

CALIFORNIA STATE ASSOCIATION OF COUNTIES
EXECUTIVE COMMITTEE
Thursday, August 23, 2007
10:00am - 1:30pm
CSAC Conference Center, Sacramento

A G E N D A

Presiding: Richard Gordon, 1st Vice President

10:00am PROCEDURAL ITEMS

1. Roll Call *Page 1*
2. Approval of Minutes of May 24, 2007 *Page 2*

10:15am ACTION ITEMS

3. Eminent Domain Efforts/Campaign *Page 5*
 - *Steve Keil, CSAC staff*
 - *Jean Hurst, CSAC staff*
4. Electronic Voting Systems (possible action) *Page 13*
 - *Karen Keene, CSAC staff*

11:00am INFORMATION ITEMS

5. Draft Climate Change Policy Statements *Page 60*
 - *Supervisor Jeff Morris, Climate Change Working Group Co-Chair*
6. National Association of Counties Report
 - *Supervisor Valerie Brown, NACo 1st Vice President*
7. CalPERS Update
 - *Supervisor Tony Oliveira, CalPERS Board Member*
8. CSAC Finance Corporation Report *Page 70*
 - *Norma Lammers, Finance Corporation Executive Director*
9. Regional Summits on Reentry Facilities Report *Page 71*
 - *Elizabeth Howard, CSAC staff*
10. Health Care Reform Issues *Page 74*
 - *Kelly Brooks, CSAC staff*
11. State Budget/Legislative Report
 - *Steve Keil*
12. Other Items

12:00pm LUNCH

1:00pm CLOSED SESSION REGARDING PERSONNEL ISSUES

1:30pm ADJOURN

ROSTER

California State Association of Counties
Executive Committee
2007

President:	Frank Bigelow, Madera
1 st Vice President:	Richard Gordon, San Mateo
2 nd Vice President:	Gary Wyatt, Imperial
Immed. Past President:	Connie Conway, Tulare

Urban Section

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

Suburban Section

Joni Gray, Santa Barbara
Mike McGowan, Yolo
Mike Nelson, Merced
Valerie Brown, Sonoma (alternate)

Rural Section

Terry Woodrow, Alpine
Jeff Morris, Trinity
Tony Oliveira, Kings (alternate)

Advisors

Larry Combs, Sutter County Administrative Officer
Kathleen Bales-Lange, Tulare County Counsel

MINUTES OF MAY 24, 2007

CALIFORNIA STATE ASSOCIATION OF COUNTIES
EXECUTIVE COMMITTEE

May 24, 2007
Sheraton Grand Hotel, Sacramento

MINUTES

Presiding: Frank Bigelow, President

1. ROLL CALL

Frank Bigelow, President	Mike McGowan, Yolo
Richard Gordon, 1 st Vice President	Mike Nelson, Merced
Gary Wyatt, 2 nd Vice President	Valerie Brown, Sonoma (alternate)
John Tavaglione, Riverside	Terry Woodrow, Alpine
Roger Dickinson, Sacramento	Jeff Morris, Trinity
Greg Cox, San Diego (alternate)	Tony Oliveira, Kings (alternate)
Joni Gray, Santa Barbara	Larry Combs, CAO advisor

2. APPROVAL OF MINUTES

The minutes of March 15, 2007 were approved as previously mailed.

3. EMINENT DOMAIN EFFORTS/CAMPAIGN

CSAC has been working with a broad range of stakeholders to develop an eminent domain measure that would go to the voters in 2008. The coalition, which includes the League of California Cities, California Redevelopment Association and the California League of Conservation Voters, among others, has been working on a number of fronts to avoid another expensive defense of legitimate government regulation. Staff announced that Assembly Member De La Torre has agreed to author two bills that comprise the eminent domain reform package – ACA 8 and AB 887.

Since January, the coalition has been advised by a team of legal and political advisors, all of which were involved in the “No on Prop. 90” campaign. Staff outlined the expenditure plan for CSAC’s share of funding the consultants’ fees through August of 2007. CSAC’s share will be \$180,000, plus forgiveness of a \$9,935 loan to the “No on Prop. 90” campaign account. Other coalition partners will also be sharing in the costs. Staff pointed out that there will be additional costs as the campaign moves forward. However, those costs are unknown at this time since it is not yet clear whether the coalition will be supporting a legislative initiative or one that requires voters’ signatures to put on the ballot.

Motion and second to approve expenditure plan and recommend approval by the Board of Directors. Motion carried unanimously.

4. REPORT ON MAY REVISION OF THE GOVERNOR'S BUDGET

Staff distributed copies of an analysis of the Governor's May Revision prepared by CSAC. The May Revision contains a reversion of the \$39 million for Williamson Act funds originally included in the Governor's January budget. Executive Committee members were urged to contact legislators to express their opposition to the Williamson Act proposal.

Staff outlined a proposal being proposed by Assembly Democratic leadership to capture the transit/spillover revenues under Proposition 42 and change the formula between the state (STIP), cities, counties and transit beginning in 2008-09. CSAC's current position is that any statutory change to bring spillover under Proposition 42 must protect the existing formula passed by the voters of 40% STIP, 20% cities, 20% counties and 20% transit through a hold harmless or other mechanism. The Executive Committee directed staff to continue with this position.

Staff distributed a chart that outlines the Health and Human Services programs contained in the Governor's Budget and how they would be impacted by current legislative proposals. The California Health Care Foundation has developed a website regarding health reform issues. It can be found at www.calhealthreform.org. CSAC's Budget Action Bulletin, which will include summaries of health reform and other State Budget issues, will be sent to all counties this week.

5. CORRECTIONS REFORM UPDATE

Staff provided an update on AB 900, the Public Safety and Offender Rehabilitation Services Act of 2007, which was signed into law in May. This measure addresses overcrowding and recidivism issues in the state and local adult corrections systems and provides \$1.2 million for jail construction. It also gives the state authority to transfer up to 8,000 inmates out-of-state. The measure does not include two of the more controversial elements of the Governor's initial reform plan – a sentencing commission structure and significant changes to the parole system. The bill addresses the adult corrections system only. The Governor's juvenile justice realignment proposal is still being discussed and will proceed on a separate track as part of the budget process. Details of that proposal were contained in the briefing materials.

Staff has been meeting regularly with an Executive Steering Committee on Corrections Reform, a group of county supervisors and CAOs convened to give policy guidance on a broad range of corrections issues, and will consult frequently with this group in the coming weeks and months.

Contra Costa County has requested CSAC's support for the creation of the "California Sentencing Commission" which was eliminated from AB 900. Staff distributed a letter from the Contra Costa County Board of Supervisors and recommended that this issue go before the Administration of Justice policy committee for consideration prior to CSAC taking a position.

Motion and second to refer the Contra Costa County proposal to the Administration of Justice policy committee for consideration. Motion carried unanimously.

6. CSAC CORPORATE ASSOCIATES REPORT

Norma Lammers, CSAC's Interim Deputy Director, reported that the CSAC Officers recently approved a contract to hire Brent Wallace to assist the Corporate Associates program. Mr. Wallace also currently serves as Executive Director of the County Administrative Officers Association of California (CAOAC) and will be focusing on opportunities for bringing county officials and corporate members together, such as inviting corporate members to make presentations at regional CAOAC meetings.

Meeting adjourned to closed session to conduct Executive Director interviews.

EMINENT DOMAIN EFFORTS/CAMPAIGN



August 10, 2007

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To: CSAC Executive Committee

From: Paul McIntosh, Executive Director
Jean Kinney Hurst, Legislative Representative

Re: **Eminent Domain Reform Update and Request for Additional
Expenditure – ACTION ITEM**

Recommendation. Staff recommends approval of up to an additional \$250,000 for purposes of developing and securing an eminent domain reform package for the 2008 ballot.

Background. Since we last reported, our coalition – Californians for Eminent Domain Reform – was working in earnest to secure votes for the two legislative measures that contain the eminent domain reform provisions we have been seeking. ACA 8 and AB 887, by Assembly Member Hector De La Torre, have both moved from their first policy committee hearings on a party-line vote. ACA 8 will next be heard in the Assembly Local Government Committee on August 22 and AB 887 is awaiting a vote on the Senate Floor.

The coalition is actively lobbying Assembly Republicans. You will recall that Assembly Member Mimi Walters, the chairperson of the Proposition 90 campaign, authored her own eminent domain measure, which failed passage in the Assembly Judiciary Committee. After that hearing, however, Assembly Member Walters indicated an interest in negotiating changes to ACA 8 that could allow Assembly Republicans to cast their “aye” vote for the measure. Those conversations are focused on protection of farmland, churches, and additional business protections. We have not yet agreed to language, but conversations seem very positive.

As you know, the Jarvis initiative is currently collecting signatures. We understand that, while initial reports indicated that they were only collecting signatures in three counties, signatures are now being gathered statewide. We also know that the Howard Jarvis Taxpayers Association, the California Farm Bureau Federation, and the California Alliance to Protect Private Property Rights are in full fundraising mode. However, after tracking their financial reports, we have not seen a considerable amount of money being spent. The Secretary of State’s Office requires about 700,000 valid signatures for qualification for the June ballot.

With regards to our coalition’s initiative that provides eminent domain protection for single-family homes, the coalition conducted a poll to determine voters’ views

on the measure. Based on its title and summary only, a solid majority of voters support the measure. This support cuts across all major subgroups of the electorate (political party, gender, etc.). Support increases to 76% after a simple statement explaining the measure. Even after voters hear a strong opposition argument, support remains well above 50%. Our pollster indicates that these results show that the measure has an excellent chance of winning approval from California voters.

Thus, the coalition has begun the signature-gathering process to place this measure on the June 2008 ballot. This effort is not intended in any way to diminish our legislative efforts, and we remain committed to securing legislative approval of ACA 8 and AB 887. Our main concern is that the measure put forward by the HJTA group is just as extreme as Proposition 90. Given the timeline to place measures on the June 2008 ballot, we must begin collecting signatures now to ensure that, in the event that the Legislature does not place ACA 8 on the ballot, voters will have an alternative measure to consider. Again, ACA 8 and AB 887 is the preferred solution, and if the Legislature approves these measures, the coalition will reconsider our signature-gathering efforts.

These signature-gathering efforts require additional funding that was not previously considered as a component of our initial campaign budget. Our campaign consultants have developed a budget that estimates total signature-gathering costs at about \$2.5 million. The League of California Cities and California Redevelopment Association have committed funds to this effort. CSAC staff is requesting authorization for expenditure of up to \$250,000 toward this effort. Likely, additional fundraising will be required if we are required to collect the full amount of signatures.

Policy Considerations. Eminent domain reform has been on the forefront of CSAC's legislative agenda for many months. Even before the initial filing of what would become Proposition 90 in 2006, CSAC has been engaged with a broad coalition, determined to address voters' concerns about eminent domain abuses, while maintaining counties' authority to address community priorities and needs through appropriate regulation. Our efforts to date have been successful: Proposition 90 did not meet voters' approval and, so far, we have been able to avoid a ballot box showdown with a "Son of Prop 90" measure. Staff continues to recommend our ongoing financial participation in the coalition efforts, not only to ensure the ultimate success of an eminent domain reform measure, but also to ensure that counties have an equal seat at the table with our coalition partners when negotiating through the process.

As with previous requests for funding, the Executive Committee must also consider the fiscal implications of such a plan. Funds dedicated to this effort could certainly be used for another purpose. However, staff suggests that these expenditures are far less costly than fighting another measure, as we did in the "No on Prop 90" campaign last fall.

Attached to this item is an Informational Item "*Options for Funding an Issue Campaign*" which explores this policy issue in more detail. Your consideration and discussion of this issue during your meeting is encouraged.

Action Requested. Staff is requesting your approval of an additional expenditure of \$250,000 for purposes of developing and securing an eminent domain reform package for the 2008 ballot.

Staff Contact. Please contact Paul McIntosh (pmcintosh@counties.org or (916) 327-7500 x506) or Jean Kinney Hurst (jhurst@counties.org or (916) 327-7500 x515) for additional information or questions.



August 8, 2007

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To: CSAC Executive Committee

From: Paul McIntosh, Executive Director
Jean Kinney Hurst, Legislative Representative

Re: Options for Funding an Issue Campaign – INFORMATIONAL ITEM

Recommendation. This item is informational only. At the CSAC Board of Directors meeting on June 14, 2007, following a discussion of funding for the current eminent domain reform campaign, CSAC staff was directed to research options for reserving funds to participate in an issue campaign. This memo reflects our initial research on this issue and is intended to provide a starting point for conversations about how to finance future campaign participation by CSAC.

Background. CSAC has been financially involved with three major initiative campaigns: Proposition 65, Proposition 1A, and Proposition 90. (CSAC was also involved with Proposition 42, but did not contribute financially.) In each of these cases, CSAC contributed its non-public funds to the campaign and engaged in active fundraising efforts. (For Propositions 65/1A, expenditures totaled \$1,080,000. For Proposition 90, expenses totaled \$650,000.) However, in each circumstance, CSAC's non-public funds were redirected from traditional CSAC budget expenses to fund campaign costs that were not necessarily budgeted. CSAC is currently involved in the campaign for eminent domain reform, for which CSAC's non-public funds are being used to finance a portion of campaign activities that were not budgeted.

CSAC staff has considered three options for financially participating in issue campaigns: formation of a political action committee (PAC), reserving CSAC non-public funds in a separate CSAC account, or continue the existing practice of utilizing CSAC non-public funds on a case-by-case basis.

Formation of a political action committee (PAC): Forming a PAC is relatively simple. A bank account must be set up under our existing 501(c)(4) organization, and a campaign committee established with the Secretary of State. The campaign committee must have a name, sponsoring organization, address, treasurer and purpose. For an issues committee (a committee that supports or opposes ballot measures, as opposed to contributing to individuals), funds raised may be used at the discretion of the sponsor. If this were to be the option selected, CSAC may wish to develop an internal policy as to expenditure of funds, such as a steering committee or designation of authority to expend funds, but it is not required under the law.

We could hire an outside treasurer or hire a firm to serve as treasurer to do the required ongoing reporting. Public funds may be spent on the administration of the issues committee.

In terms of fundraising, any CSAC resources used are in-kind contributions to the committee. However, any CSAC employee's work time under 10% of their total work time is not reportable under existing law.

While the formation of a PAC is relatively straightforward and simple, the administration of a PAC is more complicated. We are advised that, to be credible, CSAC should have at least \$200,000 available to spend in any given election cycle to "buy a seat at the table." Establishing procedures and practices for fundraising on an ongoing basis is an integral part of having a meaningful, well-functioning PAC. If the Executive Committee determines that a PAC is an appropriate option for CSAC, then we must begin to develop a staffing and fundraising plan.

Further, we also advise that having a PAC with publicly available financing will result in initiative backers and opponents coming to us and requesting our financial involvement in campaigns that CSAC may not have become involved with under similar circumstances. It also could increase scrutiny of CSAC's use of non-public funds.

Reserve funds in a separate CSAC account: This is a relatively straightforward option that would involve specifying revenue to set aside within the CSAC budget for purposes of an eventual initiative campaign. Over a number of years, as a component of the regular CSAC budget development and approval process, non-public funds would be identified and specifically allocated to an internal account for purposes of expenditure on an issue campaign. A process for accessing such funds would be outlined and final approval for expenditure authorized by the Executive Committee and/or Board of Directors.

This is certainly a less-visible option for setting aside revenues to fund eventual campaign expenditures and would not require additional staff time. We caution, though, that such an approach could result in a need to increase dues to offset the loss of non-public funds diverted to the reserve.

Continue pay-as-you-go policy: CSAC has been in the practice of dedicating funding to issue campaigns on a case-by-case basis. These funds are generally dedicated to other activities in the CSAC budget. However, the Executive Committee and Board of Directors can redirect funds based on perceived need. Of course, this option requires the leadership to weigh the value of participating in a campaign against other priority items for funding in the budget.

Policy Considerations. The summary above reflects staff's conversations about options for participating in issue campaigns and reflects the unfortunate fact that our initiative process is being utilized far more broadly than in the past for major policy initiatives, many of which could directly or indirectly impact California counties.

Ballot-box Policy-making. 2004's Propositions 65/1A was the first time CSAC determined it appropriate to become financially involved in a ballot measure campaign, but recall that this decision was not made lightly. After a number of fits and starts over nearly a decade, CSAC, along with our local government partners, recognized that achieving some measure of fiscal stability was not achievable within the legislative process. As California's initiative process becomes the chosen battleground for public policy debate, it is no wonder that many other interest groups find themselves in similar situations to counties, cities, and special districts in 2004.

As of this publication, the Secretary of State lists only two measures qualified for the new February primary (transportation funding and community college funding), but 18 measures that are cleared for circulation for qualification for the June ballot. These include the Jarvis eminent domain/rent control measure, eminent domain protection for homeowners, reforming the Electoral College process, internet poker, same-sex marriage, and use of electronic voting machines. In addition, four referenda on the new tribal gaming compacts are expected to be in circulation shortly. Referenda are subject to shorter timelines and could qualify for the June ballot, as well.

It is clear that, with the right combination of financing and public opinion, special interests are heading to the ballot box to meet their policy goals.

It Ain't Cheap. The General Election in 2006 set records for campaign spending in California and nationwide. Proposition 87, the alternative energy/tax on oil production was the nation's most expensive campaign, hitting a staggering \$107 million in expenditures both pro and con. Other ballot measures included the infamous Proposition 90, a repeat proposal requiring parental consent for a minor's abortion, the infrastructure bond package, a water quality bond, and more. The crowded ballot meant increased competition for television and radio time, costly political consultants, and new gimmicks to get voters' attention.

Additionally complicating the field has been an influx of financial participation in campaigns from out-of-state interests. You will recall that signature-gathering costs and initial funding for Proposition 90 came from Howie Rich. Rich's organization, U.S. Term Limits, has also pledged to fund an opposition campaign against a term-limits extension measure headed for the February ballot.

As discussed previously, CSAC has spent a total \$1.73 million on the issue campaigns in which we have become financially involved (not including our

current involvement in eminent domain reform). This is somewhat of a “slippery slope” in that, once CSAC decides to become involved, it is difficult to control or cap expenditures. We also note that campaigns seem to always cost more than originally estimated.

To be involved or not to be involved? Initially, becoming involved in a ballot measure campaign was a difficult decision for CSAC’s membership. Initiating the process to develop Proposition 65 and negotiate Proposition 1A was outside of the Association’s regular practice and meant making a significant financial commitment to ensure a successful outcome. Did CSAC’s initial foray into issue campaigns mark a new path for involvement in political campaigns?

