LEGISLATION COMMITTEE

February 8, 2016
10:30 A.M.
651 Pine Street, Room 101, Martinez

Agenda

Supervisor Federal D. Glover, Chair
Supervisor Karen Mitchoff, Vice Chair

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

1. Introductions

2. Public comment on any item under the jurisdiction of the Committee and not on this agenda (speakers may be limited to three minutes).

3. **CONSIDER the issue of the Governor's Revised Managed Care Organization (MCO) Fix Proposal and its Impact, and urge our legislative delegation to adopt the MCO Fix as soon as possible, as recommended by Dr. William Walker.**

4. **CONSIDER recommending a position on Assembly Bill 1665 (Bonilla): Transactions and Use taxes: County of Alameda, County of Contra Costa, and Contra Costa Transportation Authority, or provide direction to staff on the pursuit of bill amendments.**

5. **CONSIDER recommending to the Board of Supervisors a position of "Oppose Unless Amended" on AB 45 (Mullins): Household Hazardous Waste, as recommended by CSAC and Deidra Dingman, Conservation Programs Manager for Contra Costa County.**

6. **CONSIDER recommending to the Board of Supervisors a position of "Support" on AB 1642 (Obernolte): State Responsibility Areas: Fire Prevention Fees.**

7. **CONSIDER the statewide issues of importance to counties and provide direction to staff as needed.**

8. **CONSIDER recommending to the Board of Supervisors a position of "Support" on S. 2123, the federal *Sentencing Reform and Corrections Act.***

9. The next meeting is currently scheduled for March 14, 2016 at 10:30 a.m.

10. Adjourn

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

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

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

For Additional Information Contact:

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Phone (925) 335-1097, Fax (925) 646-1353
lara.delaney@cao.cccounty.us

Contra Costa County Board of Supervisors

Subcommittee Report

LEGISLATION COMMITTEE **3.**

Meeting Date:	02/08/2016
Subject:	Governor's Revised MCO Fix Proposal and Impact on Counties
Submitted For:	LEGISLATION COMMITTEE,
Department:	County Administrator
Referral No.:	2016-01
Referral Name:	Governor's Revised MCO Fix Proposal and Impact on Counties
Presenter:	L. DeLaney **Contact:** L. DeLaney, 925-335-1097

Referral History:

One of the Governor's top priorities is to authorize a new MCO "tax" that complies with federal standards and provides at least $1.3 billion in funding to the state for Medi-Cal costs. The current MCO tax expires June 30, 2016, and the Brown Administration is seeking a two-thirds vote of the Legislature on a fix as soon as possible.

The Governor's MCO funding plan requires all health plans to participate as required by federal law. In return, health plans would incur lower Gross Premium Taxes and Corporate Taxes and become eligible for supplemental payments – creating a net neutral balance for the plans. While it is called the MCO "tax," the proposal protects participating plans from net costs and losses while preserving Medi-Cal services. Specific details of the proposal continue to be refined and negotiated, and CSAC is in close communication with select stakeholders.

Dr. Walker recommends that the Legislation Committee consider this issue and encourage our Board of Supervisors to engage with our legislative delegation on the importance of adopting the MCO fix as soon as possible.

Referral Update:

The Managed Care Organization (MCO) tax is of critical importance for county funding and other Medi-Cal services, and the Governor's proposal in the January Budget would spare health plans any net costs or losses while realizing $1.3 billion for critical Medi-Cal services. Counties are at risk of significant statewide and county financial liabilities for critical services in the absence of a MCO fix.

County Impact. MCO funding is vital to all counties. The MCO tax provides about $1.1 billion in health care financing for California, including implementation financing for the Coordinated Care Initiative (CCI), as well as other critical state-level Medi-Cal services. Furthermore, continuation of the CCI is tied to the county In-Home Supportive Services (IHSS) Maintenance of Effort (MOE) and the eventual plan to transition collective bargaining for IHSS workers from each county to the state. If the current MCO funding for the CCI is not continued, it could

each county to the state. If the current MCO funding for the CCI is not continued, it could jeopardize the IHSS MOE and eventual transfer of collective bargaining. The loss of MCO funding for other Medi-Cal programs would also result in statewide cuts that could affect counties.

The current MCO tax expires June 30, 2016 and the Brown administration has proposed a new, broader MCO tax on almost all health plans. The administration would use this funding to continue support for children's health services, as well ongoing funding for the restoration of a seven percent cut in IHSS recipient hours. Further, the Governor and legislative leaders intend to examine ways to increase fee-for-service Medi-Cal provider rates and rates for providers of services to developmentally disabled residents.

The Governor's proposal requires all health plans to contribute funds that would be used by the state to draw down federal funding of at least an estimated $1.3 billion. In return, health plans would receive discounts on their Gross Premium Taxes and Corporate Taxes, as well as receive supplemental payments from the federal funds drawn down by the state, creating a net neutral balance for their participation. While the Governor's proposal is called the MCO "tax," it ensures that participating plans do not experience any net costs or losses.

(*Note: While it is true that health plans will have no loss from Medi-Cal, there is a net loss to health plans for their commercial patients which will get passed on in terms of raised premiums to employer groups most likely . CSAC is in close communication with local and county-run health plans to ensure minimal impact on these providers, especially in regards to their commercial lines of business, such as IHSS providers* .)

The Brown administration has also signaled a desire to prepare for increases in the state's share of Medi-Cal costs under the Affordable Care Act. Under the Affordable Care Act, the state added nearly four million beneficiaries to the Medi-Cal caseload, and more than 12 million Californians – a third of the state's population – receive health care services through the Medi-Cal program. Further, the federal reimbursement for new Medi-Cal recipients will step down from 100 percent to 90 percent in 2020. It is worth noting that the Governor's proclamation calling for the special session does not mention continued funding for the CCI, and it includes a reference to "and/or other fund sources" for the myriad of programs and services explained above. The Legislature officially convened the health special session on June 19, 2015, but there is no timeline for when bills will be introduced or discussed. The administration released draft trailer bill language regarding their concept for the new MCO tax last year, and released an updated proposal with the Governor's January budget proposal this year. The updated plan would not result in higher total tax payments for any health care provider.

Political Landscape. Despite the Governor's efforts to date, achieving the two-thirds vote necessary in the Legislature to provide the fix has remained elusive as it is framed as a "tax." However, there is no net increase to the health plans in the Governor's January Budget proposal. The Special Session on Health Care remains open, but the Legislature has not yet taken up the Governor's plan.

Recommendation(s)/Next Step(s):

CSAC is urging counties to contact their local legislative delegations to explain the specific potential local impacts and importance of passing an MCO fix as soon as possible.

Attachments

No file(s) attached.

Contra Costa County Board of Supervisors

Subcommittee Report

LEGISLATION COMMITTEE **4.**

Meeting Date: 02/08/2016
Subject: AB 1665 (Bonilla): Transactions and Use taxes
Submitted For: LEGISLATION COMMITTEE,
Department: County Administrator
Referral No.: 2016-02
Referral Name: AB 1665 (Bonilla): Transactions and Use taxes
Presenter: John Cunningham **Contact:** J. Cunningham 925-674-7833

Referral History:
This bill is being referred to the Legislation Committee for consideration by John Cunningham, Principal Planner in the Department of Conservation and Development.

