two-thirds vote of the legislative body of an affected entity of government to an emergency account for expenditures relating to that emergency shall not constitute appropriations subject to limitation. As used in this paragraph, "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 such conditions as attack or probable or imminent attack by an enemy of the United States, fire, flood, drought, storm, civil disorder, earthquake, or volcanic eruption.

(d) This section shall not apply to any fiscal period commencing on or after July 1, 2001. This section shall remain in effect only until July 1, 2001, and as of that date is repealed.

Seventy-Sixth—That Section 3 is added to Article XIII B thereof, to read:

SEC. 3. The appropriations limit for any two-year fiscal period, in the case of the State, or for one fiscal year, in the case of local government, pursuant to Section 1 shall be adjusted as follows:

(a) In the event that the financial responsibility of providing services is transferred, in whole or in part, whether by annexation, incorporation or otherwise, from one entity of government to another, then, for the period in which the transfer becomes effective, the appropriations limit of the transferee entity shall be increased by such reasonable amount as the affected entities mutually shall agree and the appropriations limit of the transferor entity shall be decreased by the same amount.

(b) In the event that the financial responsibility of providing services is transferred, in whole or in part, from an entity of government to a private entity, or the financial source for the provision of services is transferred, in whole or in part, from other revenues of an entity of government, to regulatory licenses, user charges or user fees, then, for the year of that transfer, the appropriations limit of the affected entity of government shall be decreased accordingly.

(c) (1) In the event an emergency is declared by the legislative body of an entity of government, the appropriations limit of the affected entity of government may be exceeded, provided that the appropriations limits in the following two fiscal periods, in the case of the State, or three fiscal years, in the case of local government, are reduced accordingly to prevent an aggregate increase in appropriations resulting from the emergency.

(2) In the event an emergency is declared by the Governor, appropriations approved by a two-thirds vote of the legislative body of an affected entity of government to an emergency account for expenditures relating to that emergency shall not constitute appropriations subject to limitation. As used in this paragraph, "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 such conditions as attack or probable or imminent attack by an enemy of the United States, fire, flood, drought, storm, civil disorder, earthquake, or volcanic eruption.

This section shall apply only to fiscal periods commencing on or after July 1, 2001.

Seventy-Seventh—That Section 5.5 of Article XIII B thereof is repealed.

~~SEC. 5.5. Prudent State Reserve. The Legislature shall establish a prudent state reserve fund in such amount as it shall deem reasonable and necessary. Contributions to, and withdrawals from, the fund shall be subject to the provisions of Section 5 of this Article.~~

Seventy-Eighth—That Section 8 of Article XIII B thereof is amended to read:

SEC. 8. As used in this article and except as otherwise expressly provided herein:

(a) "Appropriations subject to limitation" of the State means any authorization to expend during a fiscal year the proceeds of taxes levied by or for the State, exclusive of ~~State~~ *state* subventions for the use and operation of local government (other than subventions made pursuant to Section 6) and further exclusive of refunds of taxes, benefit

payments from retirement, unemployment insurance, and disability insurance funds.

(b) "Appropriations subject to limitation" of an entity of local government means any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity and the proceeds of ~~State~~ *state* subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes.

(c) "Proceeds of taxes" shall include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues. With respect to any local government, "proceeds of taxes" shall include subventions received from the State, other than pursuant to Section 6, and, with respect to the State, proceeds of taxes shall exclude ~~such~~ *these* subventions.

(d) "Local government" means any city, county, city and county, school district, special district, authority, or other political subdivision of or within the State.

(e) (1) "Change in the cost of living" for the State, a school district, or a community college district means the percentage change in California per capita personal income from the preceding year.

(2) "Change in the cost of living" for an entity of local government, other than a school district or a community college district, shall be either (A) the percentage change in California per capita personal income from the preceding year, or (B) the percentage change in the local assessment roll from the preceding year for the jurisdiction due to the addition of local nonresidential new construction. Each entity of local government shall select its change in the cost of living pursuant to this paragraph annually by a recorded vote of the entity's governing body.

(f) "Change in population" of any entity of government, other than the State, a school district, or a community college district, shall be determined by a method prescribed by the Legislature.