Not necessarily. After the passage of Proposition 1A, CSAC continued its regular practice of taking positions on ballot measures without any financial commitment. CSAC was actively involved with the coalition to amend the Constitution to fix the loophole that allowed the state to regularly suspend Proposition 42 without a future commitment to fund state and local transportation projects. While active in the coalition, CSAC was not required to make a significant financial contribution since there was significant available funding from private transportation interests. However, when CSAC was approached about what eventually become Proposition 90 (2006), very few interest groups understood the broad implications of the measure, while it was clear local governments were directly and significantly impacted. Our initial participation in the campaign to defeat Proposition 90 was limited and with the expectation that other contributors would join the coalition. The coalition eventually become large in number and broad in interest, but the fundraising was difficult. In the end, CSAC had contributed \$650,000 to the campaign and assisted in outside fundraising efforts.

Our current involvement in eminent domain reform is focused on avoiding another Prop. 90-like measure. To date, the CSAC Board of Directors has approved expenditures of approximately \$180,000 with likely additional expenditures in the future.

It is impossible to predict what will appear on future ballots. However, it is increasingly likely that at least a few will directly impact counties.

At the same time, CSAC does not currently have a set means by which campaigns are financed. Reliance upon budgeted funds can hamper other, equally important, efforts in managing legislation. Raising non-public funds to support an ongoing PAC is not an activity for which CSAC is currently staffed, nor does our existing staff possess the requisite expertise.

Action Requested. No action is requested at this time. However, staff recommends that the Executive Committee and Board of Directors continue to discuss the appropriate means for making funds available to participate in an

initiative campaign. Staff is prepared to do additional research or provide additional information as requested.

Staff Contact. Please contact Paul McIntosh (pmcintosh@counties.org or (916) 327-7500 x506) or Jean Kinney Hurst (jhurst@counties.org or (916) 327-7500 x515) for additional information or questions.

ELECTRONIC VOTING SYSTEMS

August 7, 2006

To: CSAC Executive Committee

Fr: Karen Keene, CSAC Legislative Representative
Cara Martinson, CSAC Legislative Analyst

Re: Secretary of State Ruling on Electronic Voting Systems

On August 3, 2007, Debra Bowen released her ruling on the top-to-bottom review of electronic voting systems in California. After hours of delay, the Secretary of State emerged at ten minutes to midnight to decertify four electronic voting systems widely used in California. She subsequently re-certified three of the systems, including Diebold, Sequoia and Hart InterCivic to very limited usage in order to comply with regulations for disabled- voter access. This effectively means that all counties in California will return to a paper-based voting system, with one electronic voting machine available at each precinct for voters who need or want to use it, such as those with disabilities who can't use a paper ballot on their own.

CSAC, along with the California Association of County Elections Officials, were opposed to the methodology used in the top-to-bottom review from the start, arguing that the testing of the electronic voting systems was not done under "real- world" circumstances, reflecting an unrealistic and inaccurate evaluation of electronic voting systems, all of which have passed comprehensive federal testing standards as well as California's more rigorous thresholds for security, accuracy and reliability.

Additionally, Bowen imposed several other requirements, including: conducting a complete manual count of all votes cast, reinstalling the software before the February 5, 2008 election; placing seals at certain parts of the machines to reveal tampering; securing each machines at the close of each day of early voting; and assigning a specific election monitor to safeguard each machine.

The County Counsel's Association is in the process of holding closed sessions to determine their next steps. CSAC staff is working with county officials to develop a strategy to react to and comply with the new rules.



August 1, 2007

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Honorable Deborah Bowen
Secretary of State
State of California
1500 11th Street, 6th Floor
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Dear Secretary Bowen:

The California State Association of Counties (CSAC) is supportive of your interest in ensuring that the state's voting systems are secure, accurate, reliable and accessible. While we believe that your "top-to-bottom review" of the voting systems had merit, we are disappointed with the manner in which it was undertaken. Our disappointment has been further exacerbated with the release of the UC researchers' findings of this top-to-bottom review.

Despite multiple requests by CSAC and the California Association of Clerks and Elections Officials (CACEO), county election officials were not included in the voting system review process. We believe that the decision to not include election officials in the process was a serious mistake. Their experience with the "real-world" use of voting systems would have lent validity to the review process.

CSAC further agrees with the statements made by the county election officials who have questioned the validity of testing the voting systems in a laboratory setting. CSAC also shares their concerns regarding the lack of published, clear and testable standards for the penetration portion of the testing and any examination or consideration of real-world mitigation.

CSAC urges you to address the questions posed by the president of the CACEO, Steve Weir, at the July 30 public hearing and in his written comments (Attachment 1), prior to making a final decision regarding the voting systems. Regardless of your final decision, it is imperative that county election officials be included in any follow-up actions necessitated by your decision, as soon as possible. We can attest to their readiness and willingness to assist you in providing for secure and proper handling of election materials.

I welcome the opportunity to discuss these issues with in more detail at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Paul McIntosh".

Paul McIntosh
CSAC Executive Director

Attachment



June 14, 2007

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Honorable Deborah Bowen
Secretary of State
State of California
1500 11th Street, 6th Floor
Sacramento, CA 95814

Dear Secretary Bowen:

The California State Association of Counties (CSAC) continues to remain deeply concerned that the timing and manner in which the "top to bottom review" of voting systems that your office has undertaken will create significant uncertainty in the ability of counties to conduct upcoming elections.

Our member counties concur with the need to ensure that voting systems are secure, accurate and reliable. The Office of the Secretary of State previously certified all of the systems that are being tested. We recognize that you have concerns about these systems that differ from your predecessor, and we respect your efforts to assure voters of the integrity of these systems. However, the timing and the unclear standards and procedures of this review will make it very difficult to conduct upcoming elections.

First, counties using equipment that is subject to this review have not been advised of any final standards or procedure for the review. We appreciate that your office convened a conference call with local election officials, but this gave them little opportunity to comment on standards and procedures of the review, and no final standards or procedures have yet been published.

Second, your office has not responded to election officials' requests to be included in the review process. If your reviewers will be providing recommendations for changing the use or security procedures for these systems, it is critical that the review committees include experts with extensive experience in the actual conduct of elections in California. No one has more experience in that field than the County elections officials themselves. None of the individuals identified in your list of reviewers appears to have that sort of experience.

Third, the County elections officials are also justifiably concerned with your office's reliance upon consultants who are outspoken opponents of electronic voting in general or of specific vendors, or have been proponents of election systems other than the ones they will be reviewing. The fear is that their inclusion could lead to preordained or biased results. For example, attached for your reference is a thirty-nine page report prepared and signed by Noel Runyan, the individual you have designated to head the "accessibility" review team. Mr. Runyan's report was filed with the Colorado court on behalf of the plaintiffs in the *Conroy et al. v. Dennis* case. In the report Mr. Runyan unequivocally states that the Sequoia Edge II, ES&Si Votronic and Diebold TSx "are not accessible for individuals with disabilities," "are not voting systems that meet HAVA" and "would require significant redesign to comply with federal ... legal requirements." Lowell Finley, your Deputy Secretary of State for Voting Systems Technology and Policy, and his then co-counsel, also filed a declaration by Mr. Runyan in the California case of *Holder v.*

McPherson. That declaration offered even more highly critical opinions relating to the Diebold AV-TSx system. Given that Mr. Runyan's opinions are already on record it would appear that he has formed a strong opinion, and that there likely may be a lack of objectivity in order to avoid contradicting his prior opinions. Such strongly held views would make it highly unlikely that the review team would reach a different opinion.

Fourth, our organization is also acutely aware that no regulations have been published about the review and use of the voting machines, voting devices and vote tabulating devices, as required by Elections Code sections 19100 and 19205. Such regulations are required to be approved pursuant to the Administrative Procedures Act of California (Government Code section 11340 *et seq.*). Last year Mr. Finley and his co-counsel in *Holder v. MacPherson* argued that the Secretary of State was required to comply with the requirements of the APA before imposing conditions on the continued use of election systems. His arguments on this issue are attached for your information. Specifically, counsel argued that the certification procedures were "regulations" that required their formal issuance, preceded by a formal opportunity for comment by interested parties. (See particularly Government Code sections 11346.2 and 11346.8). We are concerned that the failure to consider the same legal arguments in the context of this review may threaten the validity of the decisions ultimately made following this review. An unreliable or invalid result does not serve the interests of the voters or those who must conduct the elections.

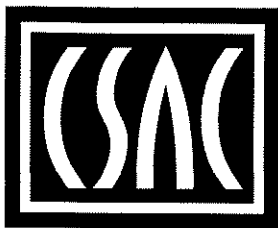
Finally, it is now five months before the next major election cycle in November and eight months before the 2008 Presidential Primary Election. Our organization is concerned that given the shortness of time, your review may rush to judgment and may impose new and varied conditions. Moreover, the issuance of such conditions may be so late as to create significant challenges and serious risks associated with the conduct of upcoming elections. If the review imposes impractical and/or onerous conditions that threaten the smooth and efficient running of that election, it could undermine the credibility of the very important vote and delay the results of the election.

Over the past several years, counties have worked diligently to comply with the shifting directives of the Secretaries of State pertaining to the use of certified voting systems. We fully support your ongoing efforts to ensure the integrity of elections systems. However, we are greatly concerned that the present review is being conducted in a manner that presents serious risks due to the uncertainties created by this current process. This uncertainty has the very high likelihood to impair County election officials' ability to perform their duties.

Sincerely,



Frank Bigelow
CSAC President



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FOR IMMEDIATE RELEASE

August 4, 2007

Contact: Paul McIntosh, CSAC Executive Director, 916/327-7500 ext. 506 or 916/956-6305
Karen Keene, CSAC Legislative Representative, 916/327-7500 ext. 511 or 916/803-4752

***CSAC RESPONSE TO SECRETARY OF STATE'S DECISION
REGARDING VOTING SYSTEMS REVIEW***

From Paul McIntosh, CSAC Executive Director:

"As the voice of California counties, we are deeply concerned about the methodology used in the Top-to-Bottom Review process, as well as the Secretary of State's subsequent decisions based on those findings. We do not believe that these results reflect a realistic and accurate evaluation of our electronic voting systems, all of which have passed comprehensive federal testing standards as well as California's more rigorous thresholds for security, accuracy and reliability.

"California Counties have made a significant investment into these voting systems to ensure that they are secure, accurate and reliable. And, the Office of the Secretary of State previously certified all of the systems. Now, our counties must respond to an 11th hour decision, based upon a flawed analysis, that could threaten the smooth and efficient running of upcoming elections. This decision was made without any consultation with those responsible for actually conducting elections – our county elections officials.

"The veracity of any election – no matter what type of equipment is used – comes down to the integrity of the individuals responsible. County elections officials in California have always been, and will continue to be, above reproach.

"CSAC will provide additional comment once we have an opportunity to analyze the Secretary of State's decision and its potential impacts."

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1 *City & County of San Francisco*, 29 Cal. 4th 164, 168 (2002). The right to vote “may be the
2 most fundamental of all.” *Board of Supervisors v. Local Agency Formation Comm’n*, 3 Cal.
3 4th 903, 913 (1992).

4 As described above, the AV-TSx fails to meet standards of reliability, accessibility and
5 security mandated by the California Elections Code. See Section I.B.1-5, *supra*. Forcing
6 Petitioners and other California voters to use this flawed system—which may result in votes
7 being manipulated and/or not counted and will not provide equal access to disabled voters—
8 while other voters are permitted to use reliable and accessible systems violates disabled
9 voters’ fundamental right to vote and constitutional right to equal protection of the law. See
10 Section I, *supra*.

11 **7. Use Of The AV-TSx Is Unlawful Because The Secretary Of State’s**
12 **“Conditional Certification” Was Invalid And Unlawful.**

13 **a. The Secretary Of State’s “Conditional Certification” Imposed**
14 **Conditions Without Notice Or Hearing In Violation Of The**
California Administrative Procedures Act.

15 Elections Code Section 19205 directs the Secretary of State to establish “regulations
16 governing voting machines, voting devices, vote tabulating devices, and any software used
17 for each, including the programs and procedures for vote tabulating and testing.” The
18 physical and procedural security measures that the Secretary of State’s February 17, 2006
19 certification required County Elections Officials to adopt in order to use Diebold machines
20 are invalid because they are “regulations” subject to the Administrative Procedures Act
21 (“APA”) that were adopted without complying with the APA.

22 The APA, Government Code Sections 11340 *et seq.*, sets forth procedures that state
23 officers must use to adopt regulations. *Tidewater Marine W., Inc. v. Bradshaw*, 14 Cal. 4th
24 557, 568 (1996); *Sherwin-Williams Co. v. South Coast Air Quality Mgmt. Dist.*, 86 Cal. App.
25 4th 1258, 1282-83 (2001). Coverage of the APA is broadly construed. Gov’t Code §11346
26 (“[e]xcept as provided in Section 11346.1, the provisions of this chapter are applicable to the
27 exercise of any quasi-legislative power conferred by any statute heretofore or hereafter
28 enacted”). The procedures required under the APA include public notice of the proposed

1 regulation, an opportunity for comment by interested parties, and review by the Office of
2 Administrative Law. *Sherwin-Williams*, 86 Cal. App. 4th at 1282-83.

3 The APA defines “Regulation” as “every rule, regulation, order, or standard of general
4 application or the amendment, supplement, or revision of any rule, regulation, order, or
5 standard adopted by any state agency to implement, interpret, or make specific the law
6 enforced or administered by it, or to govern its procedure.” Gov’t Code §11342.600.
7 Regulations subject to the APA have two principal identifying characteristics: (1) the
8 agency must intend its rule to apply generally, rather than in a specific case—*i.e.* it must
9 declare how a certain class of cases will be handled; and (2) the rule must implement,
10 interpret, or make specific the law enforced or administered by the agency, or govern the
11 agency’s procedure. *Sherwin-Williams*, 86 Cal. App. 4th at 1283 (citing Gov’t Code
12 §11342(g) and *Tidewater Marine Western*, 14 Cal. 4th at 571).

13 Under the APA and the *Sherwin-Williams* two-part test, the use procedures mandated
14 by the Secretary of State are “regulations.” *First*, the procedures apply generally to the
15 entire class of counties that intend to use AV-TSx machines. The Secretary’s February 17,
16 2006 press release claimed that he was “*mandating* the additional use procedures” and that
17 counties “wishing to use either the upgraded OS system or the upgraded, paper audit trail-
18 retrofitted touch screen (TSX) system for elections in 2006 must comply with these
19 requirements.” Gallo Decl., Ex. J (*emphasis added*). This mandate defines how a certain
20 class of cases will be addressed—*i.e.*, it decides the standards that counties using a certain
21 class of voting systems must satisfy. *Sherwin-Williams*, 86 Cal. App. 4th at 1283. *Second*,
22 the Secretary’s use procedures implement Elections Code 19205(c), which expressly
23 requires him to establish “regulations” to ensure that voting systems “shall be safe from
24 fraud or manipulation.” *See AAPD v. Shelley*, 324 F. Supp. 2d 1120, 1131 (C.D. Cal. 2004)
25 (“subjecting the certification process, but not the decertification process to the APA would
26 be more likely result, as §19205 [governing certification] specifically refers to “regulations”
27 and §19222 [governing decertification] does not”).

28 A regulation subject to the APA must comply with the APA’s requirements. *See* Gov’t

1 Code §11340.5(a); *State Water Res. Control Bd. v. Office of Admin. Law*, 12 Cal. App. 4th
2 697, 706 (1993). The Secretary's "requirements" did not satisfy the APA's public notice
3 and hearing requirements: the Secretary did not file a copy of the proposed regulation
4 (Gov't Code §11346.2(a)), file a statement of reasons for the regulation and identify any
5 reports supporting the adoption of the regulation (Gov't Code §11346.2(b)), or hold a public
6 hearing on the new regulations (Gov't Code §11346.8). Because the regulations do not
7 satisfy these statutory requirements, they are invalid as a matter of law. *See* Gov't Code
8 §11340.5(a); *State Water Resources*, 12 Cal. App. 4th at 706.

9 **b. The Secretary Of State's "Conditional Certification" Improperly**
10 **Delegates To County Elections Officials Responsibility For**
Ensuring The AV-TSx's Compliance With State Law.

11 The Secretary of State's certification also improperly delegates election law
12 enforcement to County Elections Officials and private elections system vendors.

13 A delegated power, when made subject to the delegatee's judgment or discretion, "is
14 purely personal and may not be further delegated in the absence of express statutory
15 authorization." *Schechter v. County of Los Angeles*, 258 Cal. App. 2d 391, 396 (1968). The
16 Elections Code delegates enforcement of voting laws to the Secretary of State. Elec. Code
17 §19205. The Elections Code also mandates that the Secretary of State "shall not approve
18 any voting system, or part of a voting system, unless it fulfills the requirements of this code
19 and the regulations of the Secretary of State." *Id.* §19200.

20 When the Secretary of State certified the AV-TSx, he made certification "conditional"
21 on "compl[iance] with all applicable state and federal statutes, regulations, rules and
22 requirements," including the FEC's 2002 Voting System Standards/Guidelines. Gallo Decl.,
23 Ex. E ¶j. The Certification stated that "[a]ny voting system purchased with funds allocated
24 by the Secretary of State's Office shall meet all applicable state and federal standards,
25 regulations and requirements," including the FEC's 2002 Voting System
26 Standards/Guidelines. *Id.* ¶l. As described in Section II.D. *supra*—and as the Secretary's
27 experts have acknowledged (Gallo Decl., Ex. A at 35)—the AV-TSx does not satisfy the
28 FEC's 2002 Standards, made applicable to voting systems in California by virtue of

Noel H. Runyan
638 Sobrato Lane
Campbell, CA

September 5, 2006

Michael T. Williams
Wheeler Trigg Kennedy LLP
1801 California St., Ste. 3600
Denver, CO 80202

RE: *Conroy v. Dennis* - Expert Report

Dear Mr. Williams:

This is my report in the Colorado Direct Recording Electronic ("DRE") voting systems case, *Conroy v. Colorado Secretary of State Ginnette Dennis*.

I. QUALIFICATIONS

I have been asked by counsel for Plaintiffs in this action to provide my opinion whether the Diebold Election Systems, Inc. ("Diebold") AccuVote-TSx ("Diebold TSx") Direct Recording Electronic ("DRE"), Sequoia Voting Systems, Inc. ("Sequoia") AVC Edge II DRE ("Sequoia Edge II"), and Election Systems and Software, Inc. ("ES&S") iVotronic Touch Screen DRE ("ES&S iVotronic") voting systems are accessible for individuals with disabilities, as required by Colorado's Election Code and Election Rules, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters. This report also describes my personal knowledge and experience with DRE voting systems as a voter who is blind.

My opinions are based on more than 36 years of personal and professional experience with microprocessors, digital logic, analog circuits, speech output, human interface design, and development of access technology for persons with disabilities, including extensive development

and application of speech, Braille, and large print interface technologies. My opinions are also based on my professional experience with hands-on examination, testing, demonstration, and use of various voting systems, including the Sequoia Edge and Edge II, ES&S AutoMark, VotePad, and Diebold TSx voting systems, and two separate hands-on trials of the ES&S iVotronic voting system, as well as my personal experiences voting on the Sequoia Edge II machines in several real elections. My opinions are also based on my review of current literature on voting system accessibility, technical specifications and publications of DRE system manufacturers, and other information gathered over the years at conferences, seminars, and workshops on accessibility issues.