Referral Update:
Bill: Assembly Bill 1655 (Bonilla) Transactions and use taxes: County of Alameda, County of Contra Costa, and Contra Costa Transportation Authority. (*See Attachment A for the text of the bill.*)

Background: In 2013 AB 210 (Wieckowski) modified the Revenue & Taxation (R&T) code to include a provision allowing Contra Costa County to adopt an ordinance proposing the imposition of a transactions and use tax for the support of countywide transportation programs at a rate of no more than 0.50% that, in combination with other specified taxes, exceeds the 2% statutory limitation.

Status: AB 1665 (Bonilla) would further modify the R&T code substituting "Contra Costa Transportation Authority" for "Contra Costa County" specifically assigning the taxing authority for a countywide transportation program to CCTA, and extend the period of authorization from 2020 to 2024.

The subject bill rather than *adding* CCTA as an entity eligible to propose a sales tax it *removes* the County and adds CCTA. As the statute (R&T 7291) now reads, it is limited to transportation uses but, in theory, other uses could have been added.

The bill further proposes to replace the County as the entity to impose the tax with CCTA. In other words, the bill enables CCTA to pass their own ordinance rather than going through the Board of Supervisors. Prior to this, the County had a role, albeit largely ministerial, and now with this bill, we are out of the process with the exception of acting as a CCTA member agency similar to the cities.

Recommendation(s)/Next Step(s):

Attachments

Attachment A: AB 1665 Bill Text

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL No. 1665

Introduced by Assembly Member Bonilla

January 14, 2016

An act to amend Sections 7291 and 7292 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1665, as introduced, Bonilla. Transactions and use taxes: County of Alameda, County of Contra Costa, and Contra Costa Transportation Authority.

Existing law authorizes the County of Alameda and the County of Contra Costa to impose a transactions and use tax for the support of countywide transportation programs at a rate of no more than 0.5% that, in combination with other specified taxes, exceeds the combined rate of all these taxes that may be imposed, if certain requirements are met, including a requirement that the ordinance proposing the transactions and use tax be submitted to, and approved by, the voters. Existing law repeals this authority on December 31, 2020, if the ordinance is not approved by the voters by that date.

This bill would extend this taxing authority of the County of Alameda until December 31, 2014, and would shift this same taxing authority, or so extended, from the County of Contra Costa to the Contra Costa Transportation Authority.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 7291 of the Revenue and Taxation Code is amended to read:

7291. Notwithstanding any other law, the County of Alameda and the ~~County of~~ Contra Costa *Transportation Authority* may each impose a transactions and use tax for the support of countywide transportation programs at a rate of no more than 0.5 percent that would, in combination with all taxes imposed pursuant to Part 1.6 (commencing with Section 7251), exceed the limit established in Section 7251.1, if all of the following requirements are met:

(a) The county *or the Contra Costa Transportation Authority* adopts an ordinance proposing the transactions and use tax by any applicable voting approval requirement.

(b) The ordinance proposing the transactions and use tax is submitted to the electorate and is approved by the voters voting on the ordinance pursuant to Article XIII C of the California Constitution.

(c) The transactions and use tax conforms to the Transactions and Use Tax Law, Part 1.6 (commencing with Section 7251), other than Section 7251.1.

SEC. 2. Section 7292 of the Revenue and Taxation Code is amended to read:

7292. If, as of December 31, ~~2020,~~ *2024*, an ordinance proposing a transactions and use tax has not been approved as required by subdivision (b) of Section 7291, this chapter shall be repealed as of that same date.

SEC. 3. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV because of the unique fiscal pressures being experienced in the County of Alameda and by the Contra Costa Transportation Authority in providing essential transportation programs.

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Contra Costa County Board of Supervisors

Subcommittee Report

LEGISLATION COMMITTEE **5.**

Meeting Date:	02/08/2016
Subject:	AB 45 (Mullins): Household Hazardous Waste
Submitted For:	LEGISLATION COMMITTEE,
Department:	County Administrator
Referral No.:	2016-03
Referral Name:	AB 45 (Mullins): Household Hazardous Waste
Presenter:	Deidra Dingman **Contact:** D. Dingman (925) 674-7203

Referral History:

AB 45 (Mullins) is a bill that is of concern to CSAC and the Urban Counties Caucus (UCC). CSAC has requested that counties consider taking action on this bill. The California Products Stewardship Council is also opposing this bill because they are concerned it will prevent local jurisdictions from enacting EPR-type pharmaceutical collection programs.

Referral Update:

As amended on January 21st, AB 45 would now require Cal Recycle to develop one or more general household hazardous waste (HHW) model ordinances in consultation with affected industry and stakeholders; defines home generated pharmaceutical waste as HHW; allows for the creation of a nonprofit agency to make grants to local governments to assist with outreach and educations and other costs, and deems five million dollars as sufficient funding for these purposes. The bill would be repealed in 2019 if Cal Recycle determines that there is no nonprofit willing or able to meet parameters in the bill and deemed adequate by Cal Recycle. The bill also includes intent language that states that the role for manufacturers in the end-of-life management of their products should be based on the ability of manufactures and distributors to communicate with consumers.

CSAC opposes the role outlined for manufactures in this bill. They believe that industries that profit from these hard to manage products should have a significant stake in their proper management and disposal. The bill outlines the role for manufacturers as communicating with consumers and making grants to local governments. While an Extended Producer Responsibility (EPR) model may not be appropriate for all products, EPR is an excellent tool to employ for the producers of toxic and expensive-to-manage products, and those that pose additional health and safety risks such as sharps and pharmaceuticals. AB 45 also defines home generated pharmaceutical waste as HHW. We object to home generated pharmaceutical waste being included in the proposed comprehensive hazardous waste program, as neither our state nor federal regulating agencies currently regulate it as such.

Attached are a copy of the bill (*Attachment A*) and CSAC's letter to the author (*Attachment B*).

Bill Status:
01/27/2016 In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE. (50-18)

Bill Analysis:

SUMMARY: Requires the California Department of Resources Recycling and Recovery (CalRecycle) to adopt one or more model ordinances for a comprehensive program for the collection of household hazardous waste (HHW), and allows a local jurisdiction to adopt one of the model ordinances. Specifically, this bill:

1) Requires CalRecycle, in consultation with affected industries and stakeholders, to adopt one or more model ordinances for a comprehensive program for the collection of HHW for adoption by any local jurisdiction that provides for the residential collection and disposal of solid waste.

2) Requires CalRecycle, upon adoption of the model ordinance or ordinances, to notify the public by positing the ordinances on their Internet Web site.

3) Allows, after CalRecycle complies with the posting requirements in 2) above, a local jurisdiction that proposes to enact an ordinance governing the collection and diversion of HHW to adopt one of the model ordinances.

4) Requires CalRecycle to determine whether an appropriate nonprofit organization has been created and funded for the purpose of making grants to local governments to assist with both of the following activities:

a) Educate residents of communities on the existence of HHW disposal programs and how to use them; and,

b) Defray the cost of components of local government HHW programs.