"Change in population" of a school district or a community college district shall be the percentage change in the average daily attendance of the school district or *the number of full-time equivalent students of the* community college district from the preceding fiscal year, as determined by a method prescribed by the Legislature.

"Change in population" of the State shall be determined by adding (1) the percentage change in the State's population multiplied by the percentage of the State's budget in the prior fiscal year that is expended for other than educational purposes for kindergarten and grades one to 12, inclusive, and the community colleges, and (2) the percentage change in the total statewide average daily attendance in kindergarten and grades one to 12, inclusive, and the *number of full-time equivalent students in the* community colleges, multiplied by the percentage of the State's budget in the prior fiscal year that is expended for educational purposes for kindergarten and grades one to 12, inclusive, and the community colleges.

Any determination of population pursuant to this subdivision, other than that measured by average daily attendance *or the number of full-time equivalent students* , shall be revised, as necessary, to reflect the periodic census conducted by the United States Department of Commerce, or successor department.

(g) "Debt service" means appropriations required to pay the cost of interest and redemption charges, including the funding of any reserve or sinking fund required in connection therewith, on indebtedness existing or legally authorized as of January 1, 1979, or on bonded indebtedness thereafter approved according to law by a vote of the electors of the issuing entity voting in an election for that purpose.

(h) The "appropriations limit" of each entity of government for each fiscal year is that amount ~~which~~ *that* total annual appropriations subject to limitation may not exceed under Sections 1 and 3. However, the "appropriations limit" of each entity of government for *the 1978–79* fiscal year ~~1978/79~~ is the total of the appropriations subject to limitation of the entity for that fiscal year. For *the 1978–79* fiscal year ~~1978/79~~ , ~~State~~ *state* subventions to local governments, exclusive of federal grants, are deemed to have been derived from the proceeds of ~~State~~ *state* taxes.

(i) Except as otherwise provided in Section 5, "appropriations subject to limitation" do not include local agency loan funds or indebtedness funds, *or* investment (or authorizations to invest) funds of the State, or of an entity of local government in accounts at banks or savings and loan associations or in liquid securities.

This section shall not apply to any fiscal period commencing on or after July 1, 2001. This section shall remain in effect only until July 1, 2001, and as of that date is repealed.

Seventy-Ninth—That Section 8 is added to Article XIII B thereof, to read:

SEC. 8. As used in this article, and except as otherwise expressly provided herein:

(a) "Appropriations subject to limitation" of the State means any authorization to expend during a two-year fiscal period the proceeds of taxes levied by or for the State, exclusive of state subventions for the use and operation of local government (other than subventions made pursuant to Section 6) and further exclusive of refunds of taxes, benefit payments from retirement, unemployment insurance, and disability insurance funds.

(b) "Appropriations subject to limitation" of an entity of local government means any authorization to expend during one fiscal year the proceeds of taxes levied by or for that entity and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes.

(c) "Proceeds of taxes" shall include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues. With respect to any local government, "proceeds of taxes" shall include subventions received from the State, other than pursuant to Section 6, and, with respect to the State, proceeds of taxes shall exclude these subventions.

(d) "Local government" means any city, county, city and county, school district, special district, authority, or other political subdivision of or within the State.

(e) (1) "Change in the cost of living" for the State, a school district, or a community college district means the percentage change in California per capita personal income from the preceding two-year fiscal period, in the case of the State, or one fiscal year, in the case of a school district or community college district.

(2) "Change in the cost of living" for an entity of local government, other than a school district or a community college district, shall be either (A) the percentage change in California per capita personal income from the preceding year, or (B) the percentage change in the local assessment roll from the preceding year for the jurisdiction due to the addition of local nonresidential new construction. Each entity of local government shall select its change in the cost of living pursuant to this paragraph annually by a recorded vote of the entity's governing body.

(f) "Change in population" of any entity of government, other than the State, a school district, or a community college district, shall be determined by a method prescribed by the Legislature.

"Change in population" of a school district or a community college district shall be the percentage change in the average daily attendance of the school district or the number of full-time equivalent students of the community college district from the preceding fiscal year, as determined by a method prescribed by the Legislature.