I received a BS in Electrical Engineering and Computer Science from the University of New Mexico in May 1973. I was named the Eta Kappa Nu Most Outstanding Electrical Engineering Student in the United States for 1972. In 1971, I received the Engineering Open House Sweepstakes Award for my project, "Digital Voltmeter with Braille Output." Also in 1971, I was awarded 1st place Local, 3rd place Regional prizes in the Institute of Electrical and Electronic Engineers (IEEE) Paper Contest, "Aids and Devices for the Visually Handicapped Engineer."

While a student, in 1968-1969, I worked at the Air Force Weapons Lab, Kirtland AFB on programs for simulating atomic bomb blasts. In 1970, I worked on Mopsis, a tactile graphics program, at the University of Kansas.

From 1973 through 1978, I was employed by IBM. My projects included design and testing of magnetic stripe card security systems, testing the security for ATMs and for Bay Area Rapid Transit system (BART) ticket machines, nonvisual display technology research, systems architecture, electronic logic design, and human factors engineering. At IBM, I developed the

first text to speech program ever used on microprocessors. I used speech synthesizers and microprocessors to develop advanced prototype devices for the visually impaired. I co-invented the first talking touch screen/tablet system. I received an IBM Special Contribution Award in 1978.

From 1978 through 1983, I was employed by Telesensory Systems. My projects there included development of a serial interface, and other portions of the original VersaBraille, the first Braille laptop computer. I developed and patented a vibrating dots Braille display system. I was in charge of the Voice Output Communications Aid (VOCA) research and development projects and the TeleBraille deaf blind communicator research and development projects.

In 1983, I founded a company, now known as Personal Data Systems, to develop communications systems for persons with visual impairments. I headed up the hardware and software design and the development of the Audapter Speech synthesizer and the Talking Tablet System. I authored the EasyScan, BuckScan and PicTac scanning software programs. I helped design accessible touch screen information kiosks. Recently, I have been involved in the development of talking medical devices and accessible talking Internet radio systems.

I have extensive experience integrating over 500 custom computer systems with speech, Braille, and large-print output. I also have experience with the array of adaptive technologies for persons with manual dexterity handicaps, gained while I was the principal investigator on a National Science Foundation funded research project for developing Voice Output Communication Aids (VOCAs) for persons with motor impairments. Many people with problems like Cerebral Palsy cannot speak with their own voice and cannot use a standard keyboard to type messages. As part of this project, I had to become familiar with alternative data input and control systems for people with various keyboard impairments. These alternatives

included head mounted laser pointers, foot switch, eye gaze, eye blink, and puff-and-sip switch scanned input systems (in which the user blows or sucks air to control a communications device) and other systems. In addition, I worked with Telesensory Systems' alternative lap tray communications product called the Autocom, an electronic lap tray communications system that used a magnetic selector puck, instead of a keyboard.

A copy of my curriculum vitae is attached as Exhibit A to this report. My qualifications to testify as an expert witness in the fields of disability access technology generally and voting access technology specifically are provided in that document.

II. METHODOLOGY, ANALYSIS, AND OPINIONS

A. Summary of Opinions

My opinions in this matter are based on my education, training, study, and experience in the fields of disability access technology and voting technology in particular. The Colorado General Assembly has declared that "[I]t is the intent of the general assembly that all state requirements should meet or exceed the minimum federal requirements for accessibility of voting systems and polling places to persons with disabilities." Colo. Rev. Stat. § 1-5-701(a). It is my opinion that the Colorado Secretary of State's certification and qualification processes are wholly inadequate to satisfy the legislative intent of the Colorado Election Code and have resulted in the certification of DRE voting systems that fail to meet the disability access requirements of Colorado law.

In addition, so far as I can tell from the transcripts of the deposition testimony of John Gardner, the Secretary's expert on voting systems and the individual responsible for certification of Colorado's voting systems, the Secretary did not appoint any qualified expert to evaluate the disability access features of the DRE voting systems. Mr. Gardner does not appear to have the education, training, experience, or other qualifications that would allow him to evaluate the

voting systems' compliance with minimum state legal standards for disability access. (Gardner Dep. at 54:13—57:19.)

It also is my opinion that the Colorado Secretary of State has certified the Diebold TSx, Sequoia Edge II, and ES&S iVotronic voting systems in violation of Colorado Revised Statutes sections 1-5-615, 1-5-617, and 1-5-704 and Election Rules 34.1¹, 34.5², and 35.1³ because those three voting systems are not accessible for individuals with disabilities for at least the following reasons:

1. Diebold TSx's and ES&S iVotronic's complete lack of a dual-switch capability without which the systems are inaccessible to voters with severe manual dexterity disabilities and who are unable to use touch screens or keypads;
2. The inadequacy of the Diebold TSx, Sequoia Edge II, and ES&S iVotronic audio access features for persons who are blind, low vision, dyslexic, cognitively impaired, or severely motor impaired;
3. The Sequoia Edge II's, and ES&S iVotronic's lack of simultaneous and synchronized audio and visual outputs without which the systems are inaccessible for

¹ "The requirements of § 301(a)(3) of The Help America Vote Act of 2002 ('HAVA') to implement voting systems that: (1) are accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters . . . are triggered when a political subdivision acquires a new voting system by lease or purchase using HAVA § 301(a)(3) funds after January 1, 2003." Colo. Election Rule 34.1.

² "If a political subdivision acquires a new voting system, the system must be accessible to persons with physical, cultural/educational, mental/cognitive disabilities and provide the voter in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters." Colo. Election Rule 34.5.

³ "A voting system shall be accessible to voters with physical disabilities including no vision, low vision (visual acuity between 20/70 and 20/200, and/or 30 degree or greater visual-field loss), no hearing, low hearing, limited manual dexterity, limited reach, limited strength, no mobility, low mobility, or any combination of the foregoing by providing voters with physical disabilities with a

many voters with visual impairments (e.g., the failure of the Sequoia Edge II, and ES&S iVotronic DREs to accommodate elderly voters who have developed severe visual impairments with age but are unfamiliar with, and unable to cope with, audio-only access technology because they have had normal vision most of their lives) violates Colorado Revised Statute section 1-5-704(d);

4. The verified voter paper audit trails (“VVPATs”) on the three systems are inaccessible to many voters with visual or motor impairments, so that persons with disabilities cannot personally verify the printout of VVPAT printers on the Diebold TSx, Sequoia Edge II, and ES&S iVotronic systems, and such inaccessibility violates Colorado Revised Statute section 1-5-704(1)(b) and (1)(n);

5. All three systems’ blatant lack of adequate privacy curtains to prevent eavesdroppers from reading the text of ballots on the visual displays of the DRE systems, which violates, among other things, voters’ constitutional rights to cast private and secret ballots, as well as Colorado Revised Statute section 1-5-615(1)⁴ and Colorado Election Rule 34.1;

6. The three systems’ lack of technology that allows voters with disabilities to select for themselves different modes or features to provide accessibility without intervention from poll workers; and

practical and effective means to cast an independent and secret ballot . . .” Colo. Election Rule 35.1.

⁴ “No electronic or electromechanical voting system shall be certified by the secretary of state unless such system: (a) Provides for voting in secrecy . . .; (c) Permits each elector to verify his or her votes privately and independently before the ballot is cast; (d) Permits each elector privately and independently to change the ballot or correct any error before the ballot is cast, including by voting a replacement ballot if the elector is otherwise unable to change the ballot or correct an error;. . . Colo. Revised Statute section 1-5-615(1)

7. The Diebold TSx's, Sequoia Edge II's, and ES&S iVotronic's confusing menu selection systems that are difficult for people with cognitive disabilities to use effectively.

It is my opinion that a large portion of Colorado citizens having disabilities who attempt to cast their votes on Diebold TSx, Sequoia Edge II, or ES&S iVotronic voting machines will be unable to do so privately and independently. Below, I will explain each of the deficiencies identified above. Further, it is my opinion that the above failures and omissions could have been corrected using existing adaptive or other available technologies.

My opinions are expressed to a reasonable degree of engineering and scientific certainty and based on the available information as of the date of this report, including my review of the transcripts of John Gardner's deposition testimony and the State of Colorado's voting equipment qualification reports for these systems. In the event that additional information becomes available, my opinions may change accordingly.

B. Foundation for My Analysis of the Diebold TSx, Sequoia Edge II, and ES&S iVotronic DREs

In addition to the qualifications described in section I above, I am thoroughly familiar with the disability access capabilities of the Diebold TSx, Sequoia Edge II, and ES&S iVotronic DRE voting machines, have reviewed the manufacturers' specifications, have attended vendor demonstrations, have personally tested the Diebold TSx in a demonstration ballot-marking environment, have personally tested the Sequoia Edge II by voting on it in several real elections, and have performed two separate hands-on trials of the ES&S iVotronic voting system.

My own hands-on experiences with DRE systems manufactured by these vendors include the following:

- 2002 demonstration of Diebold AccuVote-TS DRE (the predecessor to the Diebold TSx) in a League of Women Voters ("LWV") booth, at a conference for the blind;

- 2003 evaluation of Diebold AccuVote-TS, ES&S iVotronic, and Sequoia Edge with mock ballots at the Peninsula Center for the Blind and Visually Impaired, Palo Alto, California;
- 2003 trial voting on Diebold AccuVote-TS in LWV booth at a conference for the blind;
- 2004 trial with mock ballot on the Diebold TSx at the American Council of the Blind summer conference;
- 2004 and 2006 voting four different times on Sequoia Edge II in Santa Clara County, California, elections; and
- April 2006 personal testing of the Diebold TSx, the ES&S iVotronic, and other voting systems at the National Federation of the Blind Technology Center in Baltimore, Maryland.

I have also discussed, at length, the Diebold TSx, Sequoia Edge II, and ES&S iVotronic machines' designs and performances with several experts on accessible electronic voting systems, who also have personally tested the Diebold TSx, Sequoia Edge II, and ES&S iVotronic DREs with their audio access systems.

In addition to studying the VerifiedVoting.org and Electronic Frontier Foundation (EFF) descriptions of the features and operation of the Diebold TSx, Sequoia Edge II, and ES&S iVotronic, I have studied their specifications, features, and demonstration materials on the manufacturers' web sites. These included detailed step-by-step descriptions of how to vote both with and without their audio systems.

My personal and professional background, my hands-on experiences, my review of the manufacturers' and others' materials, and my discussions with expert users render me able to assess whether or not the Diebold TSx, Sequoia Edge II, and ES&S iVotronic are able to accommodate voters with disabilities and satisfy the disability access requirements of HAVA and Colorado state law.

C. Opinions

The Help America Vote Act of 2002 (“HAVA”) requires that all polling places in elections for federal office anywhere in the United States have at least one voting system that shall “be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.” HAVA § 301(a)(3)(A), 42 U.S.C. § 15481(a)(3)(A). Colorado’s state law incorporates HAVA’s requirements regarding disability access for voting systems. According to the federal Election Assistance Commission (EAC), established by HAVA, “[c]ompliance with Section 301(a)(3) requires that the voting system be accessible to persons with disabilities as defined by the Americans with Disabilities Act, including physical, visual, and cognitive disabilities, such that the disabled individual can privately and independently receive instruction, make selections, and cast a ballot.” EAC Advisory 2005-004, issued July 20, 2005. This means, among other things, that States must acquire and make available to disabled persons voting systems that will accommodate the basic range of disabilities, including such as Cerebral Palsy, aphasia, low vision, blind, deaf blind, and hearing impaired.⁵ The Diebold TSx, Sequoia Edge II, and ES&S iVotronic voting systems do not accommodate these disabilities adequately.

1. Affordable Disability-Access Technologies Are Readily Available

Omission of proper access capabilities from the Diebold TSx, Sequoia Edge II, and ES&S iVotronic DRE voting systems cannot be attributed to impracticality of undue cost or

⁵ Cognitive impairments are impairments that make it more difficult for a voter to process information. For example, voters who have suffered strokes will often suffer some degree of cognitive impairment. Voters with cognitive impairments often will require accommodations that allow them to receive information about the ballot in more than one form simultaneously—for example, visually and through spoken messages.

unavailable technology. Adding the necessary switch-control inputs, alternative tactile-key controls, speech output, and easy-to-read large-text display to electronic voting equipment does not have to entail major costs or great technology breakthroughs.

For over 15 years, computer hardware and software have been successfully assisting persons with a wide variety of disabilities to meaningfully communicate with and use computerized systems. Although not perfected and not implemented evenly across all possible applications, computerized access technologies have made most computer systems reasonably accessible for most persons with disabilities. This is especially true in the case of access to personal computers.

Many blind or low vision folks can now regularly use large-text, speech, or Braille interface systems on computers to do word processing, email, and web browsing.

For over a decade, most personal computers have been able to speak to their users in a high quality voice, using only inexpensive software programs and the standard built-in hardware of the computer. Single-line Braille displays (although costing several thousand dollars or more) have been used by many blind computer users for decades.

For over 16 years, the standard built-in video hardware of personal computers has been powerful enough to allow screen magnifier programs to magnify screen text and images, adjust contrast, and customize the colors used for screen text and background.

For at least a decade, motor-impaired persons with some keyboarding capabilities have been typing on their personal computers, with the aid of software programs that adjust keyboard timing to prevent unwanted key presses or stuttering repeats. This type of keyboard access software also offers "sticky key" options to allow single-finger or mouth-stick entry of keystrokes that would normally require typing with two hands or multiple fingers.

For decades, there have been alternative input-control systems that allow severely motor impaired persons to input text and control computers with just a couple of special switches (like foot switches, large "jelly" switches, sip-and-puff switches, head-movement switches, and eye-blink switches). Sip-and-puff devices are devices that attach to the voting machine and allow the voter to indicate his or her choices by sipping air from or puffing air into a tube. Jelly switches accommodate voting for dexterity-impaired voters. Jelly switches are large buttons that are easier for a person with limited hand strength and dexterity to press. Most of these switch input systems use the standard 1/8-inch audio phone plug for their common interface. Head-mounted laser pointers, eye-gaze input systems, lap-tray puck-sensor systems, and voice-recognition systems are just a few of the many alternative input and control systems in common use for decades.

Today, many folks have sophisticated computerized wheelchairs with built-in accessible communications systems that allow their users to send text messages and send control signals to other computer systems.

To aid folks with hearing impairments, properly designed personal computer systems have, for many years, been able to route warning beeps through their sound systems and to redundantly indicate audible warning sounds, prompts, and messages with visual flashes, captions, or other visible cues.

This is not to say that all computer systems are completely accessible by all persons with disabilities. Rather, it is to demonstrate that many good, inexpensive, and mature access technologies have long been well known and readily available for computerized equipment designers to use in the design of equipment such as accessible electronic voting systems.

Other voting systems incorporate many of the standard access technologies, listed above, either singly or in combination. For example, the Hart InterCivic eSlate DRE and ES&S AutoMark ballot-marking machine both allow alternative input controls with switched devices, and the AutoMark and VotePad tactile ballot systems produce printed paper ballots that can be accessibly verified by voters with disabilities.

2. The Secretary and Her Voting Systems Certification Personnel Have Not Appointed a Qualified Expert to Evaluate the Disability Access Features of the Subject DREs

The Colorado Election Code requires the Secretary to appoint "one or more experts in the fields of data processing, mechanical engineering, or public administration to assist in the examination and testing of electronic or electromechanical voting systems submitted for certification and to produce a written report on each system." Colo. Rev. Stat. § 1-5-617(2). The Secretary could have and should have sought the assistance of an engineer or other qualified person with expertise in disability access technology to evaluate the subject DREs' compliance with Colorado and federal legal requirements regarding disability access. Instead, the Secretary appointed John Gardner as her sole statutory expert. Mr. Gardner appears to be an individual with a degree in architecture and lacks any education, training, or expertise in the fields of engineering and disability access technology. If the Secretary had sought out the assistance of an individual with appropriate expertise in disability access technology, rather than relying on Mr. Gardner, it is my opinion that the certification process would have and should have revealed the Diebold TSx's, the Sequoia Edge II's, and the ES&S iVotronic's failures to satisfy the accessibility requirements of Colorado law.

Further, it appears that Mr. Gardner arbitrarily waived documented instances of statutory non-compliance for the three subject DREs, while declining to certify other devices, such as the ES&S AutoMark ballot-marking device, which affords disability access that is far superior to the

accessibility of the Diebold TSx, Sequoia Edge II, and ES&S iVotronic DREs. For example, in Mr. Gardner's qualification report for the ES&S Unity 3.0.1.0 system, which includes the ES&S iVotronic, he simply warns users of that DRE that the device fails to satisfy the requirement set forth in Colorado Revised Statute section 1-5-704(d). (State of Colo. Qualification Rep. for Election Systems & Software at 7.) In the qualification report for the Sequoia Voting Systems System 5.0, which includes the Sequoia Edge II, he doesn't even mention that the Sequoia Edge II also fails to satisfy that requirement. (E.g., State of Colo. Voting Equip. Qualification Rep. for Sequoia Voting Systems at 5-7.) Simultaneous audio and video is not a "minor requirement," and Mr. Gardner is not qualified to make that "judgment call". (Gardner Dep. at 54:13—57:19, 71:23—82:4.) Nor was he qualified to make the judgment call that the inability to remove a sleeved ballot from an ES&S AutoMark was a critically important part of casting a ballot independently, and he declined certification of the ES&S AutoMark based on that perceived non-compliance with the Colorado Election Rules. (Gardner Dep. 69:3—70:1, 80:22-25.)

3. Missing and Inadequate Access Features on the Diebold TSx, Sequoia Edge II, and ES&S iVotronic DREs

a. The Subject DREs' Failure to Accommodate Severe Dexterity Disabilities

In order for a voting system to comport with federal and state accessibility requirements, a voting machine's adaptive technology must accommodate not only blind and low vision persons but also persons with physical disabilities, such as dexterity disabilities, as well as persons with hearing impairments, or cognitive disabilities.

There currently exist available adaptive technologies for persons with various keyboard impairments and complete inability to use hand controls, and these technologies are readily adaptable to voting machines. Such technologies include head switches, foot switches, giant jelly switches, and sip-and-puff switches. The only practical way to connect these adaptive

devices to a computer or other equipment the user wishes to control and operate, such as a voting machine, is through a standard 1/8-inch phone-plug dual-switch interface. Diebold TSx and ES&S DRE voting machines do not support these standard two-switch systems. Voters with manual dexterity disabilities who use a sip-and-puff switch, a foot switch, a head switch, or any other dual-switch adaptive device cannot plug that device into the Diebold TSx or ES&S iVotronic to gain control over the system. Voters with manual dexterity disabilities who are unable to use these three voting systems' manual selection buttons or touch screen are thus prevented from casting a vote using these voting systems. These defects deny voters with severe manual dexterity disabilities the same opportunity for access and participation (including privacy and independence) enjoyed by other voters who use these three voting systems.