5) Requires CalRecycle, in making the determination in 4) above, to consider the following:

a) If the nonprofit organization has, at the time of the determination, a minimum of $5 million dedicated to grants to local governments for the purposes described in 4) above.

b) If the nonprofit organization will have sufficient funding to allocate grants to local governments throughout the state for five years;

c) If the composition of the nonprofit's board of directors is sufficiently diverse and experienced to appropriately consider grant applications that will positively impact efforts to improve the disposal of HHW; and,

d) If the nonprofit organization has appropriate criteria for considering grant applications.

6) Provides that this bill is applicable only to local jurisdictions that provide for the residential collection and disposal of solid waste.

7) Repeals the provisions of this bill on January 1, 2019, if CalRecycle does not make the determination that an appropriate nonprofit organization exists, as specified in 4) and 5) above, by

December 31, 2018.

8) Defines the following terms:

a) "Comprehensive program for the collection of HHW" to mean a local program that may include, but is not limited to, the following components:

i) Utilization of locally sponsored collection sites;

ii) Scheduled and publicly advertised drop off days;

iii) Door-to-door collection programs;

iv) Mobile collection programs;

v) Dissemination of information about how consumers should dispose of the various types of HHW; and,

vi) Education programs to promote consumer understanding and use of the local components of a comprehensive program.

b) "HHW" includes, but is not limited to, the following:

i) Automotive products, including, but not limited to, antifreeze, batteries, brake fluid, motor oil, oil filters, fuels, wax, and polish;

ii) Garden chemicals, including, but not limited to, fertilizers, herbicides, insect spray, pesticides, and weed killers;

iii) Household chemicals, including, but not limited to, ammonia, cleaners, strippers, and rust removers;

iv) Paint products, including, but not limited to, paint, caulk, glue, stripper, thinner, and wood preservatives and stain;

v) Consumer electronics, including, but not limited to, televisions, computers, laptops, monitors, keyboards, DVD and CD players, VCRs, MP3 players, cell phones, desktop printers, scanners, fax machines, computer mice, microwaves, and related cords;

vi) Swimming pool chemicals, including, but not limited to, chlorine tablets and liquids, pool acids, and stabilizers;

vii) Household batteries, defined as batteries that individually weigh two kilograms or less of mercury, alkaline, carbon-zinc, or nickel-cadmium, and any other batteries typically generated as household waste, including, but not limited to, batteries used to provide power for consumer electronic and personal goods often found in a household;

viii) Fluorescent tubes and compact fluorescent lamps;

ix) Mercury-containing items, including, but not limited to, thermometers, thermostats, and switches;

x) Home-generated sharps waste, as defined in existing law; and,

xi) Home-generated pharmaceutical waste, defined as a prescription or nonprescription drug, as specified, that is a waste generated by a household or households. "Home-generated pharmaceutical waste" shall not include drugs for which producers provide a take-back program as a part of a United States Food and Drug Administration managed risk evaluation and mitigation strategy pursuant to Section 355-1 of Title 21 of the United States Code, or waste generated by a business, corporation, limited partnership, or an entity involved in a wholesale transaction between a distributer and a retailer.

9) Makes a number of findings and declarations.

EXISTING LAW:

1) Requires cities and counties to prepare, adopt, and submit to CalRecycle an HHW Element plan which identifies a program for the safe collection, recycling, treatment, and disposal of hazardous wastes that are generated by households within the jurisdiction and provides a specific time frame for achieving these objectives.

2) Requires, under the California Integrated Waste Management Act of 1989, each city or county to divert 50% of solid waste from landfill disposal or transformation on and after January 1, 2000. Establishes a statewide policy goal that not less than 75% of solid waste be source reduced, recycled, or composted on and after January 1, 2020.

3) Requires CalRecycle and the Department of Toxic Substance Control (DTSC) to jointly maintain a database of all HHW collection events, facilities, and programs within the state and make that information available to the public upon request.

4) Requires the California Integrated Waste Management Board to coordinate with DTSC to develop and implement a public information program to provide uniform and consistent information on the proper disposal of hazardous substances found in and around homes, and to assist the efforts of counties required to provide HHW collection, recycling, and disposal programs.

5) Requires CalRecycle, upon appropriation by the Legislature, to distribute grants to cities, counties, or other local agencies with the responsibility for solid waste management, and for local programs to help prevent the disposal of hazardous wastes at disposal sites, which include but are not limited to programs that expand or implement HHW programs.

FISCAL EFFECT: According to the Assembly Appropriations Committee, this bill contains increased annual costs to CalRecycle in the range of $200,000 to $300,000 (special fund).

COMMENTS:

1) Bill Summary. This bill requires CalRecycle, in consultation with affected industries, to adopt one or more model ordinances for a comprehensive program for the collection of HHW for adoption by a local jurisdiction that provides for the residential collection and disposal of solid waste. Local jurisdictions proposing to enact an ordinance to govern the collection and diversion of HHW may adopt one of the model ordinances after CalRecycle has posted the model

ordinances on its Web site. Additionally, this bill requires CalRecycle to determine if an appropriate nonprofit organization has been created and funded to make grants to local governments for specified activities relating to HHW programs. This bill requires CalRecycle to consider a list of factors in making the determination about the nonprofit organization. The provisions of this bill will be repealed on January 1, 2019, if CalRecycle does not make the determination that an appropriate nonprofit organization exists by December 31, 2018. This bill is an author-sponsored measure.

2) Background on HHW. HHW is hazardous waste commonly generated by households and includes such ubiquitous items as batteries, pesticides, electronics, fluorescent lamps, used oil, solvents, and cleaners. If these products are handled or disposed of incorrectly, they can pose a threat to health and safety and the environment. When these products are discarded, they become "household hazardous waste." In California, it is illegal to dispose of HHW in the trash, down the drain, or by abandonment. HHW needs to be disposed of through a HHW program.

Cities and counties are required to prepare, adopt, and submit to CalRecycle, a HHW Management Element Plan, which identifies a program for the safe collection, recycling, treatment, and disposal of HHW. The Element Plan specifies how HHW generated within the jurisdiction must be collected, treated, and disposed. Each jurisdiction is required to prepare and implement plans to reduce and safely collect, recycle, treat, and dispose of HHW and provides a specific time frame for achieving these objectives. While there are many different approaches for the collection and management of HHW, all are permitted by DTSC and most are operated by local jurisdictions. Some private operators operate programs under contract with local jurisdictions, including curbside and door-to-door collection.

3) Author's Statement. According to the author, "State law has loosely regulated HHWs for approximately 25 years. AB 45 aims to coordinate with affected industries like local governments, producers of HHW products, and CalRecycle to adopt model ordinances for a comprehensive program for the collection of HHW. Local governments have the option to choose whether or not to use the model ordinances listed by CalRecycle. In addition, CalRecycle will determine whether or not an appropriate nonprofit organization has been created and funded for the purpose of making grants to local governments. This non-profit will be created to assist in educating residents about HHW disposal programs and how to use them. In addition, the Department will ensure that product manufacturers contribute a minimum of five million dollars to the non-profit for defraying the cost of components of local government HHW programs."

4) Related Legislation. AB 2371 (Mullin) of 2014, as heard by the Assembly Local Government Committee, would have required each jurisdiction, no later than January 1, 2016, to review its HHW Element to determine its effectiveness in the collection, recycling, treatment, and disposal of HHW, and would have required CalRecycle, on or before January 1, 2017, to submit a report to the Legislature that analyzes the effectiveness of the state's HHW management system. AB 2371 was later amended to deal with a different subject matter.