"Change in population" of the State shall be determined by adding (1) the percentage change in the State's population multiplied by the percentage of the State's budget in the prior two-year fiscal period that is expended for other than educational purposes for kindergarten and grades one to 12, inclusive, and the community colleges, and (2) the percentage change in the total statewide average daily attendance in kindergarten and grades one to 12, inclusive, and the number of full-time equivalent students in the community colleges, multiplied by the percentage of the State's budget in the prior two-year fiscal period that is expended for educational purposes for kindergarten and grades one to 12, inclusive, and the community colleges.

Any determination of population pursuant to this subdivision, other than that measured by average daily attendance or the number of full-time equivalent students, shall be revised, as necessary, to reflect the periodic census conducted by the United States Department of Commerce, or successor department.

(g) "Debt service" means appropriations required to pay the cost of interest and redemption charges, including the funding of any reserve or sinking fund required in connection therewith, on indebtedness existing or legally authorized as of January 1, 1979, or on bonded indebtedness thereafter approved according to law by a vote of the electors of the issuing entity voting in an election for that purpose.

(h) The "appropriations limit" of each entity of government for each fiscal period, as appropriate, is that amount that total appropriations subject to limitation may not exceed under Sections 1 and 3. However, the "appropriations limit" of each entity of government for the 1978–79 fiscal year is the total of the appropriations subject to limitation of the entity for that fiscal year. For the 1978–79 fiscal year, state subventions to local governments, exclusive of federal grants, are deemed to have been derived from the proceeds of state taxes.

(i) Except as otherwise provided in Section 5, "appropriations subject to limitation" do not include local agency loan funds or indebtedness funds, or investment (or authorizations to invest) funds of the State, or of an entity of local government in accounts at banks or savings and loan associations or in liquid securities.

This section shall apply only to fiscal periods commencing on or after July 1, 2001.

Eightieth—that Section 10.5 of Article XIII B thereof is amended to read:

SEC. 10.5. *(a)* For fiscal years beginning on or after July 1, 1990, the appropriations limit of each entity of government shall be the appropriations limit for the 1986–87 fiscal year, adjusted for the changes made from that fiscal year pursuant to this article, as amended by the measure adding this section, adjusted for the changes required by Section 3.

(b) In the case of the State, beginning with the two-year fiscal period commencing on July 1, 2001, the appropriations limit shall be the appropriations limit for the 2000–2001 fiscal year, adjusted for the changes made from that fiscal year pursuant to this article and adjusted for the changes required by Section 3.

Eighty-First—That Section 1.2 is added to Article XVI thereof, to read:

SEC. 1.2. Except as to any indebtedness approved by the voters pursuant to Section 1, during any fiscal period for which

a budget bill is to be, or has been, enacted pursuant to Section 12 or 12.1, as applicable, of Article IV, the Legislature shall not in any manner create any debt or debts, or liability or liabilities, unless the debt or debts, or liability or liabilities, are repaid during that same fiscal period. For purposes of this section, "debt or debts, or liability or liabilities" includes an obligation for which an appropriation is made from anticipated funds, but does not include borrowing between state funds.

Eighty-Second—That Section 8 of Article XVI thereof 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~~ *Public School System.*

(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~~ *the Public School System for any fiscal year* shall be not less than the greater 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,~~ *the Public School System* 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~~ *the Public School System* from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes shall not be 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~~ *one-half* of one percent.

(3) (A) The amount required to ensure that the total allocations to ~~school districts and community college districts~~ *the Public School System* 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~~ *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.

(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~~ *the Public School System* for purposes of computing the amount of state aid pursuant to paragraph (2) or ~~3~~ *(3)* of subdivision (b) in the subsequent fiscal year.

(d) In any fiscal year in which ~~school districts and community college districts are~~ *the Public School System is* allocated funding pursuant to paragraph (3) of subdivision (b) or pursuant to subdivision ~~(h)~~ *(g)*, ~~they~~ *the Public School System* shall be entitled to a maintenance factor, equal to the difference between (1) the amount of General Fund moneys ~~which~~ *that* 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~~ *that* 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~~ *the Public School System* in that fiscal year.

(e) The maintenance factor for ~~school districts and community college districts~~ *the Public School System* 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 *fiscal* 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) 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.