Dual-switch adaptive technology has been available for more than 15 years, is affordable, and is easy to implement. The failure of the Diebold TSx and ES&S iVotronic voting systems to include dual-switch adaptive technology is inexcusable and makes the systems inaccessible to most people with severe manual dexterity disabilities.

The sip-and-puff option proposed for the Sequoia Edge II would work only with audio output, and without visual display. It would force voters with severe motor impairments to vote as though they were also totally blind. The no-key-pressed timeouts that are so annoying and confusing for blind voters are likely to happen even more often to most severely motor-impaired voters. Additionally, the audio orientation instructions and prompts are for using the tactile keypad and are totally inappropriate and unhelpful for two-switch users.

Because Sequoia's sip-and-puff switch controls would only give voters the "Forward" and "Select" control input functions, they would not have access to the "Help" functions and would not be able to reasonably back up to hear something again or make corrections. This

attempt to offer a sip-and-puff interface is bogus and not what the access industry would normally consider to be a two-switch or sip-and-puff interface. Normally, a two-switch interface to a system with a visual display would permit the user to select items on the visual display, instead of forcing them to use an exclusively audio output system built for blind users. Sequoia's proposed interface is token and represents a poorly considered, tacked-on approach to accessible voting system design. It will not functionally meet the needs of most severely motor impaired voters.

The Diebold TSx, Sequoia Edge II, and ES&S iVotronic DRE voting machines also do not support computerized communicators such as head-mounted laser pointers, eye gaze, eye blink, and electronic lap-tray puck-selector systems because they do not support serial or other standard I/O interfaces. Therefore, voters whose dexterity disability requires them to use adaptive technologies are not afforded "the same opportunity for access and participation (including privacy and independence) as for other voters" on these three voting systems, nor can many voters with such a physical disability "privately and independently receive instruction, make selections, and cast a ballot."

The Diebold TSx and Sequoia Edge II voting machines require voters to insert and remove the voter identification card, which is much smaller and even more difficult than removing the AutoMark's paper ballot, yet for some reason Mr. Gardner did not make a consistent judgment call that this feature of the Diebold TSx and Sequoia Edge II was "major" or sufficient grounds on which to deny certification of the latter systems.

The legs of the Sequoia Edge II stand appear to be only about 16 inches apart, too narrow for some wheelchairs, as explicitly anticipated in Colorado Election Rule 35.1.15, which provides for a 30-inch wide clearance.

b. Inadequate Keypads

As specified in section 508 of the Americans with Disabilities Act (ADA), "Controls and keys shall be operable with one hand . . ." Likewise, Colorado Revised Statute section 1-5-704(1)(k) states that "[c]ontrols and mechanisms shall be operable with one hand, including with a closed fist, and operable without tight grasping, pinching, or twisting of the wrist." Many voters with motor impairments cannot hold the Diebold TSx or the Sequoia Edge II tethered keypads in one hand, while attempting to press keys with the other.

Unlike smaller and more ergonomically designed single-hand-operated remote controls for television sets, the large size and form factor of the Sequoia Edge II and Diebold TSx keypads do not facilitate their use as a keypad held in a single hand and operated by the thumbs of the same hand.

Although Diebold's own literature represents the TSx's tethered keypad as a "tactile keypad," their telephone keypad with a bump on the 5 key is not what the access industry considers a tactile keypad. Its keys are much too small and too close together for most persons with major motor impairments to be able to use it. There are too many keys, including keys that apparently have no function at all. Proper accessible keypads should have only a few keys and the keys should be much larger and be spaced further apart. Additionally, the keys should have high-contrast coloring, large print labels, and unique tactile shapes; all chosen to make them simple to discover, to identify intuitively, to remember easily, and to locate quickly.

The Sequoia Edge II tethered keypad is so big and bulky that many voters, not to mention those with dexterity impairments, find it very awkward to hold and operate, even with both hands.

Because the Sequoia Edge II has no built-in keypad cradle or place to park the keypad without the keypad having to be held by the voter, a standing voter is forced to try to hold the keypad in one hand and operate it with the other.

There is no place to leave the Sequoia Edge II keypad when you are through voting. I have personally found Sequoia Edge II voting machines in polling places with the keypads and earphones left hanging over the edge, by their cables, and dragging on the floor.

The Braille labels on the keys of the Sequoia Edge II keypad are difficult to read. They do not have the Braille dots spaced properly, with the standard Braille dot spacing. They are also so close to the back edge of the keys that it is difficult for many Braille readers to get their finger tips onto the dots to feel them.

The ES&S iVotronic does not have a built-in volume control. The inline volume control slide on all of the ES&S iVotronic DRE headsets are of poor quality, noisy and scratchy, and there is no tactile indication for where it should be set for normal operation. Consequently, I missed the initial instruction message of the system before I figured out how to get the volume set properly.

The ES&S iVotronic lacks a "speed control" for the audio output. This is important for the elderly and people with learning disabilities, cognitive disabilities or special needs who need to listen to the instructions and ballot selections at a slower rate than the fixed, default rate set by the system, while other voters cannot stand to listen to tediously slow speech. Voice speed control is standard adaptive technology that has been around for many years. It can be easily implemented, and commonly has been implemented, in computer systems, including electronic voting systems.

The challenge of using such keypads or touch screens, for many folks with motor impairments, may be better appreciated if you imagine yourself trying to operate the touch screens, the keypad of the Sequoia Edge II, or the telephone-style keypad of the Diebold TSx with the heel of your hand, your elbow, a rod held in your armpit, or a small baseball bat held in your mouth. Instead of the small, indistinct, closely spaced keys on the Diebold TSx's telephone-style keypad, other voting devices such as the ES&S AutoMark have large, widely spaced, and distinct tactile keys.

The ES&S iVotronic also needs, but does not have, a detachable keypad that can be positioned on the lap, hand, or other convenient place if required. If designed properly, this adaptive tactile keypad technology, which has also been around for a long time, would allow more voters with motor impairments or reaching impairments to operate the input controls.

The proper operation of the system by the voter should be highly discoverable. This means that a voter should be able to figure out how to use the system without previous training and without significant instruction by a poll worker. To aid in this discovery, the Diebold TSx, Sequoia Edge II, and ES&S iVotronic should have audio key describer features, such as holding the Help key down while pressing a second key to produce a message describing the second key's function.

Additionally, the Diebold TSx, Sequoia Edge II, and ES&S iVotronic each need, but do not have, practice modes with a simplified example mini ballot, to give the voter who needs it a comfortable opportunity to figure out how to view, mark, review, and correct their choices.

The Diebold TSx, Sequoia Edge II, and ES&S iVotronic also do not have a "Call for Help" key or other control to discretely summon assistance from a poll worker.

As demonstrated in the Trace Center (Madison) proposal for an ideal voting system, the Diebold TSx and ES&S iVotronic should (but do not) have an 1/8 inch phone jack (separate from the headphone jack) on the keypad, for attaching a sip-and-puff or other standard switched input-control device.

c. Inadequate Audio Interfaces for Blind and Low Vision Voters

The Diebold TSx, Sequoia Edge II, and ES&S iVotronic, from my direct experience, have no more than poorly functioning and ineffective audio interfaces. The designs of the Diebold TSx, Sequoia Edge II, and ES&S iVotronic DREs require poll workers to enable the audio function for the voter. The selection of this access option and others, such as larger or smaller text size, should be available at all times, for selection by the voters themselves. Choosing to use access features should not require poll worker intervention such as reprogramming of the voter identification card (as is required by the Diebold TSx system), nor rebooting the system (as has been required by the Sequoia Edge II). The current state of adaptive technology allows for people with visual disabilities to do "discovery" and "personal adaptation" on well-designed computer systems without intervention (*i.e.*, the ability to go to a computer system and immediately begin to privately adapt it for personal use). Just as voters can select a language choice on these systems by themselves, they should be able to select audio mode or video viewing enhancements by themselves, without the intervention of poll workers or third parties. There is no good reason that voting systems could not have personal configuration abilities for selecting access media and settings.

The absence of this technology to allow immediate use and adaptation by people with disabilities without third party intervention causes several problems for people with visual and other disabilities. One is the total lack of privacy, as the voter is required to inform election officials in front of other people of his or her disability and the need for assistance, denying that

voter privacy and independence. This problem is particularly acute for people who prefer to keep secret the fact that they have visual or reading impairments or other special needs.

Another problem with running the system in a completely separate audio mode is the possibility that the system will malfunction when it operates in a separate, special audio mode. In one well-publicized demonstration to California voting officials, a Sequoia voting system misrepresented votes when it was switched to Spanish language mode. A similar problem could occur when the Diebold TSx, Sequoia Edge II, or ES&S iVotronic are switched to a special audio mode.

Voting with audio output on the Diebold TSx, Sequoia Edge II, and ES&S iVotronic is an excessively slow and tedious process. In the case of the Diebold TSx, this is due, in large part, to its annoyingly long, pregnant pauses between phrases or messages. It also has overly verbose prompts that relentlessly keep repeating unnecessarily long messages throughout the ballot marking process. However, when you need it to talk, the Diebold TSx audio prompting does not tell you how to return to reviewing the ballot.

Moving back and forth between reviewing and making changes in the Diebold TSx ballot can be a long, slow process, because it usually requires many repeated pressings of the forward or backup keys.

Many voters using the Diebold TSx, Sequoia Edge II, or ES&S iVotronic audio access feature would not be able to navigate their cognitively difficult hierarchical menus and ballot marking, review, and correction systems. For example, the ES&S iVotronic voting system uses a complicated and confusing process for navigating its hierarchical menu system. Its poorly worded messages and complicated logic make it difficult to use, especially for the elderly and people with learning disabilities or cognitive impairments. A good example is that one button

(the green, diamond-shaped button) is used on some screens to select a candidate but used elsewhere to move to the next race. A voting system with good human factors design would not have more than one function per button, to avoid confusion and erroneous voting.

The navigation buttons also can cause confusion about what race you're on and who you're voting for. For example, initially, the voter is placed in the top level, or contest level, of the hierarchy, and uses the yellow "Up and Down" arrow buttons to move from contest to contest, and presses the green "Select" button to enter a race. Once in a particular race, the voter is at the bottom, or candidate level, of the hierarchy and again uses the "Up and Down" buttons to move from candidate to candidate. The voter presses the "Select" button to choose the candidate of his or her choice within that race. The problem is that if a voter moves past the last candidate in a race, the system immediately moves back up a level in the hierarchy to the contest level, positioned on the next race. If the voter realizes that he or she has been automatically moved out of one race into another race, they would have to move back to the original race they were working on and again press the Select button to move back down into the candidate level. If the voter doesn't comprehend what has happened in these situations (as is likely with the elderly or people with learning disabilities, cognitive impairments, dyslexia, or other special needs), the voter may be confused and think that he or she is selecting a candidate for one race while the system has actually moved on to another race.

I noted that, in his deposition testimony, John Gardner described a flow-chart-like note on his test documentation as something he had to write down to figure out how that audio menu worked. If he was having that much trouble understanding the DRE's audio menu systems, it seems that it should have been obvious to him that the system was too cognitively challenging for the average voter.

In my opinion, this confusing system of input controls and multilevel menu system renders these DRE voting systems inaccessible to people with certain visual or cognitive impairments. These overwhelmingly complicated systems will also cause some people with disabilities to skip voting altogether, or to "short circuit" the process, such as skipping the summary page. Incredibly, reading the summary page on the ES&S iVotronic is the only way for a voter to confirm if they have "under-voted" (*i.e.*, failed to vote for enough candidates for every race).

An additional frustration I encountered with the speech on the Diebold TSx, Sequoia Edge II, and ES&S iVotronic DREs was that the volume on some of the messages was so much lower than the rest of the messages that I had to turn up the volume, try to make it repeat the message, and then turn the volume back down before proceeding. The volume on all the messages should be normalized to make them the same. This is easy to do and should be done for all messages.

To support the needs of audio voters who have major hearing loss, a high volume boost capability should be but is not available for Diebold TSx, Sequoia Edge II, or ES&S iVotronic machines. Mr. Gardner's qualification reports do not mention testing for or confirming if any of the certified systems meet the 97 db audio output level minimum requirement.

When using audio output, the voter should always be able to turn off or on the visual display output. This would allow audio-only voters to have better privacy, if they want it, while allowing them to re-enable the visual display whenever they desire. For example, it might be helpful for the voter to enable the visual display when asking for assistance from a sighted poll worker. Neither the Diebold TSx, Sequoia Edge II, nor the ES&S iVotronic have a control to enable and disable the video display while using the audio-voting feature.

If you are forced to stand while voting with either the Diebold TSx or Sequoia Edge II, you will need to detach the keypad from the side of the DRE and hold it in your hand. As a Braille reader, I have found it extremely difficult to read the Braille notes I bring to the polling place, while trying to also hold and operate a keypad. When reading Braille, it is important to be able to keep one's place by keeping one hand on the Braille text. Having to switch back and forth between reading Braille and holding the keypad is tedious and time consuming, especially on long ballots. A lot of time is wasted each time I switch from holding the keypad to finding my place again in my Braille notes. The Sequoia Edge II has no cradle or other place to park its keypad for single-handed operation. This makes it very awkward and difficult to read Braille notes while using these keypads.

Unlike the keys of the Diebold TSx keypad, keys that are used to move forward or backward in an audio ballot should have shapes that indicate direction. For example, arrow-shaped keys that intuitively indicate their direction through the ballot choices.

d. Failure to Accommodate Voters Who Require Both Visual and Audio Access

The Sequoia Edge II and ES&S iVotronic systems do not allow for simultaneous and synchronized audio and video outputs, which violates Colorado Revised Statute section 1-5-704(1)(d) and Election Rule 35.1.5. In other words, if these systems are in audio mode, the visual displays are disabled, and if the systems are in visual mode, the audio mode is disabled. This failure to allow simultaneous and synchronized audio and visual outputs makes the systems inaccessible for voters with visual impairments who require or prefer to have audio assistance when viewing the video display of ballot selections. This problem is particularly acute for elderly voters who have developed severe visual impairments with age but are unfamiliar with, and unable to cope with, audio-only access technology because they have previously had good

enough eyesight for most of their lives. For these voters, neither a fully adjustable touch screen display nor the audio access alternative is sufficient by itself. Rather, they require the simultaneous use of both audio and video display systems in order to vote independently and privately.

Empirical studies have confirmed that multi-sensory outputs are more accessible to voters with disabilities than single-sensory outputs. Indeed, these studies have shown that multi-sensory output systems reduce error rates for all voters. Adaptive technology that allows for such multi-sensory outputs has been around for many years, is affordable, and is easily implemented into computer systems. There is no good reason for the Sequoia Edge II and ES&S iVotronic voting systems to lack such basic access technology.

Proper operation of simultaneous audio/visual access does not mean just having the audio/keypad and video/touch screen working at the same time, as separate systems. Rather, it means that they must be integrated in a synchronous fashion. In a synchronous audio/visual output system, selecting an item on the touch screen highlights it visually and also synchronously speaks it through the audio output. Similarly, selecting an item with the keypad or switch input control alternatives should cause the item to be both spoken and visually highlighted. Synchronized, redundant input controls and output media allow the voter to play to their own strengths by focusing on the combination of controls and output that best fits their personal abilities. Synchronized audio and visual display would also be valuable when the audio voter needs some assistance from a poll worker (assuming the voter has the ability to easily turn the visual display mode on and off and gets audible acknowledgement of the display mode).

For similar reasons, it is unreasonable to expect people who may have no visual impairment but are severely motor impaired to be able or willing to use only audio output to read

and mark their ballot on the Sequoia Edge II or ES&S iVotronic DRE machines as if they were also totally blind.

The Diebold TSx, Sequoia Edge II, and ES&S iVotronic voting machines do not permit voters with disabilities to select their audio and visual display modes by themselves. Instead, they must get a poll worker to assist them by selecting the audio or visual modes for them. This requires that the disabled voter is aware of, and knows how to ask for, the proper audio/visual mode, and requires that the poll workers know how to properly select the synchronized mode for the voter. Synchronized audio/visual access mode should be the default access mode for all electronic voting systems.

In practice, the lack of technical training and expertise of poll workers has meant that many visually impaired voters have not been aware of the audio/visual access mode or have been unable to get their poll workers to set up their Diebold TSx, Sequoia Edge II, or ES&S iVotronic voting system properly to use it. For example, Karyn Campbell, in an article she sent to the American Council of the Blind Discussion List and other groups, described her first experience voting with a Diebold TSx machine in the Illinois March 2006 primary. She explained that she asked for an audio ballot, and had to have poll workers reprogram her voter ID card, as it did not set up the Diebold TSx properly the first time she tried it. When she put the reprogrammed card in the Diebold TSx machine, it started working in audio mode, but with the video output in the wrong mode. Not wanting to push her luck, she gave up and went ahead and voted with the Diebold TSx machine not configured as she needed.

In my own first voting experience with the Sequoia Edge II, the poll workers were never able to get the DRE working in audio mode, even after 45 minutes of reading manuals and calling voter tech support service centers.

The access functions of the Diebold TSx, Sequoia Edge II, and ES&S iVotronic systems are also not suitable for providing accessible voting to voters who are both profoundly hearing impaired and visually impaired. The lack of a standard output interface port means that, for example, a deaf-blind voter cannot bring his or her own portable Braille display device to the polls and plug it into a standard output plug of the DRE, in order to read the instruction materials, mark, review, and correct his or her ballot privately and independently.

In order to provide accessibility for people with hearing impairments, these DRE systems should have a "boosted" high volume capability for audio voters who normally need the higher volume levels of assisted listening. The absence of such a "boosted" volume setting on these DRE systems means that the systems are inaccessible for some audio-using voters with severe hearing impairments.

For voters who are low vision but not blind, the Diebold TSx, Sequoia Edge II, and ES&S iVotronic do not provide the combination of touch screen display modification capabilities necessary to accommodate the range of vision impairments. Vision impairments vary considerably from person to person. An adequate display modification system permits the user to change contrast, foreground and background colors, fonts and font size, with options for multiple font sizes or for zoom magnification. The Sequoia Edge II and ES&S iVotronic are not accessible for some people with astigmatism, color blindness, or other visual impairments because they do not provide for contrast control or foreground/background color selection. Contrast control allows for adjustment of the display's contrast sharpness (*i.e.*, high, medium, or low) while color selection allows a person to change from the default "black text on a white background" display to "white text on a black background" or some other color combination. Some visually impaired people prefer and need different colors or contrasts in order to read

effectively. This adaptive technology has been around for 16 years or more, is affordable, and is easily implemented into computer systems. Here also there is no good reason for these voting systems not to fully include this enhanced video display technology.