AB 1159 (Gordon) of 2015 would have established a limited-term product stewardship program for home-generated medical sharps and household batteries. AB 1159 was held in the Assembly Appropriations Committee.

5) Policy Considerations. The Legislature may wish to consider the following:

a) Nonprofit Organization. This bill is contingent on a determination made by CalRecycle on

whether an appropriate nonprofit organization has been created and funded for the purpose of making grants to local governments. Under this bill, CalRecycle is required to consider a list of factors in making this determination, which includes whether the nonprofit organization has $5 million and if the nonprofit organization has sufficient funding to allocate to local governments for five years. The Legislature may wish to consider that, while CalRecycle must consider certain factors, there are no requirements in this bill to require that a specified amount of funding is distributed.

The California State Association of Counties (CSAC), opposed unless amended, argues that "there is a lack of criteria, specific qualifications, or process as to how these non-profits would operate. The bill arbitrarily identifies the amount of five million dollars as a sufficient amount for grants to local governments. HHW management is a very expensive process as those toxic products require very specific handling. We question how this number was deemed sufficient."

In a letter to the author, the Advanced Medical Technology Association, Biotechnology Industry Organization, Consumer Healthcare Products Association, and the Pharmaceutical Research and Manufacturers of America state "the undersigned associations commit that following the enactment of AB 45 in a form that our member companies believe will ensure a strong commitment by local government to a comprehensive state-wide approach to disposal of (HHW), we will facilitate the establishment and funding of an appropriate non-profit entity dedicated to providing education to California consumers about the appropriate handling and disposal of our industries' products. This entity, which we propose to be funded by the industry participants represented by the signatories of this letter, as well as other impacted groups, would be funded at the amount of $5 million over a 5-year period."

b) Current Programs and Definitions. The Legislature may wish to consider how current programs and definitions pertaining to the management of HHW will interact with the provisions in this bill.

i) Grant Funding. CSAC states, "CalRecycle currently runs a HHW grant program. There are no findings in the bill indicating why such a move could, or would be an improvement over the current system."

ii) HHW Element Plan. According to CSAC, "jurisdictions across the state have developed comprehensive ordinances to collect and manage HHW, each tailored to the needs of their respective community. We question the need for a general HHW model ordinance when locals are required to have them in place already. In addition, there is little guidance within the legislation to indicate the types of ordinances that might be developed."

iii) Definitions. CSAC argues that "the bill includes a new, broader definition of HHW, which includes home-generated pharmaceutical waste, such as prescription or non-prescription drugs. This would ban the disposal of these drugs without a comprehensive plan in place to collect this material. We believe that a specific collection model is necessary for these types of materials, as a typical local collection event, or curbside program is not appropriate for dangerous substances. CSAC supports a product stewardship model for pharmaceutical waste, which incentivizes the industries that profit from these products to have a significant stake in their proper management and disposal."

iv) Shared Responsibility. Product Stewardship and Extended Producer Responsibility (EPR) refers to a policy model that includes manufacturers in the end-of-life management for products

that they produce. The California Product Stewardship Council states that EPR is a strategy to place a shared responsibility for end-of-life product management on all entities involved in the product chain, instead of the local governments and taxpayers, while encouraging product design changes that minimize a negative impact on human health and the environment at every stage of a product's lifecycle."

CSAC argues that "the role of industry, or other stakeholder participation outlined in the bill lacks critical detail."

6) Arguments in Support. Supporters argue that industry is considering approaches that would support consumer education and local governments in the implementation of comprehensive programs with the goal to increase compliance with the State's goals of diverting HHW from the waste stream. Supporters believe such approaches complement this bill's intent to build on the residential collection system to ensure consumer convenience and enhance participation rates without mandates on local governments.

7) Arguments in Opposition. Santa Barbara County, in opposition, states "We believe that retailers and manufacturers should participate in the end-of-life management of the products they put on the market. We are disappointed that AB 45 moves away from this shared responsibility approach and instead continues to make local jurisdictions solely responsible for collecting HHW. The recent amendments mention a non-profit organization that will provide grants to jurisdictions for HHW programs, but we are not clear how this non-profit organization will be formed or how the funds will be generated."

Recommendation(s)/Next Step(s):

CONSIDER recommending to the Board of Supervisors a position of "Oppose Unless Amended" on AB 45 (Mullins): Household Hazardous Waste, as recommended by CSAC and Deidra Dingman, Conservation Programs Manager for Contra Costa County.

Attachments

Attachment A: AB 45 Bill Text

Attachment B: CSAC Letter

AMENDED IN ASSEMBLY JANUARY 21, 2016

AMENDED IN ASSEMBLY APRIL 30, 2015

AMENDED IN ASSEMBLY APRIL 23, 2015

AMENDED IN ASSEMBLY APRIL 13, 2015

AMENDED IN ASSEMBLY MARCH 19, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL No. 45

Introduced by Assembly Member Mullin

December 1, 2014

An act to add *and repeal* Article 3.4 (commencing with Section 47120) ~~to~~ *of* Chapter 1 of Part 7 of Division 30 of the Public Resources Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 45, as amended, Mullin. Household hazardous waste.

The California Integrated Waste Management Act of 1989, which is administered by the Department of Resources Recycling and Recovery, requires, among other things, each city and each county to prepare a household hazardous waste element containing specified components, and to submit that element to the department for approval. Existing law requires the department to approve the element if the local agency demonstrates that it will comply with specified requirements. A city or county is required to submit an annual report to the department summarizing its progress in reducing solid waste, including an update of the jurisdiction's household hazardous waste element.

~~This bill would require each jurisdiction that provides for the residential collection and disposal of solid waste to increase the collection and diversion of household hazardous waste in its service area, on or before July 1, 2020, by 15% over a baseline amount, to be determined in accordance with department regulations. The bill would authorize the department to adopt a model ordinance for a comprehensive program for the collection of household hazardous waste to facilitate compliance with those provisions, and would require each jurisdiction to annually report to the department on progress achieved in complying with those provisions. By imposing new duties on local agencies, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

This bill would require the department to adopt one or more model ordinances for a comprehensive program for the collection of household hazardous waste and would authorize a local jurisdiction that provides for the residential collection and disposal of solid waste that proposes to enact an ordinance governing the collection and diversion of household hazardous waste to adopt one of the model ordinances adopted by the department. The bill would require the department to determine whether a nonprofit organization has been created and funded to make grants to local jurisdictions for specified purposes relating to household hazardous waste disposal and would specify that if the department does not determine that such a nonprofit organization exists by December 31, 2018, then the bill's provisions would be repealed on January 1, 2019.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

SECTION 1. ~~(a)~~ The Legislature finds and declares all of the following:

~~(1)~~

(a) Household hazardous waste is creating environmental, health, and workplace safety issues. Whether due to unused pharmaceuticals, batteries, medical devices, or other disposable

consumer items, effective and efficient disposal remains an extraordinary challenge.

~~(2)~~

(b) State and local efforts to address disposal of these items have been well intended and, in some cases, effective. However, even the most effective programs have very low consumer participation. Other approaches being promoted throughout the state would fragment the collection of household hazardous waste and move collection away from consumer convenience.