~~(h)~~

(g) Subparagraph (B) of paragraph (3) of subdivision (b) may be suspended for one *fiscal* 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 *fiscal* 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.

(h) For the purposes of this section, "allocated local proceeds of taxes" does not include any tax imposed pursuant to Section 5 of Article XI, any ad valorem real property tax imposed pursuant to subdivision (c) of Section 1 of Article XIIIA, or any tax imposed pursuant to subdivision (b) of Section 4 of Article XIII A.

(i) Commencing with the 1997–98 fiscal year, and each fiscal year thereafter, for the purpose of making computations pursuant to paragraphs (2) and (3) of subdivision (b), any amount appropriated for the support of the Public School System from General Fund revenues that may be appropriated pursuant to Article XIII B in the prior fiscal year that exceeds the amount that was required to be appropriated from those revenues for that prior fiscal year pursuant to paragraph (1) or (2) of subdivision (b), as applicable, shall be included within the amounts appropriated for the support of the Public School System from General Fund revenues that may be appropriated pursuant to Article XIII B in that prior fiscal year only if the Legislature specifically so provides.

(j) For the fiscal period commencing July 1, 2001, and for each subsequent fiscal period, "fiscal year," as used in this section, shall be deemed to refer to one of the two 12-month periods from July 1 to June 30, inclusive, that comprise collectively the two-year fiscal period described in subdivision (a) of Section 12.1 of Article IV. The Legislature shall identify, in the budget act for each of those fiscal periods, the amount of the appropriations made by that budget act that apply for the support of the Public School System for purposes of this section for each of the two fiscal years within that fiscal period. Additional state funding determined to be required under this section for the second fiscal year of a fiscal period may be appropriated in the budget rebalancing bill or other appropriate statute.

Eighty-Third—That Section 8.5 of Article XVI thereof is amended to read:

SEC. 8.5. (a) In addition to the amount required to be applied for the support of ~~school districts and community college districts~~ *the Public School System* pursuant to Section 8, ~~the Controller shall~~ during each fiscal ~~year~~ *period the Controller shall* transfer and allocate all revenues available pursuant to paragraph 1 of subdivision (a) of Section 2 of Article XIII B to that portion of the State School Fund restricted for elementary and high school purposes~~, and to that portion of the State School Fund restricted for community college purposes, respectively, in proportion to the enrollment in school districts and community college districts respectively.~~

~~(1) With respect to funds allocated to that portion of the State School Fund restricted for elementary and high school purposes, no~~

(b) No transfer or allocation of funds pursuant to this section shall be required at any time that the Director of Finance and the Superintendent of Public Instruction mutually determine that current annual expenditures per student equal or exceed the average annual expenditure per student of the 10 states with the highest annual expenditures per student for elementary and high schools, and that average class size equals or is less than the average class size of the 10 states with the lowest class size for elementary and high schools.

~~(2) With respect to funds allocated to that portion of the State School Fund restricted for community college purposes, no transfer or allocation of funds pursuant to this section shall be required at any time that the Director of Finance and the Chancellor of the California Community Colleges mutually determine that current annual expenditures per student for community colleges in this State equal or exceed the average annual expenditure per student of the 10 states with the highest annual expenditures per student for community colleges.~~

~~(b)~~

(c) Notwithstanding ~~the provisions of~~ Article XIII B, funds allocated pursuant to this section shall not constitute appropriations subject to limitation.

~~(c)~~

(d) From any funds transferred to the State School Fund pursuant to subdivision (a), the Controller shall, each ~~year~~ *fiscal period*, allocate to each school district ~~and community college district~~ an equal amount per enrollment in *the* school ~~districts~~ *district* from the amount in that portion of the State School Fund restricted for elementary and

high school purposes ~~and an equal amount per enrollment in community college districts from that portion of the State School Fund restricted for community college purposes.~~

~~(d)~~

(e) All revenues allocated pursuant to subdivision (a) shall be expended solely for the purposes of instructional improvement and accountability as required by law.

~~(e)~~

(f) Any school district maintaining an elementary or secondary school shall develop and cause to be prepared an annual audit accounting for ~~such funds~~ *revenue received pursuant to this section,* and shall adopt a School Accountability Report Card for each school.