For the reasons discussed above, the Diebold TSx, Sequoia Edge II, and ES&S iVotronic DREs fall far short of meeting HAVA and Colorado's statutory standards. As other DRE manufacturers have managed it, there appears to be no good reason that the manufacturers of the Diebold TSx, Sequoia Edge II, and ES&S iVotronic voting machines could not have easily adapted their designs to provide accessible visual display technology.

e. Privacy from Eavesdropping

Because low vision voters would like to use large, clear text on the screen and may have difficulty detecting eavesdroppers, the lack of a privacy surround curtain enclosing the booth area (not just token privacy side panels), appears to be a serious or even totally unacceptable privacy breach. The side privacy panels of the Diebold TSx, Sequoia Edge II, and ES&S iVotronic systems are inadequate for assuring privacy for all voters. The privacy exposure in the booth has been made worse by the addition of the VVPAT printers beside the DRE voting machines. This makes it harder to shield the screen and printer display window with your body. The lack of a privacy curtain adequately enclosing the booth area creates an unacceptable privacy exposure, all in violation of constitutional requirements and Colorado Revised Statute section 1-5-615(a), (c), and (d).

f. VVPAT Printouts Are Not Accessible to Many Persons with Disabilities

When attempting to read the output of the Voter Verifiable Paper Audit Trail ("VVPAT") printers in Diebold TSx, Sequoia Edge II, and ES&S iVotronic DREs, voters with low vision can only achieve useful magnification of the printout through external lenses. For nonvisual readers

and for voters whose impairments prevent them from positioning themselves close enough to the VVPAT printer view window to read the printout, verifying their own vote on the verification paper printout is not possible. Using the audio read back feature of the DRE to confirm their electronic ballot marking in the DRE does not allow them to verify that their vote is recorded properly on the VVPAT paper printouts.

For example, the ES&S iVotronic voting system provides a VVPAT by means of a printer attached to each device that records on a rolling paper scroll the selections of voters as those selections are made. A voter verifies his or her vote on the audit trail by viewing the printout of that vote on the paper scroll through a small, "audit log window" on the printer. The ES&S iVotronic VVPAT, however, is not adaptable for, or useable by, many people with visual or motor disabilities. Blind voters cannot read the printout at all, and other visually impaired people might only be able to read this paper with the assistance of external lenses. Verification is also not possible for many voters with motor disabilities (e.g., those who use wheelchairs) whose impairments prevent them from positioning themselves close enough to the VVPAT printer audit log window to read the printout.

Because these three DRE systems lack a VVPAT that all visually impaired or motor impaired voters can use, they do not afford the same opportunity for access and participation (including privacy and independence) as for other voters on these voting systems. Instead, the electronic voting machines give voters without visual or motor impairments a verification feature not made accessible to visually impaired or motor impaired voters.

With respect to the Diebold TSx, verification of the printout is also not possible when the tablet portion of the Diebold TSx is removed from the base, for example, to place it in a voter's lap or to take it outside for use in an automobile.

The VVPATs are really not accessible for most of the voters with disabilities or special needs. Voters with disabilities are more likely to have these DRE voting systems misrepresent their vote, accidentally or maliciously, so they have even greater need than other voters to accessibly verify the audit record. When representatives attempt to justify the lack of fully accessible VVPAT printouts by saying that it isn't important or doesn't matter because "other voting systems vendors don't have it," they are simply wrong. Adaptive technology to provide visually impaired and motor impaired voters with VVPAT capability is currently available, and systems such as the AutoMark Voter Assist Terminal (manufactured by ES&S) and VotePad (a tactile ballot sleeve technology), both of which I have tested, are able to provide accessible verification with standard paper ballots. The failure of the Diebold TSx, Sequoia Edge II, and ES&S iVotronic voting systems to include accessible VVPAT technology cannot be justified.

g. My Personal Experience Voting in Actual Elections on the Sequoia Edge II DREs

I have attempted to vote on Sequoia Edge II DRE machines in four separate elections. The first time, in March of 2004, the poll workers were never able to get any of the machines at our polling place rebooted with the audio-assist feature working. After 45 minutes of struggling with the systems, we gave up and I had to have someone else do my voting for me. Clearly these Sequoia Edge DREs were not designed correctly to be operated by poll workers lacking high levels of technical sophistication.

My experience voting on the Sequoia Edge II DRE with the audio-assist feature in the November 2004 election illustrates the problems that blind and visually impaired voters face when attempting to vote on Sequoia Edge II DREs.

After signing in, and getting my voter smart card, I had to wait eight minutes for officials to manage to reboot the audio voting machine. The polling officers had been using it for visual

touch screen voting, as there was a very long line and just five voting machines for our combined two-precinct polling place.

I had my notes in Braille. Because there was no table surface for the notes, the poll workers had to find me a chair so I could read my notes with the Braille on my lap.

The volume control on the front of the Sequoia Edge II keypad was not working well and resulted in scratchy and intermittent sound. By the time I got the volume set to where I could understand it, the introduction message had already finished the English instructions and was off into other languages. I was not sure what I should do, so I finally gave up and pressed the select button. This eventually got me to the language menu, where I was able to select English and get started with my ballot.

The first major problem I had was that the ballot on the Sequoia Edge II voting machine was not in the same order as the printed sample ballot. When my wife pointed this out to the chief poll worker, the poll worker was surprised to see the difference and said maybe that would explain why it was taking most voters longer than expected to vote. Because my notes were done in the order of the sample ballot, I had to do a lot of hopping around in my notes and be very thorough and careful listening to the machine. In contrast to what we had been told, the list of candidate names was spoken in alphabetical order.

It took me 30 minutes to work my way through the ballot and make my selections. After that, I had quite a bit of trouble getting into the review mode, to get a full list of all my selections. When I did, it went on and on, for 23 minutes, like a long uncontrolled drink from a fire hose. The review function read each item, and then, at the very end, said what my selection was for that item. It even threw in the details of what the fiscal impact would be, and took forever. This is completely backwards. It should announce the name of the item, then state my

selection, and then read the rest of the information for that item. Also, I should have the control to press the arrow key to move forward or backward through the items, without having to listen to all the text about every item.

When I did find that I had made a mistake in my selections, I had to wait until the end of the whole review process to correct it, instead of being able to stop, make the change, and then continue with the review where I left off. I did not want to abort the ballot verification review to make a correction, and then have to start the long, tedious review all over again.

When I later attempted to change one of my selections from "no" to "yes," the machine would not let me just select "yes," until I had first gone to the unwanted choice and deselected it. This was very awkward and confusing. This is just poor human factors design for anybody, but especially for those using the audio assist feature. Many voters using the audio assist feature would not be able to navigate this difficult review and correction procedure.

At one point, as I was nearing the end of the ballot, I was dumped back into the language selection menu. I found out later that this was because the Sequoia Edge II has a timeout function that did this because I hadn't hit a key in quite a while. I hadn't hit a key for a while because it was taking a very long while to read out the long ballot summary! This is terrible human factors design. If a system is trying to present a helpful prompt when it senses an overly long delayed response from the user, it should never bounce the user off into a different place in the menu system. It might prompt the user, but it should then leave them at their previous position, to minimize confusion. Furthermore, the timeout should not begin until the system has finished reading out its message—in this case, after the whole ballot review summary. For a scary minute, I was afraid I had just lost my ballot and would have to start all over. I re-selected "English" and fortunately was returned to my previous location in the ballot.

An additional frustration was that the volume on some of the messages was so much lower than the rest of the messages that I had to turn up the volume, repeat the message, and then turn the volume back down before proceeding. The volume on all the messages should be normalized to make them the same.

From the time I signed in and got my voter smart card, it took eight minutes to reboot the machine as an audio voting machine, 30 minutes to make my choices, 23 minutes to review and verify, and another four minutes to make a correction and record my vote. Not counting the hour I had waited in line, it took me about 65 minutes to mark and record my ballot.

It would have taken even longer if I had been willing to wait, as prompted, until the end of each message to push the "select" button. The messages mislead some folks because they say something like, "at the end of this message, you can press the . . ." This implies that you are supposed to wait until the speech message finishes.

I must emphasize that, in my opinion, my ability to navigate this process at all was due to my familiarity with computers and computer technology. I doubt that many blind or visually impaired voters would have been able to navigate it at all.

As an expert in the design of audio access technology, it is my opinion that the Sequoia Edge II system was incompetently designed.

The Sequoia Edge II audio review process is totally unacceptable and would cause most voters with disabilities to skip the review.

There were at least two times when I wanted to ask for help from the poll workers. One was during the confusion I encountered from the difference between the printed sample ballot and the DRE ballot. The other time was near the end of my ballot marking, when I had a lot of trouble getting the review started and then was trying to find and change a mistake I found

during the review. Because the poll workers would not be able to look at a working visual display on my system, and didn't have any way to join me in listening to the audio output of the machine, I knew that I couldn't get much help from them (even though our head polling officer seemed very knowledgeable and helpful).

In November of 2005 I once again had a very frustrating experience attempting to vote with the Sequoia Edge II machine. The polling officers (who were actually very pleasant) thought that they had booted the machine into audio mode first thing in the morning but they had not. Once they realized that it was not in audio mode, they could not figure out how to reboot the DRE into audio mode. After my wife read their manual and figured out the correct audio boot up process, she finally managed to get the machine properly rebooted and talking for them. This rebooting fiasco took 18 very frustrating minutes.

After the Sequoia Edge II voting machine finally started talking, it took me about six minutes to fill out the ballot, seven minutes to review my vote, and another minute to record my ballot and finish. Total time in front of the machine was 32 minutes. Luckily it was a short ballot with just eight choices.

After I initially made all my ballot choices, the Sequoia Edge II machine prompted me with a message that said something like "You are finished voting" instead of "If you are finished voting . . .," which is likely to cause some folks to walk away before their vote has been properly recorded. It should more obviously prompt with something like "If you are done making your choices, press select to record your vote." Many of the factory built-in prompts of the Sequoia Edge II audio-assist feature are similarly poorly worded and misleading or confusing.

Additionally, understanding the locally recorded November 2005 ballot messages was very difficult, because they had used a non-native reader who had a very thick foreign accent.

Clearly, if I hadn't been very tenacious and hadn't taken my own computer expert along when I went to vote, I wouldn't have been able to vote privately.

More generally, I must emphasize that, in my opinion, my ability to independently navigate the Diebold TSx, Sequoia Edge II, and ES&S iVotronic voting processes at all was due to my familiarity with computers and computer technology. Many blind, low vision, and cognitively impaired voters would not be able to successfully navigate through the Diebold TSx's, Sequoia Edge II's, and ES&S iVotronic's hierarchical menu systems.

Additionally, as one familiar with the technology, I was far more likely than the typical voter using audio access to be able to figure out how Sequoia audio features worked and were structured, yet I had considerable difficulty that slowed the voting process. Many voters forced to use the audio-assist features might be embarrassed to tie up a voting machine for long periods, or not have sufficient patience, and therefore decide not to vote the entire ballot or not to fully review their selections before casting their ballot.

The June 6, 2006, primary election in Santa Clara County was my fourth opportunity to attempt to vote on the Sequoia Edge II electronic voting systems. For 12 minutes, the poll workers struggled with trying to get the system talking. By watching the screen for them, my wife was able to tell them it wasn't setting up correctly. The poll workers tried repeatedly to program the voter ID card properly so it would cause my voting machine to talk. Fortunately, I remembered that, at the last Voter Access Advisory Committee meeting, a member of the ROV staff told me that the Sequoia ID card encoder did not show a menu choice for the audio voting mode. Our poll workers did not know that, just before the final step of encoding the ID card, they were supposed to issue a special menu command to bring up a hidden menu for selecting audio access mode.

After I explained this procedure for properly using the card encoder, they were eventually convinced to try it and were finally able to make me an ID card that actually worked and brought the machine up in the audio voting mode. What did happen, and what will happen in the general elections, to all the folks who were not told or did not remember enough to convincingly tell their poll workers how to encode their cards properly for audio access mode? They will not be able to vote using the Sequoia Edge II machines.

After 12 minutes waiting for my Sequoia Edge II machine to be configured in audio mode, it took an additional 31 minutes for me to successfully navigate my way through the ballot marking procedure. It then took eight more minutes for it to play out the ballot review. At this point, I decided that I needed to change one of my votes to a write-in and that procedure took another seven minutes.

By the time the Sequoia Edge II system printed the paper trail and then spit out my voter ID card, I had spent a total of 59.5 minutes—nearly an hour—trying to vote privately.

There were several other problems I encountered while trying to vote on this Sequoia Edge II voting system. The voter ID card slot was hard to find, as it was located so low on the front bottom of the machine and lacked a good tactile guide bezel around its opening. The locally recorded audio messages were distorted and poor quality from the speaker blowing on the microphone. At least three times while I was voting the Sequoia Edge II timed out and put me back in the language selection menu, where it then required that I press the Select key twice to exit the language menu and return to my previous position in the ballot.

When the system printed my vote on the VVPAT roll-to-roll printer, I asked my wife to take a look at it, to verify my vote for me. It turns out that if I am using the audio access feature and have a multi-page ballot, the printer prints out the whole ballot in one shot, and then clears it

out of the viewing window, without any break to stop and permit me to have a sighted friend read the paper trail for me. When sighted folks are printing their ballot on the VVPAT without audio, it only prints a single printer page at a time and then pauses for the user to press a button to make it print the next page, after the voter is ready.

Because the manufacturer of the Sequoia Edge II system knows that blind voters will not be able to read and verify the paper trail themselves, the manufacturer incorrectly assumes that all audio voters want the whole ballot printed out without any pauses for viewing by anyone. Voters with disabilities are more likely to have electronic voting systems misrepresent their vote, accidentally or maliciously, so they have even greater need than other voters to accessibly verify the audit record.

One of the Sequoia Edge II voting machines in our polling place was broken and taken out of service. Luckily for me, it was not the audio access voting machine. Based on affidavits from Colorado voters and newspaper articles, the situation I encountered was similar to the situations that some Colorado voters have experienced in Colorado's elections when Sequoia and other manufacturers' DREs were temporarily taken out of service at several polling locations. (*E.g.*, George Merritt, "New Machines Puzzle Voters, Officials," *The Denver Post*, Aug. 9, 2006; Aff. of Brenda St. John ¶¶ 6-8; Aff. of Donna Plutschuck ¶¶ 3-11.)

h. Other Voters' Experiences Voting in Actual Elections on the Subject DREs

What I have heard from other voters, even sighted voters (*e.g.*, Aff. of Jeanine Maxey ¶¶ 2-6), is that they have often caught ballot marking mistakes in the review process. It is clear from this and from my own experience, that we really have to go through the review process in order to make sure that our ballots are accurate. The Diebold TSx, Sequoia Edge II, and ES&S

iVotronic review processes are likely to cause most voters with disabilities to give up and skip the review.

One of the plaintiffs in the California voter action, which is challenging certain DREs like this Colorado action, had to wait, after getting her voter ID card encoded, for the person in front of her to finish voting on the audio access Sequoia machine. When it was her turn to vote, the Sequoia Edge II rejected her voter ID card, as it had exceeded the 30-minute time-out limit. She had to have her card encoded several times more, before the poll workers could finally manage to get it properly set up to put the Sequoia Edge II machine in audio access mode.

Since the June 2006 primary election, I've heard from other voters who voted in precincts of Santa Clara County that were using the cardboard privacy panels from the old punch-card booths, in hopes that would afford a better privacy shield than the flimsy panels that normally are attached to the sides of the Sequoia Edge II units.

A motor-impaired friend of mine who tried to vote on the Sequoia Edge II found that he had to have a poll worker stand behind the touch screen unit and hold up its back end to keep it from falling off his lap while he voted. The Sequoia Edge II is clearly not designed to work in the lap of someone in a wheelchair.

I am aware that Diebold, Sequoia, and ES&S all represent that they are working on making future improvements to the audio prompts and other capabilities of their DRE machines. This sounds good and should be encouraged. However, like the two-switch input-control feature and other access options that have been promised by these vendors, these possible future features are still not available on our real voting systems in our real polling places today.

As my own experiences prove, it is certainly possible for some tenacious disabled persons to get through the voting process successfully on these Diebold TSX, Sequoia Edge II,

and ES&S iVotronic systems. However, that experienced computer and access technology users like myself have had such frustrating experiences trying to use the Diebold TSx, Sequoia Edge II, and ES&S iVotronic DREs, clearly indicates that these systems have not been designed to provide appropriate access for the general disabled population.

The problems that poll workers have had properly setting up the Diebold TSx, Sequoia Edge II, and ES&S iVotronic voting systems for use by disabled voters show that the machines are not designed properly for operation by the general population of poll workers. The problem is due to flaws in the human factors design of the DREs, and should not be blamed on the poll workers' or voters' lack of technical expertise. Clearly, these Diebold TSx, Sequoia Edge II, and ES&S iVotronic DREs were not designed correctly to be operated in the real world by normal poll workers lacking high levels of technical sophistication and training.

The setup of these machines in audio access mode is still too complicated for the average poll worker; marking and reviewing the ballot takes a very long time for the audio voter; the physical privacy shielding is much worse than it used to be with punch-card systems; and audio voters do not have any way of verifying the paper audit trail privately or otherwise.

In summary, it is my opinion that the Diebold TSx, Sequoia Edge II, and ES&S iVotronic DREs are not voting systems that meet HAVA and Colorado statutes' disability accommodation requirements. The Diebold TSx, Sequoia Edge II, and ES&S iVotronic systems each would require significant redesign to comply with federal and state legal requirements.

III INFORMATION CONSIDERED

A list of the materials that I have reviewed and considered in forming my opinions in this case, in addition to those materials described above and my familiarity with disability access technology, technology literature, and voting systems technology literature, is attached as Exhibit B to this report.

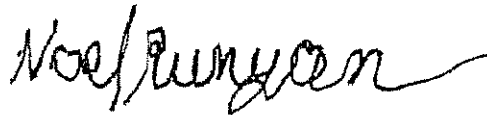
IV. OTHER TESTIMONY

I have submitted expert witness declarations in other cases in Arizona, California, New Jersey, New Mexico, and Pennsylvania concerning access by individuals with disabilities to DRE voting machines. I testified as an expert witness at a preliminary injunction hearing in the Pennsylvania *Taylor* action. A list of those cases is attached as Exhibit C to this report.

V. COMPENSATION

I am not compensated for my services in this matter as an expert witness. I am volunteering my time because the issues in this case are fundamental to democracy.

Sincerely,

A handwritten signature in black ink that reads "Noel Runyan". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Noel H. Runyan

DRAFT CLIMATE CHANGE POLICY STATEMENTS

August 23, 2007

To: CSAC Executive Committee

From: Jeff Morris, Chair, Agriculture and Natural Resources Policy
Committee/ Co-Chair Climate Change Working Group

Diane Dillon, Vice Chair, Housing, Land Use and Transportation
Policy Committee/ Co-Chair Climate Change Working Group

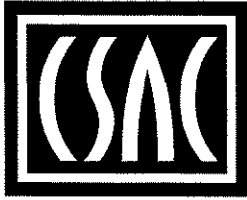
Re: CSAC Climate Change Draft Policy

CSAC is in the process of developing policy on climate change. The draft policy (attached) is based on input from the CSAC Climate Change Working Group, which includes participants ranging from supervisors, public works directors, county counsels, air districts representatives, and planning directors, to name a few. Initiated in June 2007, the working group has met twice, and a third meeting is planned for the beginning of September for additional review and comment on the draft policy statements. The purpose of these statements is to consider and identify areas where CSAC could develop climate change policy statements that would be utilized by CSAC staff as a foundation for lobbying efforts on behalf of counties.