~~(3)~~

(c) In addition to other programs for the collection of household hazardous waste, a number of cities in California are already using curbside household hazardous waste collection programs, door-to-door household hazardous waste collection programs, and household hazardous waste residential pickup services as mechanisms for collecting and disposing of many commonly used household items for which disposal has been the subject of state legislation ~~or~~ *and* local ordinances. The waste disposal companies and local governments that have implemented these programs have found them to be valuable components of a comprehensive approach to the management of household hazardous waste.

~~(4)~~

(d) There is also an appropriate role for manufacturers and distributors of these products in comprehensive efforts to more effectively manage household hazardous waste. That role should be based on the ability of manufacturers and distributors to communicate with consumers.

~~(b) It is the intent of the Legislature to enact legislation that would establish curbside household hazardous waste collection programs, door-to-door household hazardous waste collection programs, and household hazardous waste residential pickup services as the principal means of collecting household hazardous waste and diverting it from California's landfills and waterways.~~

SEC. 2. Article 3.4 (commencing with Section 47120) is added to Chapter 1 of Part 7 of Division 30 of the Public Resources Code, to read:

Article 3.4. Household Hazardous Waste Collection and Reduction

47120. For purposes of this article, the following terms have the following meanings:

(a) "Comprehensive program for the collection of household hazardous waste" means a local program that may include, but is not limited to, the following components:

(1) Utilization of locally sponsored collection sites.

(2) Scheduled and publicly advertised ~~drop off~~ *drop-off* days.

(3) Door-to-door collection programs.

(4) Mobile collection programs.

(5) Dissemination of information about how consumers should dispose of the various types of household hazardous waste.

(6) Education programs to promote consumer understanding and use of the local components of a comprehensive program.

(b) "Household hazardous waste" includes, but is not limited to, the following:

(1) Automotive products, including, but not limited to, antifreeze, batteries, brake fluid, motor oil, oil filters, fuels, wax, and polish.

(2) Garden chemicals, including, but not limited to, fertilizers, herbicides, insect sprays, pesticides, and weed killers.

(3) Household chemicals, including, but not limited to, ammonia, cleaners, strippers, and rust removers.

(4) Paint products, including, but not limited to, paint, caulk, glue, stripper, thinner, and wood preservatives and stain.

(5) Consumer electronics, including, but not limited to, televisions, computers, laptops, monitors, keyboards, DVD and CD players, VCRs, MP3 players, cell phones, desktop printers, scanners, fax machines, ~~mouses,~~ *computer mice*, microwaves, and related cords.

(6) Swimming pool chemicals, including, but not limited to, chlorine tablets and liquids, pool acids, and stabilizers.

(7) Household batteries. For purposes of this section, "household batteries" means batteries that individually weigh two kilograms or less of mercury, alkaline, carbon-zinc, or nickel-cadmium, and any other batteries typically generated as household waste, including, but not limited to, batteries used to provide power for consumer electronic and personal goods often found in a household.

(8) Fluorescent tubes and compact ~~florescent~~ *fluorescent* lamps.

(9) Mercury-containing items, including, but not limited to, thermometers, thermostats, and switches.

(10) Home-generated sharps waste, as defined in Section 117671 of the Health and Safety Code.

(11) Home-generated pharmaceutical waste. For purposes of this section, "home-generated pharmaceutical waste" means a prescription or nonprescription drug, as specified in Section 4022 or 4025.1 of the Business and Professions Code, that is a waste generated by a household or households. "Home-generated pharmaceutical waste" shall not include drugs for which producers provide a take-back program as a part of a United States Food and Drug ~~Administration managed~~ *Administration-managed* risk evaluation and mitigation strategy pursuant to Section 355-1 of Title 21 of the United States Code, or waste generated by a business, corporation, limited partnership, or an entity involved in a wholesale transaction between a distributor and a retailer.

~~47121. (a) (1) On or before July 1, 2020, each jurisdiction shall increase its collection and diversion of household hazardous waste in its service area by 15 percent over its baseline amount, as established pursuant to subdivision (b).~~

~~(2) Notwithstanding paragraph (1), a jurisdiction that has in place or adopts an ordinance implementing a comprehensive program for the collection of household hazardous waste shall have an additional two years to meet the collection and diversion objective in paragraph (1).~~

~~(b) No later than July 1, 2016, each jurisdiction shall inform the department of its baseline amount of collection and diversion of hazardous waste in accordance with regulations adopted by the department. The baseline amount may be expressed in tonnage or by the number of households participating, and may focus on particular types of household hazardous waste.~~

~~47122. (a) The department shall adopt regulations to implement this article.~~

~~(b) The department may adopt a model ordinance for a comprehensive program for the collection of household hazardous waste to facilitate compliance with this article.~~

~~47123. Commencing July 1, 2020, and annually thereafter, each jurisdiction shall report to the department on progress achieved in complying with this section. A jurisdiction shall make~~

~~a good faith effort to comply with this section, and the department may determine whether a jurisdiction has made a good faith effort for purposes of this program. To the maximum extent practicable, it is the intent of the Legislature that reporting requirements under this section be satisfied by submission of similar reports currently required by law.~~

~~47124. This article does not apply to a jurisdiction that does not provide for the residential collection and disposal of solid waste.~~

47121. (a) The department, in consultation with affected industries and stakeholders, shall adopt one or more model ordinances for a comprehensive program for the collection of household hazardous waste for adoption by any local jurisdiction that provides for the residential collection and disposal of solid waste.

(b) Upon adoption of the model ordinance or ordinances by the department, the department shall notify the public by posting the model ordinance or ordinances on the department's Internet Web site.

(c) After the department posts the model ordinance or ordinances on its Internet Web site, a local jurisdiction that proposes to enact an ordinance governing the collection and diversion of household hazardous waste may adopt one of the department's model ordinances.

47122. (a) The department shall determine whether an appropriate nonprofit organization has been created and funded for the purpose of making grants to local governments to assist with both of the following activities:

(1) Educating residents of communities on the existence of household hazardous waste disposal programs and how to use them.

(2) Defraying the cost of components of local government household hazardous waste programs.

(b) In making the determination set forth in subdivision (a), the department shall take all of the following into consideration:

(1) Whether the nonprofit organization has, at the time of the determination, a minimum of five million dollars ($5,000,000) dedicated to grants to local governments for the purposes set forth in subdivision (a).

(2) Whether the nonprofit organization will have sufficient funding to allocate grants to local governments throughout the state for five years.

(3) Whether the composition of the nonprofit's board of directors is sufficiently diverse and experienced to appropriately consider grant applications that will positively impact efforts to improve disposal of household hazardous waste.

(4) Whether the nonprofit organization has appropriate criteria for considering grant applications.

(c) Upon making a determination that an appropriate nonprofit organization exists as set forth in subdivision (a), the department shall post the fact that the department has made this determination on the department's Internet Web site.

47123. This article is applicable only to local jurisdictions that provide for the residential collection and disposal of solid waste.

47124. If the department does not make the determination that there exists an appropriate nonprofit organization, as specified in subdivision (a) of Section 47122, by December 31, 2018, this article shall be repealed on January 1, 2019.