Eighty-Fourth—That Section 10 of Article XVI thereof is amended to read:

SEC 10. Whenever the United States government or any officer or agency thereof shall provide pensions or other aid for the aged, co-operation by the State therewith and therein is hereby authorized in such manner and to such extent as may be provided by law.

The money expended by any county, city and county, municipality, district or other political subdivision of this State made available under the provisions of this section shall not be considered as a part of the base for determining the maximum expenditure for any given year permissible under Section 20 of Article XI of this Constitution independent of the vote of the electors or authorization by the ~~State Board of Equalization~~ *state government entity designated by the Legislature pursuant to Section 18 of Article XIII* .

Eighty-Fifth—That Section 18 of Article XVI thereof is amended to read:

SEC. 18. ~~No~~ *(a) Except in the case of general obligation bond indebtedness incurred by a local government agency included in a home rule community charter adopted pursuant to Article XI A,* no county, city, town, ~~township, board of education,~~ or school district~~,~~ shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for ~~such~~ *that* year, ~~without the~~ *unless both of the following conditions are met:*

(1) The indebtedness or liability receives the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose, except that ~~with respect to any such~~ *, for any* public entity ~~which~~ *that* is authorized to incur indebtedness for public school purposes, any proposition for the incurrence of indebtedness in the form of general obligation bonds for the purpose of *constructing,* repairing, reconstructing, or replacing public school buildings ~~determined, in the manner prescribed by law, to be structurally unsafe for school use,~~ shall be adopted upon the approval of a majority of the qualified electors of the public entity voting on the proposition at ~~such~~ *the* election~~, nor unless before~~.

(2) Before or at the time of incurring ~~such~~ *the* indebtedness, provision ~~shall be~~ *is* made for the collection of an annual tax sufficient to pay the interest on ~~such~~ *the* indebtedness as it falls due~~,~~ and ~~also provision~~ to ~~constitute~~ *provide for* a sinking fund for the payment of the principal thereof, on or before maturity, which shall not exceed forty years from the time of contracting the ~~same; provided, however, anything to the contrary herein notwithstanding, when~~ *indebtedness.*

(b) When two or more propositions for incurring any indebtedness or liability are submitted at the same election, the votes cast for and against each proposition shall be counted separately, and when two-thirds or a majority of the qualified electors, as the case may be, voting on any one of ~~such~~ *the* propositions, vote in favor thereof, ~~such~~ *the* proposition shall be deemed adopted.

Eighty-Sixth—That Section 1 of Article XVIII thereof is amended to read:

SECTION 1. *(a)* The Legislature, by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, may propose an amendment or revision of the Constitution and in the same manner may amend or withdraw its proposal. Each amendment shall be so prepared and submitted that it can be voted on separately.

(b) (1) An amendment to this Constitution proposed by the Legislature shall be submitted to the electors at an election held throughout the State on the first Tuesday after the first Monday in November of an even-numbered year.

(2) Notwithstanding paragraph (1), an amendment to this Constitution proposed by the Legislature may be submitted to the electors at a statewide election scheduled to be held on a date other than that specified in paragraph (1) if the Legislature specifies in a section of the measure the date of the election and the Governor, by executive order, authorizes the placement of the proposed measure on the ballot at that election. If the Governor does not grant that authorization, the proposal shall be submitted to the voters pursuant to paragraph (1).

Eighty-Seventh—That Section 7 of Article XX thereof is amended to read:

SEC. 7. ~~The~~ *(a) Except as otherwise specified by this section, the* limitations on the number of terms prescribed by Section 2 of Article IV *as amended November 6, 1990* , Sections 2 and 11 of Article V, Section 2 of Article IX, and Section 17 of Article XIII apply only to terms to which persons are elected or appointed on or after November 6, 1990, except

that an incumbent Senator whose office is not on the ballot for the general election on that date may serve only one additional term. ~~Those limitations~~

(b) The limitations on the number of terms prescribed by Section 2.1 of Article IV as added November 5, 1996, apply to any term of office as a Senator or member of the Assembly that commences on or after January 6, 2003. For purposes of the limitations prescribed by that section, terms of office include those terms of office as a Senator or member of the Assembly to which persons are elected or appointed on or after November 6, 1990, except that a person who has served more than two years, but not more than six years, as a member of the Assembly between November 6, 1990, and January 2, 2005, is deemed to have thereby served one term in the Assembly, and a person who has served more than six years as a member of the Assembly between November 6, 1990, and January 2, 2005, is deemed to have thereby served two terms in the Assembly.