The draft policy statements developed by the working group will be referred to the CSAC Agriculture and Natural Resources Policy Committee and the CSAC Housing, Land Use and Transportation Policy Committee for review and development of a recommended position to the CSAC Board of Directors at the CSAC Annual meeting in November 2007.

In addition to drafting policy, the working group has met with several outside stakeholders, including representatives from the Air Resources Board, SACOG, Planning and Conservation League, the Forestry Community and the Institute for Local Government. The working group will also meet this September with members of the State's Climate Action Team, the coordinating body for state agencies involved with Assembly Bill 32 – Global Warming Solution Act 2006 implementation.

Staff Contact: If you are interested in participating in this group or would like additional information please contact Karen Keene at 916-327-7500 ext. 511 or kkeene@counties.org, or Cara Martinson at 916-650-8113 or cmartinson@counties.org.



California State Association of Counties Draft Policy Statements on Climate Change

DRAFT

Preamble

Climate change and the release of greenhouse gases (GHG) into the atmosphere have the potential to dramatically impact multiple aspects of human life, including our environment, public health and economy. In addition to international, federal and state efforts, local strategies are needed to protect our communities and demonstrate leadership on what could be one of the greatest environmental challenges of our time. Thus, CSAC supports and encourages efforts to reduce GHG emissions and the creation of a comprehensive and viable strategy to achieve these reductions.

Local governments have the ability to demonstrate leadership at the local and regional level to influence GHG emissions reductions and support a collaborative state, regional and local approach to the development of GHG reduction strategies. CSAC advocates that counties are a vital partner in the climate change arena, rather than another stakeholder in the debate. To this end, counties should be an active participant in the discussions and dialogue in the development of GHG reduction strategies currently under way at the state level.

With the passage of AB 32, the Global Warming Solutions Act of 2006, California has embarked on a plan that establishes a regulatory and market mechanisms program with the goal of reducing GHGs to 1990 levels by 2020. In signing this legislation, Governor Arnold Schwarzenegger established the nation's first environmental law of its kind, making climate change a priority for his administration and for California. Additionally, numerous climate change-related bills have been introduced for the 2007-2008 legislative session and several measures have been taken by the Attorney General's office regarding climate change, general plans, transportation plans and CEQA documents. Because these efforts have the potential to directly or indirectly impact county government and the citizens they serve, it is imperative that county interests are represented in climate change discussions.

The following general principles and policy statements are CSAC's foundation for representing counties and the citizens they serve at both the administrative and legislative level.

General Principles

- CSAC recognizes the seriousness of climate change and its harmful effects on our environment, public health and economy. Although there remains uncertainty on the pace, distribution and magnitude of the effects of climate change, CSAC also recognizes the need for immediate actions to mitigate the sources of greenhouse gases.
- CSAC recognizes the need for sustained leadership and commitment at the federal, state, regional and local levels to develop strategies to combat the effects of climate change.
- CSAC recognizes the complexity involved with reducing greenhouse gases and the need for a variety of approaches and strategies to reduce GHG emissions.
- CSAC supports a flexible approach to addressing climate change, recognizing that a one size fits all approach is not appropriate for California's large number of diverse communities.
- CSAC supports special consideration for disadvantaged communities and rural areas that do not have the ability to address these initiatives without adequate support and assistance.
- CSAC supports cost-effective strategies to reduce GHG emissions and encourages the use of grants, loans and incentives to assist local governments in the implementation of GHG reduction programs.
- CSAC recognizes that adaptation and mitigation are necessary and complementary strategies for responding to climate change impacts. CSAC encourages the state to develop guidance materials for assessing climate impacts that includes adaptation options.
- CSAC supports the development of protocols and GHG emissions inventory mechanisms, providing the necessary tools to track and monitor GHG emissions at the local level. The state, in cooperation with local government, must determine the portfolio of solutions that will best minimize its potential risks and maximize its potential benefits. CSAC also supports the establishment of a state climate change technical assistance program for local governments.
- CSAC recognizes that many counties are in the process of developing, or have already initiated climate change-related programs. CSAC supports the inclusion of these programs into the larger GHG reduction framework and supports acknowledgement and credit given for these local efforts.

- CSAC acknowledges its role to provide educational forums, informational resources and communication opportunities for counties in relation to climate change.
- CSAC recognizes that collaboration between cities, counties, special districts and the private sector is necessary to ensure the success of a GHG reduction strategy at the local level.
- CSAC encourages counties to take active measures to reduce greenhouse gas emissions and create energy efficiency strategies that are appropriate for their respective communities.

Fiscal – The effects of climate change and the implementation of GHG reduction strategies will have fiscal implications for county government.

- CSAC recognizes the potential for tremendous fiscal impacts on all levels of government as a result of climate change, i.e. sea level rise, flooding, water shortages and other varied and numerous consequences. CSAC encourages the state and counties to plan for the fiscal impacts of climate change adaptation, mitigation and strategy implementation.
- CSAC supports the use of grants, loans, incentives and revenue raising authority to assist local governments with the implementation of climate change response activities and GHG reduction strategies.
- CSAC continues to support its state mandate principles in the context of climate change. CSAC advocates that new GHG emissions reduction programs must be technically feasible for counties to implement and help to offset the long-term costs of GHG emission reduction strategies.
- CSAC supports mandatory revenue sharing mechanisms adequate to sufficiently augment the county revenue base in order to meet the demands of mandated countywide services in growing urban city centers.
- CSAC advocates that any new GHG reduction strategies that focus on city-oriented growth and require conservation of critical resource and agricultural lands within the unincorporated area should include a mechanism to compensate county governments for the loss of property taxes and other fees and taxes from lands removed from county jurisdiction.

Land Use and Climate Change – CSAC recognizes that population growth in the state is inevitable, thus any climate change strategies that effect land use

must focus on how and where to accommodate the expected growth in California. Land use planning and development plays a direct role in transportation patterns, affecting travel demands and in return vehicle miles traveled and fuel consumption. Smart land use planning and growth is critical to address transportation across all sectors (i.e. vehicle, air and train), which are responsible for 41% of GHG emissions in California. Furthermore, cars and light trucks contribute 30% of all GHG emissions. Consequently, the link between land use planning, transportation and climate change is inextricably tied.

- CSAC supports measures suggested by the Climate Action Team (CAT) to achieve reductions in GHG emissions by promoting housing/jobs proximity and transit-oriented development, and encouraging high density residential development along transit corridors. CSAC supports these strategies through its existing smart growth policy for strategic growth. That policy supports encouraging new growth that results in compact development within cities, existing urban communities and rural towns that have the largest potential for increasing densities, efficiently utilizes existing and new infrastructure investment and scarce resources, and strives towards achieving a jobs-housing balance.
- CSAC existing policy also supports the protection of critical lands when it comes to development, recognizing the need to protect agricultural lands, encourage the continued operations and expansion of agricultural businesses, and protect natural resources, wildlife habitat and open space.
- CSAC policy supports providing incentives for regional blueprint and countywide plans to ensure that rural, suburban and urban communities have the ability to plan for more strategic growth and have access to revenues available for infrastructure investment purposes. It is CSAC's intent to secure regional and countywide blueprint funding for all areas.
- CSAC supports new fiscal incentives for the development of countywide plans to deal with growth through collaboration between a county and its cities to address housing needs, protection of resources and agricultural lands, and compatible general plans and revenue and tax sharing agreements for countywide services.
- CSAC recognizes that counties and cities must strive to promote efficient development in designated urban areas in a manner that evaluates all costs associated with development on both the city and the county. Support for growth patterns that encourage urbanization to occur within cities must also result in revenue agreements that consider all revenues generated from such growth in order to reflect the service demands placed on county government. As an alternative, agreements could be entered

into requiring cities to assume portions of county service delivery obligations resulting from urban growth.

- With respect to incorporation of climate change and environmental documents for compliance with the California Environmental Quality Act (CEQA), CSAC supports the development of analytical methodologies, thresholds of significance and other standards in order to best utilize CEQA as a tool to address climate change. CSAC supports inclusion of recommendations and technical advice for lead agencies in the CEQA Guidelines regarding incorporation of climate change in CEQA documents.
- Strategic growth plans at the regional level, whether land use or transportation, must be reconciled with the allocation of Regional Housing Needs Allocation (RHNA) and the obligation for cities and counties to zone for housing. The allocation of resources to cities and counties must be consistent with the RHNA obligation as well.
- A means for simultaneously achieving strategic growth and reduction of greenhouse gases is expected to occur at the regional level through the current blueprint and transportation planning processes. CSAC supports this method rather than a statewide “one size fits all” approach to addressing growth and climate change issues. Further, CSAC supports countywide approaches to strategic growth, resource and agricultural protection, targeting scarce infrastructure investments and tax sharing for countywide services.

Energy — Reducing energy consumption is an important way to reduce GHG emissions and conserve. Additionally, methane gas emissions, a mixture of methane, carbon dioxide and various toxic organic and mercuric pollutants, from landfills and dairies have been identified as potent GHGs. Effective collection and treatment of these gases is not only important to the reduction of GHG emissions, but can also result in an additional source of green power.

- CSAC supports legislative and regulatory green building programs that encourage the use of green building practices, incorporating energy efficiency and conservation technologies into state and local facilities. A green building is a term used to describe structures that are designed, built, renovated, operated or reused in an ecological and resource-efficient manner. Green buildings are designed to meet certain objectives using energy, water and other resources more efficiently and reducing the overall impact to the environment.
- CSAC supports the state's development of green building protocols, including standards for jails, hospitals and other such public buildings.

CSAC supports developing regulations for sustainable building standards and incorporating specified standards described in the United States Green Building Council's Leadership in Energy and Environmental Design, including a certification system based on attaining credits.

- CSAC supports the use of grants, loans and incentives to encourage and enable counties to incorporate green building practices into their local facilities.
- CSAC supports the use of energy efficient procurement practices, including the use of energy efficient products and equipment.
- CSAC supports state efforts to develop a dairy digester protocol to document GHG emissions reductions from dairy farms. CSAC supports funding mechanisms that support the use of dairy digesters to capture methane gas and convert it to energy.
- CSAC supports state efforts to capture methane gases from landfills; and supports its development of a reasonable regulatory measure with a feasible timeline, that will require landfill gas recovery systems on landfills that can support a self-sustaining collection system. CSAC supports the development of a guidance document for landfill operators and regulators that will recommend technologies and best management practices for improving landfill design, construction, operation and closure for the purpose of reducing GHG emissions. CSAC also supports funding mechanisms, including grants, loans and incentives to landfill operators to help implement these programs.
- CSAC continues to support its existing energy policy, which states that counties should seek to promote energy conservation and energy efficiency. Counties are encouraged to undertake vigorous energy action programs that are tailored to the specific needs of each county. When developing such action programs counties should: (1) assess available conservation and renewable and alternative energy options and take action to implement conservation, energy efficiency and renewable energy development when feasible; (2) consider the incorporation of energy policies as an optional element in the county general plan; and, (3) consider energy concerns when making land use decisions and encourage development patterns which result in energy efficiency.

Water – Climate change has the potential to greatly affect California's water resources. According to the Department of Water Resources, projected increases in air temperature may lead to changes in the timing, amount and form of precipitation – (rain or snow), changes in runoff timing and volume, effects of sea level rise and changes in the amount of irrigation water needed. CSAC has

an existing policy that recognizes the need for state and local programs that promote water conservation and water storage development.

- CSAC supports the incorporation of projections of climate change into state water planning and flood control efforts.
- CSAC recognizes that climate change has the potential to seriously impact California's water supply. CSAC continues to assert that adequate management of water supply cannot be accomplished without effective administration of both surface and ground water resources within counties, including the effective management of forestlands and watershed basins.
- CSAC supports water conservation efforts, including reuse of domestic and industrial wastewater, reuse of agriculture water, groundwater recharge, and economic incentives to invest in equipment that promotes efficiency.
- CSAC continues to support the study and development of alternate methods of meeting water needs such as desalinization, wastewater reclamation, watershed management, the development of additional storage, and water conservation measures.

Forestry– With 40% of California covered in forest lands, counties recognize the importance of forestry in the context of climate change. Effectively managed forests have less of a probability of releasing large amounts of harmful GHG emissions into the atmosphere in the form of catastrophic wildfires. Furthermore, as a result of natural absorption, forests reduce the effects of GHG emissions and climate change by removing carbon from the air through the process of carbon sequestration. CSAC also recognizes the benefits of biomass energy as an alternative to the burning of traditional fossil fuels.

- CSAC continues to support its existing policy on sustainable forestry, encouraging sustainable forestry practices through the existing regulatory process, and encouraging continued reforestation on private timberlands.
- CSAC supports optimum forest management practices that ensure continued carbon sequestration in the forest, provide wood fiber for biomass-based products and carbon-neutral biomass fuels, and protect the ecological values of the forest in a balanced way.
- CSAC supports the State's development of general forestry protocols that encourage private landowners to participate in voluntary emission reduction programs and enable National Forest lands to contribute to the State's climate change efforts.

Air Quality- Vehicles – With 41% of GHG emissions coming from transportation in California, CSAC encourages the research and development and use of alternative, cleaner fuels.

- CSAC supports state efforts to create standards and protocols for all new passenger cars and light-duty trucks that are purchased by the state and local governments that conform to the California Strategy to Reduce Petroleum Dependency. CSAC supports state efforts to revise its purchasing methodology to be consistent with the new vehicle standards.
- CSAC supports efforts that will enable counties to purchase new vehicles for local fleets that conform to state purchasing standards, are fuel efficient, low emission, or use alternative fuels. CSAC supports flexibility at the local level, allowing counties to purchase fuel efficient vehicles on or off the state plan.
- CSAC supports incentives for the local conversion of county on and off road diesel powered vehicles.
- CSAC opposes federal standards that supercede California's ability to adopt stricter vehicle standards.
- Counties continue to assert that federal and state agencies, in cooperation with local agencies, have the ability to develop rules and regulations that implement clean air laws that are both cost-effective and operationally feasible. In addition, state and federal agencies should be encouraged to accept equivalent air quality programs, thereby allowing for flexibility in implementation without compromising air quality goals.

Solid Waste/ Recycling – The consumption of materials is related to climate change because it requires energy to mine, extract, harvest, process and transport raw materials and more energy to manufacture, transport and, after use, dispose of products. Recycling and waste prevention can reduce GHG emissions by reducing the amount of energy needed to process materials, and reducing the amount of natural resources needed to make products.

- CSAC continues to support policies and legislation that aim to promote improved markets for recyclable materials, and encourages:
 - The use of recycled content in products sold in California;
 - The creation of economic incentives for the use of recycled materials;

- Development of local recycling markets to avoid increased emissions from transporting recyclables long distances to current markets;
- The expansion of the Electronic Waste Recycling Act of 2003 and the Beverage Container Recycling Program;
- The use of materials that are biodegradable;
- Greater manufacturer responsibility and product stewardship.

CSAC FINANCE CORPORATION REPORT

August 23, 2007

To: CSAC Executive Committee

From: Greg Cox, CSAC Finance Corporation Board Member
Norma Lammers, CSAC Finance Corporation Executive Director

Re: Green Purchasing Seminars

On Wednesday, July 25 the CSAC Finance Corporation presented their first "Green Purchasing Seminar" in Shasta County.

Counties, cities, special districts and school districts from the north state were all invited to attend this event where recognized national speakers presented on green procurement.

These seminars provide a great opportunity to collaborate and share ideas on green purchasing policy resources.

The seminar was interactive and well received. Feedback from the survey of participants illustrate the value to our members:

Some examples: (and I quote)

"This seminar truly, truly exceeded my expectation"

"Good, practical information and reference materials"

"The information was fascinating and the handout was a great follow up for additional Internet research. I've already ordered a "green" Office Depot catalog"

Finally, The Finance Corporation is presenting 4 additional green purchasing seminars throughout the state on the following dates and locations:

August 22	Solano County
August 23	Los Angeles County
October 3	Fresno County
October 4	Kern County

Please visit our website at www.csac.counties.org for additional information.

REGIONAL SUMMITS ON REENTRY FACILITIES



August 8, 2007

To: CSAC Executive Committee

From: Elizabeth Howard, Legislative Representative
Rosemary Lamb, Legislative Analyst

Re: **Update on Regional Summits on Reentry Facilities –
INFORMATIONAL ITEM**

1100 K Street
Suite 101
Sacramento
California
95814

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Facsimile
916.441.5507

Background. Following enactment of the comprehensive corrections reform measure — AB 900 (Solorio), the Public Safety and Offender Rehabilitation Act of 2007 — CSAC joined with the League of California Cities and several county affiliate organizations to assist the California Department of Corrections and Rehabilitation (CDCR) in convening nine regional summits on reentry facilities. The purpose of these summits is primarily to provide information on reentry facilities, which are a cornerstone of the state's overall effort to reduce recidivism, improve offender outcomes, and address prison overcrowding. In the briefest of terms, reentry facilities are intended to be state-funded, -constructed and -operated. Generally intended for siting in urban areas and consisting of up to 500 beds, secure reentry facilities will serve as a much-needed bridge between incarceration and community reintegration for either parole violators or offenders within six to 12 months of their parole date. The facilities will offer a range of programs and services to assure more successful offender transition into communities upon release.

Immediately following the passage of AB 900, CDCR quickly moved forward in initiating discussions with certain individual counties regarding preliminary, non-binding agreements on siting reentry facilities. However, it became clear that a more systematic process for disseminating information and addressing questions about reentry facilities was needed. CDCR's sponsorship of these summits in partnership with counties and our affiliate organizations is being undertaken to assure that all parties have equal access to information about both the jail bond construction program and the process for establishing reentry facilities in local communities. It is hoped that the information provided will assist county leaders in making informed decisions regarding the siting of a secure reentry facility.

Summit Format. The series of nine summits are planned one-day events, generally held from 10 a.m. to 3 p.m. Following a plenary session that covers the general framework of AB 900, there are three breakout sessions on the following topic areas: 1) parolee needs specific to each county in attendance, presented by the CDCR Division of Parole; 2) jail construction funding, presented by the Corrections Standards Authority (formerly the Board of Corrections); and 3) reentry facility design and programming, presented by the CDCR Division of Reentry and Recidivism Reduction. Participation in the summit is by invitation

only. CSAC is coordinating closely with individual counties (through an identified key contact in each jurisdiction) and CDCR staff to assure appropriate representation at each summit. Proposed local invitees include: county board of supervisor member, county administrative officer, county sheriff, county alcohol and drug administrator, mental health director, chief probation officer, district attorney, public works director, mayor or other city official, police chief, local prison warden, local parole administrator, Chamber of Commerce representative, victims' advocate, and a representative from community-based agencies.