~~SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.~~

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January 22, 2016

The Honorable Kevin Mullin
State Capitol Building, Room 3160
Sacramento, CA 95814

RE: AB 45 (Mullin) – Household Hazardous Waste
As Amended on January 21, 2016– OPPOSE –UNLESS- AMENDED

Dear Assembly Member Mullin:

On behalf of the California State Association of Counties (CSAC), I write to regrettably express our oppose-unless-amended position on your AB 45. CSAC appreciates the striking of the household hazardous waste (HHW) diversion mandate on local government that was included in the April 30th version of the bill. However, we have several remaining concerns with the approach outlined in this measure.

First, this bill would require the Department of Resources, Recycling and Recovery (Cal Recycle) to create one or more model ordinances for HHW collection programs for adoption by local governments, if they so choose. Current law already requires cities and counties to prepare, adopt, and submit to Cal Recycle a Household Hazardous Waste Element, which identifies a program for the safe collection, recycling, treatment, and disposal of hazardous wastes that are generated by households. The Household Hazardous Waste Element (HHWE) specifies how HHW must be collected, treated, and disposed. In addition, local jurisdictions are required to report to Cal Recycle how much HHW they collect annually. Thus, jurisdictions across the state have developed comprehensive ordinances to collect and manage HHW, each tailored to the needs of their respective community. We question the need for a general HHW model ordinance when locals are required to have them in place already. In addition, there is little guidance within the legislation to indicate the types of ordinances that might be developed.

Second, the bill includes a new, broader definition of HHW, which includes home-generated pharmaceutical waste (HGPW), such as prescription or non-prescription drugs. This would ban the disposal of these drugs without a comprehensive plan in place to collect this material. Counties recognize the additional public health and safety hazard posed by pharmaceutical waste. We believe that a specific collection model is necessary for these types of materials, as a typical local collection event, or curbside program is not appropriate for dangerous substances. CSAC supports a product stewardship model for pharmaceutical waste, which incentivizes the industries that profit from these products to have a significant stake in their proper management and disposal.

Third, the role of industry, or other stakeholder participation outlined in the bill lacks critical detail. AB 45 requires the department to determine whether an "appropriate non-profit organization has been created and funded for the purpose of making grants to local governments." Cal Recycle currently runs an HHW grant program. There are no findings in the bill indicating why such a move could, or would be an improvement over the current system. In addition, there is lack of criteria, specific qualifications, or process as to how these non-profits would operate. Finally, the bill arbitrarily identifies the amount of five million dollars as a sufficient amount for grants to local governments. HHW management is a very

expensive process as these toxic products require very specific handling. We question how this number was deemed sufficient.

Local governments currently bear the burden of managing HHW, and we welcome the opportunity to work with you to develop a workable solution that will aid in the safe collection and disposal of household hazardous waste. Should you have any questions regarding our position, please feel free to contact me at 916-327-7500, ext. 504, or cmartinson@counties.org.

Sincerely,

Cara B. Martinson
Legislative Representative

Contra Costa County Board of Supervisors

Subcommittee Report

LEGISLATION COMMITTEE **6.**

Meeting Date:	02/08/2016
Subject:	AB 1642 (Obernolte) - Fire Prevention Fee Due Dates
Submitted For:	LEGISLATION COMMITTEE,
Department:	County Administrator
Referral No.:	2016-04
Referral Name:	AB 1642 (Obernolte) - Fire Prevention Fee Due Dates
Presenter:	L. DeLaney **Contact:** L. DeLaney, 925-335-1097

Referral History:

Assemblymember Obernolte recently introduced AB 1642, legislation that would increase the deadline for paying fire prevention fees from 30 days to 60 days. His office is currently looking for letters of support for this bill. AB 1642 is similar to a previous bill that Assemblymember Obernolte sponsored last year, AB 203, which Contra Costa County supported.

Referral Update:

Assembly Bill 1642 extends the deadline to pay or dispute a fire prevention fee to 60 days, rather than the 30 days allowed under existing law.

Created by the Legislature and Governor as part of the 2011 Budget, the Fire Prevention Fee charges property owners $152.33 for each habitable structure located in a State Responsibility Area (SRA), with a $35 reduction if they live within the boundaries of a local fire protection district. About 700,000 rural Californians receive a yearly Fire Prevention Fee bill, due 30 days from the date on the notice.
Due to the rural nature of those being billed, many individuals do not receive their bills in a timely manner. Additionally, many of these individuals are on fixed incomes, making it difficult for them to pay their Fire Prevention Fee by the 30-day deadline.

The fire prevention fee affects residents in communities throughout California, and AB 1642 has received bipartisan support.

According to the California Board of Equalization (BOE), many property owners have expressed concern that the 30-day deadline does not allow them sufficient time to either pay or file a petition. If a taxpayer misses the filing deadline to appeal the assessment, they must first pay the fee in full and file a claim for a refund. California would join 20 other states that give homeowners at least 60 days to file a petition.

Attachment A is the text of the bill. Attachment B is the bill's Fact Sheet, provided by the author's office.

Recommendation(s)/Next Step(s):

CONSIDER recommending to the Board of Supervisors a position of "Support" on AB 1642 (Obernolte): State Responsibility Areas: Fire Prevention Fees.

Attachments

Attachment A: AB 1642 Bill Text

Attachment B: AB 1642 Fact Sheet

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL No. 1642

Introduced by Assembly Member Obernolte
(Coauthors: Assembly Members Bigelow, Dodd, Gallagher, Gordon, Lackey, Levine, Mayes, Melendez, Olsen, Waldron, Wilk, and Wood)
(Coauthors: Senators Hill, Liu, McGuire, Morrell, Nielsen, and Roth)

January 11, 2016

An act to amend Sections 4213, 4220, and 4222 of the Public Resources Code, relating to forestry and fire prevention.

LEGISLATIVE COUNSEL'S DIGEST

AB 1642, as introduced, Obernolte. State responsibility areas: fire prevention fees.

Existing law requires the state to have the primary financial responsibility for preventing and suppressing fires in areas that the State Board of Forestry and Fire Protection has determined are state responsibility areas, as defined. Existing law requires that a fire prevention fee be charged on each habitable structure on a parcel that is within a state responsibility area, collected annually by the State Board of Equalization, in accordance with specified procedures, and specifies that the annual fee shall be due and payable 30 days from the date of assessment by the state board. Existing law authorizes a petition for redetermination of the fee to be filed within 30 days after service of a notice of determination, as specified.

This bill would extend the time when the fire prevention fee is due and payable from 30 to 60 days from the date of assessment by the State Board of Equalization and would authorize the petition for

redetermination to be filed within 60 days after service of the notice of determination, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 4213 of the Public Resources Code is amended to read:

4213. (a) (1) ~~Commencing with the 2011–12 fiscal year, the~~ *The* fire prevention fee imposed pursuant to Section 4212 shall be collected annually by the State Board of Equalization in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

(2) Notwithstanding the appeal provisions in the Fee Collection Procedures Law, a determination by the department that a person is required to pay a fire prevention fee, or a determination by the department regarding the amount of that fee, is subject to review under Article 2 (commencing with Section 4220) and is not subject to a petition for redetermination by the State Board of Equalization.

(3) (A) Notwithstanding the refund provisions in the Fee Collection Procedures Law, the State Board of Equalization shall not accept ~~any~~ *a* claim for refund that is based on the assertion that a determination by the department improperly or erroneously calculated the amount of the fire prevention fee, or incorrectly determined that the person is subject to that fee, unless that determination has been set aside by the department or a court reviewing the determination of the department.