(c) The seats of the 40 members of the Assembly elected on November 5, 2002, from odd-numbered districts shall be vacated at the expiration of the second year, so that one-half of the terms of office of the Assembly begin every two years.

(d) Except as otherwise provided by subdivision (b), the term limitations identified in subdivisions (a) and (b) shall not apply to any unexpired term to which a person is elected or appointed if the remainder of the term is less than half of the full term.

Eighty-Eighth—That Section 7.5 is added to Article XX thereof, to read:

SEC. 7.5. (a) Notwithstanding Section 9 of Article IX, the Regents of the University of California include the Superintendent of Public Instruction, as an ex officio member, and 14 appointive members appointed by the Governor and approved by the Senate, a majority of the membership concurring.

(b) This section shall remain in effect only until January 4, 1999, and as of that date is repealed.

Eighty-Ninth—That Section 8 is added to Article XX thereof, to read:

SEC. 8. (a) The amendments to Section 2 of Article VII that took effect November 6, 1996, shall not be deemed to reduce the term of office as a member of the Personnel Board of any person who was a member of that board as of November 5, 1996.

(b) The amendments to Section 9 of Article IX that took effect November 6, 1996, including those set forth in Section 7.5 of this article, shall not be deemed to reduce the term of office as a Regent of the University of California of any person who was a regent as of November 5, 1996.

Ninetieth—that the tenth paragraph of Section 22 of Article XX thereof is amended to read:

The ~~State Board of Equalization~~ *state government entity designated by the Legislature pursuant to Section 18 of Article XIII* shall assess and collect such excise taxes as are or may be imposed by the Legislature on account of the manufacture, importation, and sale of alcoholic beverages in this State.

Ninety-First—That the heading of Article XXI thereof is amended to read:

ARTICLE XXI

REAPPORTIONMENT OF SENATE, ASSEMBLY, *AND* CONGRESSIONAL~~, AND BOARD OF EQUALIZATION~~ DISTRICTS

Ninety-Second—That Section 1 of Article XXI thereof is amended to read:

SECTION 1. 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, *and* Congressional~~, and Board of Equalization~~ districts in conformance with the following standards:

(a) Each member of the Senate, Assembly, *and* 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.

And be it further resolved, That the revisions to the California Constitution made by this measure shall become operative on January 1, 1997, except as otherwise specified by the provisions being revised, and except as follows:

(a) Section 9.5 of Article V, as proposed to be added, shall become operative January 1, 1998, to apply to terms of office to which persons are elected or appointed on or after November 3, 1998.

(b) The following shall become operative January 4, 1999:

(1) The proposed amendments to subdivision (b) of Section 14 of Article II; subdivision (l) of Section 8 of Article III; Section 18 of Article IV; subdivision (b) of Section 5 of, Sections 10.5, 11, and 12 of, and subdivision (f) of Section 14 of, Article V; subdivision (i) of Section 4 of, and subdivision (a) of Section 10 of, Article VII; subdivision (j) of

Section 3 of, subdivision (g) of Section 11 of, and Sections 16, 18, and 19 of, Article XIII; Section 10 of Article XVI; the tenth paragraph of Section 22 of Article XX; and the heading of, and Section 1 of, Article XXI.

(2) The proposed addition of Section 18.5 to Article XIII.

(3) The proposed repeal of Sections 2, 3, 3.1, 3.2, and 3.3 of Article IX; and Section 17 of, and subdivision (h) of Section 28 of, Article XIII.

(c) Sections 8 and 9 of Article IV, as proposed to be added by the twelfth and fourteenth sections, respectively, of this measure shall become operative January 1, 2001.

(d) Section 2.1 of Article IV, as proposed to be added, shall become operative January 1, 2002.