The schedule and locations for the summits are as follows:

Monday, July 30

Host County: Monterey
Suggested Counties to Attend:
Monterey, San Benito, Santa Cruz, San Luis Obispo

Stanislaus, Tuolumne, Kern (option of attending LA)

Monday, September 10

Host County: Sonoma
Suggested Counties to Attend: Marin, Napa, Lake, Mendocino, Solano, Colusa

Wednesday, August 8

Host County: Orange
Suggested Counties to Attend: San Bernardino and Riverside

Friday, September 14 (Tentative)

Host County: Shasta
Suggested Counties to Attend: Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Lassen, Tehama, Plumas, Glenn, Butte, Sierra

Monday, August 20

Host County: San Diego
Suggested Counties to Attend: Imperial

Wednesday, September 28

Host County: San Mateo
Suggested Counties to Attend: San Francisco, Santa Clara, Alameda, Contra Costa

Friday, August 24

Host County: Sacramento
Suggested Counties to Attend: Alpine, Calaveras, San Joaquin, Amador, El Dorado, Placer, Nevada, Yuba, Sutter, Yolo, Sierra

Friday, October 5 (Tentative)

Host County: Los Angeles
Suggested Counties to Attend: Ventura, Santa Barbara

Wednesday, September 5

Host County: Fresno
Suggested Counties to Attend: Kings, Tulare, Madera, Merced, Mariposa,

** Note: The counties of Inyo and Mono can select the most convenient date and location of their choice.*

Summary of Monterey Summit. The kickoff summit was held in Monterey on July 30. In attendance were the counties of San Benito, Santa Cruz, San Luis Obispo and Monterey, with approximately 60 participants overall. Generally, the summit ran smoothly and was well-received by participants, and there was ample time for questions and answers during each break-out session. However, there remain far more questions than answers regarding, among other things, the specifics of reentry facilities, the process for counties interested in pursuing a

reentry facility, the mechanics of “priority consideration” in the context of jail bond funding accorded to counties that agree to site reentry facilities, roles and responsibilities of participating local governments, plans for workforce development, and details regarding an orderly transition of offenders back into communities.

CDCR indicates they are working to devise a Request for Proposal application for jail construction funding and acknowledge that additional work must be done to coordinate that grant process with reentry facility siting commitments. CSAC, as well as many of the summit participants, have identified a clear need for a guidebook or a defined critical path that can guide counties through the process and identify the expected sequencing of next steps. One of the key unknowns at this point is what commitment — in terms of financing, programming, and staffing — a county will be expected to make if it agrees to site a reentry facility in its jurisdiction.

CSAC will continue to work closely with CDCR, participate actively in the planning of the summits, and monitor the various boards and commissions working on various areas of the corrections reform process.

Staff Contact. For more information on the regional summits on reentry facilities or any other aspect of corrections reform, please contact Elizabeth Howard (ehoward@counties.org or (916) 327-7500 x537) or Rosemary Lamb (rlamb@counties.org or (916) 327-7500 x503).

HEALTH CARE REFORM ISSUES



August 8, 2007

To: CSAC Executive Committee

From: Kelly Brooks, Legislative Representative
Farrah McDaid Ting, Senior Legislative Analyst

Re: Health Care Reform – INFORMATIONAL ITEM

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95814

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916.441.5507

Background. The Legislature made significant progress on health reform prior to the Assembly's departure on July 20. Earlier this summer, Democratic leadership merged their separate proposals into one vehicle – AB 8.

AB 8, authored by Speaker Fabian Núñez and Senate President Pro Tempore Don Perata, is scheduled to be heard in Senate Appropriations Committee on August 20. The bill cleared Senate Health Committee on July 11.

It is unclear how the budget impasse will affect the health care negotiations between the Governor and the Legislature and, ultimately, the final product. Until a budget is signed, the Governor will not turn his attention to health care. Therefore, it appears that the window for amending AB 8 is getting smaller. The Legislature is slated to adjourn on September 14.

The Governor's Proposal

To date, the Governor's plan has not surfaced in bill form. Please recall that the Governor's proposal has a number of components, including:

- An individual mandate to purchase health insurance;
- Employer mandate to spend 4 percent of payroll on health insurance for employees or pay into a pool (known as "pay or play");
- Health market reforms, including "guaranteed issue" (anyone who wants to purchase insurance in the individual market could not be prevented from purchasing insurance because of a pre-existing condition);
- Expansion of Healthy Families Program to all children up to 300% of the federal poverty level (FPL);
- Expansion of Medi-Cal to adults, including childless adults;
- Creation of a subsidized purchasing pool for low-income Californians (under 250% FPL);
- Fees on providers and hospitals, of 2% and 4% respectively, on gross revenues;
- \$1 billion county "contribution."

Major provisions of AB 8

AB 8 expands coverage to working families and children by requiring employers to spend 7.5% of Social Security wages on health care or to contribute to a state health fund. This approach is known as “pay or play.” It includes an employer mandate for both full-time and part-time employees.

The state health funds will be used to create a purchasing pool, administered by the Managed Risk Medical Insurance Board (MRMIB), to assist employees with purchasing health care. The bill establishes the California Cooperative Health Insurance Purchasing Program (Cal-CHIP) as a state purchasing pool administered by MRMIB to negotiate contracts with health insurance carriers. Only employees of employers who choose to pay into the pool rather than meet the 7.5% requirement would be eligible to receive coverage through the pool.

AB 8 provides for subsidies for low-income children, families, and individuals. For those who would qualify they will receive benefits through a plan called a Medi-Cal Benchmark and similarly a Healthy Families Benchmark, which would offer benefits “equivalent” to those respective programs. Additionally, AB 8 requires the Managed Risk Medical Insurance Board (MRMIB) to ensure that premiums for employees under 300% of the federal poverty level (FPL) in the purchasing pool do not exceed 5 percent of family income after taking into account tax savings. The bill also includes subsidized premiums for families and children under 300% of the FPL.

AB 8 expands eligibility for public programs. Children aged 1-19 in families with incomes under 133% of FPL will be eligible for Medi-Cal; children under age 1 will continue to be eligible for Medi-Cal up to 200% of FPL. Children from 133% to 300% FPL will be eligible for Healthy Families. Under AB 8, all low-income children who meet these financial eligibility criteria, regardless of immigration status, will be eligible for health insurance.

Policy Considerations. CSAC continues to analyze the provisions of AB 8. Below are specific areas of interest.

County Indigent Program Impacts. It is not clear how increasing employer-based health coverage will impact county indigent programs. Based on modeling data, legislative staff is assuming that a significant number of low-income families and individuals will get health insurance. They are assuming that approximately 50 to 75 percent of families and individuals under 133 percent of poverty may be newly insured under AB 8. However, in conversations with county health departments, it appears that approximately 20% to 30% of individuals served by county indigent programs are working and would thus qualify for health insurance. Additionally it is difficult to assess how employer behavior may change and whether some of the indigent population served by counties will move into the underground economy. Staff is concerned that if the Legislature adds a county contribution to AB 8, it may be calculated on faulty assumptions about impacts to county indigent programs.

County Hospital Impacts. It also remains unclear where the newly insured will access care and whether the newly insured leave public systems. The extent to which newly covered patients are treated by public hospital systems will have an enormous and likely determinative impact on the hospitals' ability to remain financially viable under health reform. Additionally, it is possible that private facilities that see an influx of newly covered patients will shift their current uninsured patients to county providers, which would add additional costs for counties.

Mental Health Impacts. AB 8 does not clearly indicate what type of mental health services will be included in the Medi-Cal Benchmark plan proposed in AB 8. These benchmark plans are intended to provide "equivalent" services to Medi-Cal. However, it is not clear whether the commercial plans offering these benchmark plans will continue to have county mental health plans provide mental health services as is currently done under Medi-Cal. The mental health services provided in Medi-Cal are rehabilitative and generally more effective at providing treatment to persons with serious mental illness. The inpatient and outpatient service typically covered by commercial plans have typically not been effective at providing recovery services for mental health consumers. There may be increased costs to counties if the number of Medi-Cal recipients with serious mental illness increases and counties remain the mental health plan.

In-Home Supportive Services Impacts. Initial feedback from counsels indicates that the public authorities are likely the employer for purposes of providing health care under AB 8. Staff is still gathering information from counties about potential costs. However, it is likely that many counties will not meet the 7.5% threshold set in AB 8 with current spending. Additionally, many IHSS providers do not currently take the insurance offered.

It is likely that increased spending on IHSS will have unforeseen impacts on Realignment funding. Increased IHSS spending will draw additional sales tax revenue under Realignment to the Social Services Account, reducing the revenue available to fund caseload growth for all the other social services programs in Realignment, and likely leaving nothing for the Health and Mental Health Accounts. AB 8 may impact health and mental health spending, yet Realignment revenues are unlikely to meet the needs. Please note that sales tax revenue is currently performing poorly and that it is unclear whether revenues will be sufficient to meet the Social Services base, much less cover social services caseload growth or growth for health or mental health. This problem is expected to continue into the foreseeable future.

Currently, federal, state and county dollars are used to purchase health insurance for IHSS workers. Federal law prohibits using other federal funds as a Medicaid match. It is unclear whether counties that opt to pay into the purchasing pool will create federal matching problems if they use current funding arrangements.

Federal SCHIP Reauthorization Impacts. California has a huge stake in the outcome of the State Children's Health Insurance Program (SCHIP) debate going on at the federal level. SCHIP funding expires on September 30, 2007 and needs to be reauthorized.

Health expansion and reform proposals in California not only assume an expanding SCHIP pie, but that a growing share of it would go to California in order for it to cover more uninsured children. As a recipient of \$800 million in federal dollars, California currently covers more than one million children and pregnant women through the Healthy Families program.

President Bush's federal fiscal year (FFY) 2008 budget proposal calls for \$5 billion in new funds over the next five years, and argues for rolling back federal support to states that covered children from families over 200 percent of the FPL. The Senate Finance Committee released a bipartisan SCHIP reauthorization bill in early summer that provides a \$35 billion increase in funding, with a 61 cent increase in the cigarette tax. Under the Senate's approach, California would be allowed to increase its income eligibility threshold to 300 percent of the federal poverty level; however the total amount of funds would likely not be sufficient to cover all children newly eligible under the proposals pending in the Legislature.

The House reauthorization provides nearly \$50 billion in new resources over five years that would enable states to enroll an additional 5 million children in SCHIP who are currently eligible but not receiving benefits. The House bill would allow California to join other states that have increased eligibility income thresholds to 300 percent of the federal poverty level. Financed by a 45 cent increase in the federal tax on cigarettes and a cut to the payments given to private insurance companies offering Medicare Advantage programs, the bill was strongly opposed by Republicans as imposing new taxes and cutting benefits to those seniors enrolling in Medicare Advantage.

The House and the Senate will hold a conference committee to address difference when they return from their summer recess. However, President Bush has threatened to veto either bill, holding firm to his \$5 billion budget proposal. That funding level would not be enough to cover the 800,000 children currently covered by Healthy Families in California. According to the California HealthCare Foundation, approximately 200,000 children would lose coverage.

CSAC continues to work closely with county hospitals, county health, county mental health, and county human services at a holistic approach to analysis and impacts.

Staff Contact. Please contact Kelly Brooks (kbrooks@counties.org or (916) 327-7500 x531) or Farrah McDaid Ting (fmcdaid@counties.org or (916) 327-7500 x559) for additional information.

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Coverage for children	<p>Children under 133% FPL would be eligible for Medi-Cal. Children from 133 to 300% FPL would be eligible for Healthy Families. Eliminates federal citizenship and immigration requirements for children to enroll in Medi-Cal or Healthy Families.</p> <p>Continues to cover children under age 1 up to 200% of FPL in the Medi-Cal Program.</p> <p>Provides that the increase in income to 300% must be implemented by July 1, 2008 and only to the extent funds are appropriated for those purposes.</p>	<p>All children under 100% of the FPL would be eligible for Medi-Cal. All children from 101-300% of FPL would be eligible for Healthy Families. Eliminates federal citizenship and immigration requirements for children to enroll in Medi-Cal or Healthy Families.</p> <p>Continues to cover children under age 1 up to 200% of FPL in the Medi-Cal Program.</p>
Coverage for adults	<p>Parents under 133% FPL would be eligible for Medi-Cal or for a Medi-Cal benchmark plan. Parents from 133 to 300% FPL would be eligible for Healthy Families or for a Healthy Families benchmark plan. Employed adults, working either full or part time, would be eligible for coverage – either through employer-purchased coverage in the commercial market or through the purchasing pool.</p>	<p>The Managed Risk Medical Insurance Board (MRMIB) would operate a state purchasing pool for uninsured legal resident adults with incomes between 100-250% of the federal poverty level.</p> <p>The state would pursue a federal waiver to make childless adults up to 100% of the FPL eligible for Medi-Cal.</p>
Individual Mandate?	<p>No.</p> <p>However, employees whose employer pays into the purchasing pool (Cal-CHIPP) will be required to take coverage from the pool. The employee may decline coverage if the employee certifies health coverage through his or her spouse's or domestic partner's employer.</p> <p>AB 8 limits the amount an employee with income at or below 300% of FPL has to pay toward health care coverage to no more than 5 percent of family income.</p>	<p>Yes.</p> <p>Includes an individual mandate. All Californians and their dependents would be required to have a minimum health coverage policy. The minimum health insurance benefit that must be maintained will be a \$5,000 deductible plan with \$7,500 capped contribution for individuals and a \$10,000 capped contribution for families.</p> <p><i>Enforcement:</i> All taxpayers would be required to show proof of health coverage. If proof of insurance is not provided, the state would automatically enroll the individual or family into a health plan and take payroll deductions to pay for the plan.</p>
Guaranteed Issue?	<p>As of July 1, 2008, each health plan shall use a standardized health questionnaire (developed by MRMIB) to identify an objection evaluation of a person's health status. The questionnaire will be designed to identify the 3 to 5 percent of persons who are the most expensive to treat if covered under an individual health care service plan or an individual health insurance policy.</p>	<p>Insurers will be required to guarantee coverage to all, with limits on how much they can charge based on age or health status, so that all individuals have access to affordable products.</p> <p>This proposal calls for elimination of California's high</p>

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Guaranteed Issue: A health plan cannot exclude a potential enrollee from any individual coverage on the basis of an actual or expected health condition, type of illness, treatment, medical condition, or accident, or for a pre-existing condition, except for those individuals with health conditions or diagnoses that make them automatically eligible for the Managed Risk Medical Insurance Program (MRMIP).

As of January 1, 2008, the Department of Managed Health Care shall develop regulations governing 5 classes of individual health benefit plans for each plan that is participating in the individual market. The higher the class, the more comprehensive the benefits. Within each class there will be a baseline HMO and a baseline PPO. On or after January 1, 2009, health care plans shall guarantee issue the 5 classes.

Plans will be required to offer benefit packages in each of the 5 classes and will be required to drop their offerings outside of the 5 classes.

Individuals who choose one of these plans from the individual market have to choose one of the 5 classes and are only allowed to upgrade classes annually or at a significant life event (marriage, death, divorce, birth/adoption). Once a year the enrollee will have the option of choosing a different plan within the same class or changing classes; however, they must remain with the same carrier if they upgrade the class. They can downgrade at any time.

Health benefit plans shall become effective within 31 days of receipt of the individual's application, standardized health status questionnaire, and premium payment.

Plans can reject an application for health care benefits if the individual does not reside or work in the a plan's or insurer's approved service area.

All health care benefits offered to individuals shall be renewable with respect to all individuals and dependents at the option of the subscriber, except:

risk pool for medically uninsurable persons, the Major Risk Medical Insurance Program (MRMIP) because insurers will be required to guarantee coverage to all.

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	<ul style="list-style-type: none"> ▪ For non-payment of the required premiums by the subscriber. ▪ When the plan or insurer withdraws from the individual health care market. 	
Pay or Play?	<p>Yes.</p> <p>As of January 1, 2010, employers would be required to either provide benefits for full and/or part-time employees and their dependents or pay an amount equivalent to 7.5% of Social Security wages into the purchasing pool. Employers would need to elect to pay into the pool by October 1, 2009.</p> <p>Full-time is defined as 30 hours or more per week. Part-time is defined as less than 30 hours a week. Note that there is no floor on part time.</p> <p>If an employer chooses to "pay," the funds will be used to enroll employees into the California Health Insurance Purchasing Pool (Cal-CHIPP). Employers that "pay" must commit to the Connector for at least two years.</p> <p>The amounts paid by employers into the Health Care Trust Fund may be adjusted to ensure that there are sufficient funds to pay for health care coverage. The state will assess the fees annually.</p> <p>Health spending on workers can include unreimbursed employee health care costs, healthy lifestyle programs, on-site health fairs and clinics, financial incentives to participate in health screens or other wellness activities, disease management programs, and care provided by health care providers employed by or under contract with the employer.</p>	<p>Yes.</p> <p>Employers with 10 or more employees would be required to spend 4 percent of payroll on health care coverage for employees or contribute to a health insurance pool at the state level. If current coverage does not equal 4 percent, the employer would be required to contribute the difference to the state.</p>
Employer Responsibilities	<p>Employers must offer Section 125 plans, or cafeteria plans, for the purpose of allowing employees to pay their portion of health insurance premiums with pre-tax funds. The plan at a minimum would be required to include premium-only products for health insurance purposes.</p> <p>Unspecified penalties for employers who fail to remit employee contributions for health care.</p> <p>AB 8 makes it unlawful for an employer to take any of the following</p>	<p>Employers would be required to establish "Section 125" plans so that employees can make tax-sheltered contributions to health insurance and save employers additional FICA contributions.</p>

	Governor's Proposal
<p>AB 8 (Núñez and Perata) – As Amended July 18, 2007</p>	<p>actions to avoid the pay or play requirements:</p> <ul style="list-style-type: none"> ▪ Designate an employee as an independent contractor or temporary employee. ▪ Reduce the number of hours of work of an employee. ▪ Terminate and rehire an employee. <p>Pay Employers</p> <p>If an employer chooses to “pay” the funds will be used to enroll employees into Cal-CHIPP. Employers that “pay” must commit to Cal-CHIPP for at least 2 years. If an employer leaves Cal-CHIPP, the employer must wait two years before re-joining the pool.</p> <p>The amounts paid by employers into the Health Care Trust Fund may be adjusted to ensure that there are sufficient funds to pay for health care coverage. The state will assess the fees annually.</p> <p>“Pay” employers must collect premiums from employees and give them to the health plans.</p> <p>The failure of an employer to pay the fee shall not make an enrollee or dependent ineligible for participation in Cal-CHIPP.</p> <p>Employer may elect to pay the full premium cost of Medi-Cal or HFP on behalf of an employee and his or dependents (for those employers who offer coverage). An individual whose employer elects to do this will not be required to enroll in the employer-offered health coverage and will instead enroll directly in Medi-Cal or HFP.</p> <p>Employee working for a pay employer is required to enroll in Cal-CHIPP.</p> <p>Employers are required to advise all employees of the requirement to participate in a health plan offered by Cal-CHIPP and to give employees the choice of declining coverage offered through Cal-CHIPP if the employee certifies health coverage through his or her spouse's or domestic partner's employer.</p> <p>Employer must report to EDD the hiring of employees. Within 20 days of the termination of an employee, employers must report to</p>