(B) If ~~it is determined by~~ the department or a reviewing court *determines* that a person is entitled to a refund of all or part of the fire prevention fee, the person shall make a claim to the State Board of Equalization pursuant to Chapter 5 (commencing with Section 55221) of Part 30 of Division 2 of the Revenue and Taxation Code.

(b) The annual fire prevention fee shall be due and payable ~~30~~ *60* days from the date of assessment by the State Board of Equalization.

(c) On or before ~~each~~ January 1, the department shall annually transmit to the State Board of Equalization the appropriate name and address of each person who is liable for the fire prevention

fee and the amount of the fee to be assessed, as authorized by this article, and at the same time the department shall provide to the State Board of Equalization a contact telephone number for the board to be printed on the bill to respond to questions about the fee.

(d) ~~Commencing with the 2012–13 fiscal year, if~~ *If* in ~~any given~~ *a* fiscal year there are sufficient amounts of money in the State Responsibility Area Fire Prevention Fund created pursuant to Section 4214 to finance the costs of the programs under subdivision (d) of Section 4214 for that fiscal year, the fee may not be collected that fiscal year.

SEC. 2. Section 4220 of the Public Resources Code is amended to read:

4220. A person from whom the fire prevention fee is determined to be due under this chapter may petition for a redetermination of whether this chapter applies to that person within ~~30~~ *60* days after service upon him or her of a notice of the determination. If a petition for redetermination is not filed within the ~~30-day~~ *60-day* period, the amount determined to be due becomes final at the expiration of the ~~30-day~~ *60-day* period.

SEC. 3. Section 4222 of the Public Resources Code is amended to read:

4222. If a petition for redetermination of the application of this chapter is filed within the ~~30-day~~ *60-day* period, the department shall reconsider whether the fee is due and make a determination in writing. The department may eliminate the fee based on a determination that this chapter does not apply to the person who filed the petition.

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FACT SHEET

JAY OBERNOLTE
Assemblyman, 33rd District

Assembly Bill 1642 – Fire Prevention Fee Due Dates

SUMMARY

AB 1642 (Obernolte) would extend the period for paying or disputing a fire prevention fee from 30 days to 60 days from the date of assessment.

BACKGROUND

The fire prevention fee is assessed annually on owners of habitable structures located on a parcel within a State Responsibility Area (SRA). The SRA does not include lands within city boundaries or in federal ownership. Generally speaking, the SRA is comprised of rural areas, including the state's wildlands and watersheds.

Under Public Resources Code (PRC) Section 4213, the annual fire prevention fee is due and payable to the Board of Equalization (BOE) 30 days from the date of assessment. Additionally, PRC Section 4220 provides a 30-day period to dispute the fee by filing a petition for redetermination.

If a taxpayer misses the 30 day filing deadline to appeal the assessed liability, the determined fee is final and must be paid. However, if a taxpayer files a timely petition they are not required to pay the fee until BOE makes a final ruling in regard to the dispute.

PROBLEM

Despite the efforts of BOE and the Department of Forestry and Fire Protection (CalFire) to clarify the fire fee billings, improve communications and publications, and educate fee payers about the petition process, many homeowners have expressed concern that the 30-day period does not allow them sufficient time to pay or dispute the fee.

The reasons given generally include mail delays in rural areas, difficulty understanding fire fee bills, financial stress on fixed-income property owners, and a lack of time to obtain assistance and documentation.

SOLUTION

AB 1642 would give property owners 60 days to pay or dispute the fire prevention fee, rather than the 30 days allowed under existing law. This would allow sufficient time for those residents to review their assessments and account for any delays.

STAFF CONTACT INFORMATION

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As Introduced on January 11, 2016

Contra Costa County Board of Supervisors

Subcommittee Report

LEGISLATION COMMITTEE **7.**

Meeting Date:	02/08/2016
Subject:	Report on Statewide Issues of Interest
Submitted For:	LEGISLATION COMMITTEE,
Department:	County Administrator
Referral No.:	2016-05
Referral Name:	
Presenter:	L. DeLaney **Contact:** L. DeLaney, 925-335-1097

Referral History:
Statewide issues of importance to Contra Costa County are brought to the Legislation Committee for consideration and direction to staff.

Referral Update:
Governor's Public Safety Reform Initiative

On January 26, 2016, the Governor announced that he has submitted an Initiative for the November 2016 ballot titled "THE PUBLIC SAFETY AND REHABILITATION ACT OF 2016." (*Attachment A*) This initiative would make changes to parole for adults and would amend the current juvenile initiative.

The initiative:

-Authorizes parole consideration for nonviolent inmates who complete the full sentence for their primary offense.
-Allows inmates to earn credits for good behavior, education and rehabilitative achievement.
-Requires judges rather than prosecutors to decide whether juveniles as young as 14-years-old should be tried as adults.

California's prisons are under a court-ordered population cap, the prison population is expected to grow, and there are almost 5,000 inmates housed in out-of-state prisons. Without further action, the court will order the release of prisoners. This initiative--through its nonviolent parole and earned-credit provisions--will help ensure that any release of rehabilitated inmates is consistent with public safety.

Currently, prosecutors often must decide within 48 hours whether a juvenile should be charged as an adult. The initiative will require a judge, instead of a prosecutor, to carefully review all of the circumstances and make the decision.

Budget Proposal on County Jail Facilities and Permit Incentives - Request for Comment

One of the proposals in the Governor's Budget is $250 million in grants to counties for jail facilities construction. However, this preliminary proposal is limited to those counties that have never received an award or only received a partial award. Based on information from the Board of State and Community Corrections (BSCC), only 3 urban counties fit into these categories.

In light of this restriction on the ability to apply, the Urban Counties Caucus Executive Director wants to get a sense from the urban counties if counties are interested in applying, or believed they need additional funds for jail facilities in their county. This is to help her to decide whether the UCC should support this item or whether the UCC should request changes to the application process as outlined by the Governor.

The UCC Executive Director is requesting feedback by Friday February, 19, 2016.

Transportation Funding

Recently, the California Transportation Commission (CTC) took action to lower its funding estimate for the State Transportation Improvement Program (STIP) due to continuing decreases in fuel tax revenues. On January 27, the Commission sent the Legislature a letter describing the worsening fiscal condition of the state transportation system and outlining projects that will be indefinitely delayed as a result of decreased revenues. The reductions in revenue prompting the CTC action last week also affect the funding available for the local street and road system, as the primary source of funding for maintaining and operating local roads is the state gasoline excise tax.

Due to low prices and changes in consumption patterns, funding for local roads is down about 25% over the last two fiscal years. CSAC is working with public works departments in every county to identify the impacts of these ongoing revenue reductions. In the coming weeks, CSAC will continue their push for a comprehensive transportation funding package that invests at least $3 billion annually in local streets and roads. CSAC urges counties to reach out to their legislative representatives to ensure they are aware of these ongoing revenue reductions. CSAC is planning a Press Conference in Contra Costa County the week of February 8 to highlight the more than $24 million in impacts to projects in Contra Costa County.

By Right Housing Element Legislation

Attached is a legislative proposal (*Attachment B*) related to by right housing and housing elements from the American Planning Association, California Chapter. CSAC welcomes review and feedback from counties by Friday, February 12.