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	<p>EDD.</p> <p>Employers shall advise employees of the right to apply to MRMIB for a subsidy under Cal-CHIPP if the employee's household income is at or below 300 percent of FPL.</p>	
Employee Responsibility	<p>Requires employees of employers that elect to pay the fee to enroll in Cal-CHIPP.</p> <p>Individuals and dependents enrolling in employer-offered health coverage will NOT be responsible for any premium, deductible, or co-payment requirements that are greater than any premium, deductible, or co-payment that the individual or dependent would be required to pay under Medi-Cal or HFP.</p> <p>An individual whose offering employer elects to pay the full premium cost of Medi-Cal or HFP on behalf of an employee and his or dependents will not be required to enroll in the employer-offered health coverage and will instead enroll directly in Medi-Cal or HFP.</p> <p>Employees who get coverage through Cal-CHIPP will pay a premium based on income, selected plan, and benefits. Premiums may adjust to ensure sufficient funds for Cal-CHIPP. Subsidies will be available to low income individuals and families. AB 8 limits the amount an employee with income at or below 300% of FPL has to pay toward health care coverage to no more than 5 percent of family income.</p>	<p>The individual mandate applies to all. Employees would be required to have at a minimum a high deductible health plan.</p>

<p>Purchasing Pool</p>	<p>AB 8 (Núñez and Perata) – As Amended July 18, 2007 Establishes the California Cooperative Health Insurance Purchasing Program (Cal-CHIP) as a state purchasing pool administered by MRMIB to negotiate contracts with carrier to provide health insurance for employees and their dependents of employers who have elected to pay the fee. Requires that Cal-CHIP offer three tiers of health plans that provide comprehensive health care coverage that meet Knox-Keene standards and also provide prescription drug benefits.</p>	<p>Governor's Proposal The Managed Risk Medical Insurance Board (MRMIB) would operate a state purchasing pool for uninsured legal resident adults with incomes between 100-250% of the federal poverty level. Includes cost sharing for individuals in the state subsidized pool and in Healthy Families. The individual/family contribution toward the premiums for the state subsidized pool will be as follows: ▪ 100-150% of FPL: 3% of gross income ▪ 151-200% of FPL: 4% of gross income ▪ 201-250% of FPL: 6% of gross income</p>
<p>Health Insurance Market Reforms</p>	<p><u>MANAGED RISK MEDICAL INSURANCE PROGRAM (MRMIP) EXPANSION</u> MRMIB is to develop a list of serious health conditions or diagnoses making an applicant automatically eligible for the Managed Risk Medical Insurance Program. MRMIP provides health insurance for Californians unable to obtain coverage in the individual health insurance market because of their pre-existing conditions. A 36 consecutive month enrollment limitation allows the subscriber to leave the program with guaranteed coverage from plans selling coverage in the individual insurance market. <u>MID-MARKET REFORMS</u> After July 1, 2008, AB 8 would require carriers to offer, market and sell to all applicant mid-sized employers (51-250) the existing rating and underwriting requirements applicable to employers of 2-50 (small employers). The bill would prohibit use of a risk adjustment factor on and after January 1, 2010. Exempts individual health plan contracts from Medicare, Medi-Cal contracts, Healthy Families contracts, high risk pool contracts, Medicare supplement policies, long-term care policies, specialized health plan contracts, or contracts issued through Cal-CHIP from the guaranteed issue and rating requirement. <u>MEDICAL LOSS RATIO OF 85%</u> Requires health care service plans and health insurers to expend no less than 85 percent of revenues obtained from subscribers and enrollees on patient care. Requires State to develop regulations by</p>	<p><u>Medical Loss Ratio</u> Requires health plans, insurers and hospitals to spend 85% of every dollar in premium and health spending on patient care. <u>Health Plan Contracting</u> Revise the amount an insurer must pay a hospital when insured persons need treatment outside of their network so insurers will not need "defensive contracting" to protect against high daily rates from out-of-network providers. <u>Medical Underwriting</u> Insurers will be required to guarantee coverage to all, with limits on how much they can charge based on age or health status, so that all individuals have access to affordable products.</p>

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	<p>July 1, 2008. Regulations will define "spending on health care services."</p> <p><u>COMMUNITY RATING</u> Requires health plans and insurers to use the same rating factor for age, family size and geographic location for each plan and would allow rates to vary only by age of applicant, family size and geographic rate regions. Plans can also offer health discounts (lower co-pays and premiums for non-smokers, those in weight loss programs, or disease management programs).</p> <p><u>PLAN OFFERINGS</u> As of July 1, 2008, requires every health care service plan offering group health plan contracts shall provide as one coverage option of each group contract a Healthy Families benchmark plan.</p> <p>Also as of July 1, 2008, requires every health care service plan offering group health plan contracts shall provide as one coverage option of each group contract a Medi-Cal benchmark plan.</p>	

<p>State Structure</p>	<p>AB 8 (Núñez and Perata) – As Amended July 18, 2007 Managed Risk Medical Insurance Board (MRMIB) Administers the state purchasing pool, known as Cal-CHIPP, including:</p> <ul style="list-style-type: none"> ▪ Determines eligibility and enrollment criteria and processes for Cal-CHIPP. Consider using the process in effect on January 1, 2008 for determining eligibility for the Medi-Cal program, including the eligibility determination made by the counties. ▪ Determine the participation requirements for enrollees ▪ Determine the participation requirements and the standards and selection criteria for participating health, dental and vision care plans. ▪ Determines when an enrollee's coverage commences and the extent and scope of coverage. ▪ Determine premium schedules, collect the premiums, and administer subsidies to eligible enrollees with household income at or below 300 percent of FPL. ▪ Determine rates paid to participating health, dental and vision care plans. ▪ Provide for processing of applications and the enrollment of enrollees. ▪ Determine and approve the benefit designs and co-payments for participating health, dental, and vision care plans. ▪ Allows the Board the authority to issue emergency regulations from January 1, 2008 to December 31, 2011. <p>Negotiates rates for coverage provided through Cal-CHIPP.</p> <p>By July 1, 2008, develops a standard form to screen applicants for individual health insurance coverage.</p> <p>Determines the fee paid by employers to the Fund.</p> <p>Authorized to adjust the employer spending, threshold, or fee and the employee premium amounts to ensure that revenues in the Fund would be sufficient to pay the cost of health care coverage.</p> <p>Establish the criteria and procedures through which employers direct employees' premium dollars, withheld under the terms of the cafeteria plans (or Section 125 plans), to Cal-CHIPP to be credited against the</p>	<p>Governor's Proposal</p> <p>The Managed Risk Medical Insurance Board (MRMIB) would operate a state purchasing pool for uninsured legal resident adults with incomes between 100-250% of the federal poverty level.</p> <p>MRMIB will design the subsidized benefit package for persons between 101-250% of FPL. The subsidized plans will not include vision or dental coverage. However, individuals in the pool can purchase dental and vision coverage at their own expense.</p> <p>The state would also change eligibility for Medi-Cal and Healthy Families for children. All children under 100% of the FPL would be eligible for Medi-Cal. All children from 101-300% of FPL would be eligible for Healthy Families. Additionally, the state will pursue a federal waiver to make childless adults up to 100% of the FPL eligible for Medi-Cal.</p> <p>Presumably the Employment Development Department will have a role in implementing the pay or play mandate on employers.</p>
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<p>AB 8 (Núñez and Perata) – As Amended July 18, 2007</p>	<p>employees' premium obligations.</p> <p>Allows MRMIB to share information with EDD as appropriate to implement AB 8.</p> <p>Premiums: MRMIB may adjust premiums. The amount of premiums paid by an employee with a household income at or below 300 percent of the FPL shall not exceed 0 to 5 percent of the household income after taking into account the tax savings from the cafeteria (or Section 125) plans.</p> <p>Participating Health Plans: MRMIB shall require that contracting plans utilize efficient practices to improve and control costs, including but not limited to: 1) preventative care, 2) care management for chronic diseases, 3) promotion of health information technology, 4) standardized billing practices, 5) reduction of medical errors, 6) incentives for healthy lifestyles, 7) patient cost-sharing to encourage the use of preventative and appropriate care, and 8) rational use of new technology.</p> <p>Establishes a working group to develop recommendations to the Legislature by January 1, 2009, on broadening access to Cal-CHIPP by self-employed individuals.</p> <p>In establishing the enrollee and dependent deductibles, coinsurance, and co-payment requirements, MRMIB shall consider the following:</p> <ul style="list-style-type: none"> ▪ Whether those costs would deter an enrollee or his or her dependents from obtaining appropriate and timely care, including those enrollees with low and moderate family income. ▪ The impact of these costs on an enrollee's ability to afford health care services. <p>Employment Development Department (EDD) Required to administer and collect employer fees and deposit into the Fund.</p> <p>Employers notify EDD of their election to provide or terminate employee health care through Cal-CHIPP.</p>

	AB 8 (Núñez and Perata) – As Amended July 18, 2007	Governor's Proposal
	<p>Employers required to notify EDD of all employee hires and terminations.</p> <p>EDD may assess a penalty against an employer for failing to report on employees. The penalty structure ranges from \$100 to \$5,000 per violation.</p> <p>EDD may assess unspecified penalties on employers who fail to remit the employee premium contribution.</p> <p>Allows EDD to share information with MRMIB as appropriate to implement AB 8.</p> <p>Authorized to obtain a loan from the state General Fund (GF) for expenses related to establishment and administration of new structure. Required to re-pay the state GF by January 1, 2016.</p>	

Medi-Cal Rates	AB 8 (Núñez and Perata) – As Amended July 18, 2007 AB 8 does not propose changes to Medi-Cal rates.	Governor's Proposal The plan calls for a \$4 billion rate increase to more closely align Medi-Cal to the Medicare level. The rate increase is for hospitals and physicians. Simplifies Medi-Cal eligibility by removing the asset test for children and families eligible for the expansion.
Simplification	<p>As of July 1, 2008, simplifies Medi-Cal eligibility by removing the asset test for children and families eligible for the expansion.</p> <p>As of July 1, 2008, allows different categories of Medi-Cal applicants to take greater advantage of income disregards in establishing eligibility for Medi-Cal.</p> <p>As of July 1, 2008, would streamline the deprivation test.</p>	
Prevention/ Cost Containment	<p>Requires that the uniform benefits designed by MRMIB include coverage for primary and preventive care and prescription drugs, combined with cost-sharing levels that promote prevention and health maintenance, including coverage for maintenance medications to manage chronic diseases.</p> <p>Requires the state to encourage fitness, wellness and health promotion programs that promote safe workplaces, healthy employer practices and individual efforts to improve health.</p> <p>Expresses legislative intent that all health care providers and health insurers participate in an Internet-based personal health record system under which patients have access to their own health records by January 1, 2012.</p> <p>Chronic Disease Best Practices: CHHS, in consultation with the Board of Administration of the Public Employees' Retirement System, shall assume lead agency responsibility for professional review and development of best practice standards in the care and treatment of patients with high-cost chronic diseases, such as asthma, diabetes, and heart disease. Upon adoption of the standards, each state health care program shall implement those standards.</p>	<p>Currently, all health care purchasers experience higher costs to make up for the costs of serving uninsured persons. As the number of uninsured persons drops, uncompensated care costs will be reduced or eliminated ("hidden tax" concept).</p> <p>Increases tobacco cessation services offered through California Smokers' Helpline and maximizes utilization of cessation benefits.</p> <p>Obesity reduction strategies include: a sustained media campaign to encourage healthy choices; community activities to increase access to healthy food in stores and physical activity in schools and neighborhoods; employee wellness programs; and school-based strategies that engage the broader community in obesity prevention activities.</p> <p>Proposes the establishment of a state initiative to create a national model for the prevention and treatment of diabetes.</p> <ul style="list-style-type: none"> ▪ Provide state leadership and coordination to achieve 100% electronic health data exchange in the next 10 years. ▪ Improve patient safety through universal e-prescribing by 2010. ▪ Accelerate Health Information Technology (HIT) by

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leveraging state purchasing, including support for uniform interoperability standards and HIT adoption, such as e-prescribing.

- Support consumer empowerment through the use of standardized Personal Health Records.
- At the county level, pilot an Electronic Medical Records system utilizing requirements under the Mental Health Services Act to create an integrated network of care for mental health clients.
- Facilitate the use of innovative financing mechanisms to ensure the development of public/private partnerships and to meet capital needs for important HIT-related projects.
- Expand broadband capabilities to facilitate the use of tele-medicine and tele-health, particularly in underserved areas.

Requires implementation of "Healthy Action Incentives/Rewards" programs in both the public and private sectors to encourage the adoption of healthy behaviors. The program will reward Californians for participation in evidence-based practices and behaviors that have been shown to reduce the burden of disease and are cost effective. Individuals in public programs will earn rewards that may include gym memberships or weight management programs. Participants enrolled in commercial plans will earn rewards and incentives that include premium reductions for engaging in healthy activities.

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Quality	<p>In consultation with the Board of Administration of the Public Employees' Retirement System, the California Health and Human Services Agency after consultation with affected health care provider groups, shall develop health care provider performance measurement benchmarks and incorporate these benchmarks into a common pay for performance model to be offered in every state-administered health care program, including, but not limited to, the Public Employees' Medical and Hospital Care Act, the Healthy Families Program, the Major Risk Medical Insurance Program, the Medi-Cal program and Cal-CHIPP. The benchmarks are an effort at measuring quality.</p>	<p>Pay for Performance: Link future Medi-Cal provider and plan rate increases to specific performance improvement measures, including measuring and reporting quality information, improvements in health care efficiency and safety, and health information technology adoption.</p>
Financing	<p>Establishes the California Health Trust Fund. The Fund shall be continuously appropriated to MPMIB for the purposes of providing health care. All interest earned on the moneys that have been deposited into the fund shall be retained by the fund.</p> <p>The Fund goes into effect January 1, 2010.</p> <p>The penalties collected against employers shall be deposited into a penalty account within the Fund. The penalty fund shall only be available upon appropriation by the Legislature.</p> <p>Revenues include employer contributions, increased federal funds, and employee contributions (towards premiums and co-pays).</p>	<p>The Administration's proposal identified \$12 billion in revenues to pay for its plan, including:</p> <ul style="list-style-type: none"> ▪ \$203 million from the elimination of Access for Infants and Mothers (AIM) program and Managed Risk Medical Insurance Program (MRMIP); ▪ \$1 billion from employer contributions; ▪ \$2 billion from "redirecting" county funds. The proposal includes a \$1 billion contribution of unspecified county funds and re-directing Disproportionate Share Hospital Funds (DSH) for the purpose of providing care to undocumented adults; ▪ \$3.472 billion in provider and hospital fees. The Administration is proposing that providers contribute 2% of their gross revenues to the state to assist with paying for the proposal. Hospitals would contribute 4% of their gross revenue for the same purpose. This new contribution is based on all revenue – not just Medicaid revenue. ▪ \$5.474 billion in increased federal funds as a match for expansions to Medi-Cal and Healthy Families.
Evaluation	<p>The California Health and Human Services Agency (CHHS) shall establish and administer a program to track and assess the effects of health care reform as set forth in the California Health Care Reform and Cost Control Act. The bill includes provisions that allow CHHS to contract with other entities, including independent, non-profit groups or foundations; academic institutions; or governmental entities. The assessment shall include, at minimum, the following components:</p>	<p>Not included.</p>

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- An assessment of the **sustainability and solvency** of the California Cooperative Health Insurance Purchasing Program (Cal-CHIP). This assessment shall include the number of persons purchasing health care coverage through Cal-CHIP by income bracket and by the size and type of their employer.
- An assessment of the **cost and affordability of health care** in California. This assessment shall include the cost of health care coverage products for individuals and families obtained through employers, city and county governments, the Medi-Cal program, the Public Employees' Medical and Hospital Care Act, Medicare Advantage plans, and the individual market.
- An assessment of the **health care coverage market** in California, including a review of the various insurers and health care service plans, their offering and underwriting practices, their efficiency in providing health care services, and their financial conditions, including their medical loss ratios. This assessment shall also include an assessment of risk selection by the plans and insurers.
- An assessment of the **effect on employers and employment**, including employer administrative costs, employee turnover rate, and wages categorized by the type of employer and the size of the business.
- An assessment of **employer-based health care coverage**, including the number of employers providing coverage and the number paying into Cal-CHIP categorized by employer characteristic.
- An assessment of the change in **access and availability of health care throughout the state**, including tracking the availability of health care coverage products in rural and other underserved areas of the state and assessing the adequacy of the health care delivery infrastructure to meet the need for health care services. This assessment shall include a more in-depth review of areas of the state that were determined to be medically underserved in 2007.
- An assessment of the **impact on the county health care safety net system**, including a review of the amount of uncompensated care and emergency room use.
- An assessment of **health care coverage as compiled in the**

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	<p>California Health Interview Survey or other applicable surveys.</p> <ul style="list-style-type: none"> ▪ An assessment of the wellness and health status of Californians as compiled in the California Health Interview Survey or other applicable surveys. ▪ An assessment of the capacity of the various health care professions to provide care to the population included in health care reform, identifying the number of each profession and their location in the state. ▪ An assessment of the quality of the health care services, as determined by recognized measures, provided in California. ▪ An assessment of the availability and potential for increasing federal funding for health care services and coverage in California. ▪ Any other assessments as determined necessary by the advisory board. <p>AB 8 creates an advisory body – with knowledge of and expertise in health care – chaired by the Secretary of California Health and Human Services to guide the assessment of health care reform. The Governor shall appoint five members to the advisory body, the Senate President pro Tempore shall appoint two members, and the Speaker of the Assembly shall appoint two members.</p> <p>To the extent feasible, AB 8 requires assessments to include data from years prior to the enactment of the measure.</p>	

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<p>Timeline</p>	<p>2008 January 1 – The Department of Managed Health Care shall develop regulations governing 5 classes of individual health benefit plans for each plan that is participating in the individual market. July 1 – mid-sized market reforms go into effect. July 1 – parent expansion goes into effect. July 1 – MMRIB required to develop a standard form to screen applicants for individual health insurance coverage. July 1 – requires a premium assistance benefit and wrap around benefit to be available for Medi-Cal and Healthy Families enrollees. July 1 – State must adopt regulations on the medical loss ratio (85% of revenues received by carriers must be spent on health care services). July 1 – Medi-Cal and Healthy Families program simplifications go into effect.</p> <p>2009 July 1 – Health care plans shall guarantee issue the 5 classes.</p> <p>2010 January – Employer mandate goes into effect. January – CalCHIPP functioning as purchasing pool.</p> <p>2012 January 1 – States legislative intent that all health care service plans and providers shall adopt standard electronic medical records by this date.</p>	<p>Implementation timeline not provided. Administration officials have stated that they would want one year of public education on the individual mandate before the requirements would go into effect.</p>