Based on CSAC staff's initial read, the proposal would specify that an attached housing development shall not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a "project" for purposes of CEQA, provided that the development either:

1. Meets the criteria for a CEQA exemption for a residential project located on an infill site within an urbanized area under SB 1925 (Sher, 2002) pursuant to PRC Sections 21159.22, 21159.23, and 21159.24.
2. Meets all the following criteria:
    a. Located on site listed in jurisdiction's housing element inventory OR located on a site

that has been or will be rezoned pursuant to the housing element.

b. The development doesn't contain more dwelling units than projected to be accommodated on the affected sites from the housing element plus any density bonus for which the development is eligible.
c. The development complies with applicable, objective general plan and zoning standards, including design standards (Note: this provision says when "the attached housing development was determined to be complete" but I assume it means when the application was complete.)
d. The development is located in either:
    i. An Urbanized Area, or
    ii. CDP with a population density of at least 5,000 per square mile, or
    iii. For a project with 50 or fewer units, within an incorporated city with a density of at least 2,500/square mile and a population of at least 25,000, or
    iv. An infill site as defined in Section 21061.5 of the PRC (infill definition from SB 375)

Other provisions include a requirement that at least 10% of units in the attached housing development be affordable to very low income households, or at least 20% of the units be affordable to lower income houses, or at least 50% of the units be affordable for moderate income households for a period of at least 30 years.

CSAC would appreciate any initial comments or concerns counties may have with this legislative proposal, which has yet to be introduced in bill form.

Recommendation(s)/Next Step(s):

CONSIDER the statewide issues of importance to counties and provide direction to staff.

Attachments

Attachment A: Governor's Initiative

Attachment B: By Right Housing Legislation

THE PUBLIC SAFETY AND REHABILITATION ACT OF 2016

SECTION 1. Title.

This measure shall be known and may be cited as "The Public Safety and Rehabilitation Act of 2016."

SEC. 2. Purpose and Intent.

In enacting this Act, it is the purpose and intent of the people of the State of California to:

1. Protect and enhance public safety.
2. Save money by reducing wasteful spending on prisons.
3. Prevent federal courts from indiscriminately releasing prisoners.
4. Stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles.
5. Require a judge, not a prosecutor, to decide whether juveniles should be tried in adult court.

SEC. 3. Section 32 is added to Article I of the California Constitution, to read:

SEC. 32. (a) The following provisions are hereby enacted to enhance public safety, improve rehabilitation, and avoid the release of prisoners by federal court order, notwithstanding anything in this article or any other provision of law:

(1) Parole consideration: Any person convicted of a non-violent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.

(A) For purposes of this section only, the full term for the primary offense means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.

(2) Credit Earning: The Department of Corrections and Rehabilitation shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements.

(b) The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety.

SEC. 4. Judicial Transfer Process.

Sections 602 and 707 of the Welfare and Institutions Code are hereby amended.

Section 602 of the Welfare and Institutions Code is amended to read:

602. ~~(a)~~ Except as provided in ~~subdivision (b)~~ Section 707, any person who is under 18 years of age when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based

solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

~~(b) Any person who is alleged, when he or she was 14 years of age or older, to have committed one of the following offenses shall be prosecuted under the general law in a court of criminal jurisdiction:~~

~~(1) Murder, as described in Section 187 of the Penal Code, if one of the circumstances enumerated in subdivision (a) of Section 190.2 of the Penal Code is alleged by the prosecutor, and the prosecutor alleges that the minor personally killed the victim.~~

~~(2) The following sex offenses, if the prosecutor alleges that the minor personally committed the offense, and if the prosecutor alleges one of the circumstances enumerated in the One Strike law, subdivision (d) or (e) of Section 667.61 of the Penal Code, applies:~~

~~(A) Rape, as described in paragraph (2) of subdivision (a) of Section 261 of the Penal Code.~~

~~(B) Spousal rape, as described in paragraph (1) of subdivision (a) of Section 262 of the Penal Code.~~

~~(C) Forcible sex offenses in concert with another, as described in Section 264.1 of the Penal Code.~~

~~(D) Forcible lewd and lascivious acts on a child under 14 years of age, as described in subdivision (b) of Section 288 of the Penal Code.~~

~~(E) Forcible sexual penetration, as described in subdivision (a) of Section 289 of the Penal Code.~~

~~(F) Sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code, by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.~~

~~(G) Lewd and lascivious acts on a child under 14 years of age, as defined in subdivision (a) of Section 288, unless the defendant qualifies for probation under subdivision (d) of Section 1203.066 of the Penal Code.~~

Section 707 of the Welfare and Institutions Code is amended to read:

707. (a)(1) In any case in which a minor is alleged to be a person described in ~~subdivision (a) of~~ Section 602 by reason of the violation, when he or she was 16 years of age or older, of any felony criminal statute, ~~or ordinance except those listed in subdivision (b)~~, or of an offense listed in subdivision (b) when he or she was 14 or 15 years of age, the District Attorney or other appropriate prosecuting officer may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction. ~~upon~~ The motion ~~of the petitioner~~ must be made prior to the attachment of jeopardy. Upon such motion, the juvenile court shall ~~cause~~ order the probation officer to ~~investigate and~~ submit a report on the behavioral patterns and social history of the minor. ~~being considered for a determination of unfitness.~~ The report shall include any written or oral statement offered by the victim pursuant to Section 656.2.

(2) Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the juvenile court shall decide whether the minor should be transferred to a court of criminal jurisdiction. In making its decision, the court shall consider the criteria specified in subparagraphs (A) to (E) below. If the court orders a transfer of jurisdiction, the court shall recite the basis for its decision in an order entered upon the minutes. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the transfer hearing, and no plea that may have been entered already shall constitute evidence at the hearing. ~~may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the criteria specified in clause (i) of subparagraphs (A) to (E), inclusive:~~

(A)(i) The degree of criminal sophistication exhibited by the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.

(B)(i) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.

(C)(i) The minor's previous delinquent history.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.

(D)(i) Success of previous attempts by the juvenile court to rehabilitate the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.

(E)(i) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.

~~A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above in clause (i) of subparagraphs (A) to (E), inclusive, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea that may have been entered already shall constitute evidence at the hearing.~~

~~(2)(A) This paragraph shall apply to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she has attained 16 years of age, of any felony offense when the minor has been declared to be a ward of the court pursuant to Section 602 on one or more prior occasions if both of the following apply:~~

~~(i) The minor has previously been found to have committed two or more felony offenses.~~

~~(ii) The offenses upon which the prior petition or petitions were based were committed when the minor had attained 14 years of age.~~

~~(B) Upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of the criteria specified in subclause (I) of clauses (i) to (v), inclusive:~~

~~(i)(I) The degree of criminal sophistication exhibited by the minor.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.~~

~~(ii)(I) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.~~

~~(iii)(I) The minor's previous delinquent history.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous~~

~~delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.~~

~~(iv)(I) Success of previous attempts by the juvenile court to rehabilitate the minor.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.~~

~~(v)(I) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.~~

~~A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth in subclause (I) of clauses (i) to (v), inclusive, and findings therefore recited in the order as to each of the those criteria that the minor is fit and proper under each and every one of those criteria. In making a finding of fitness, the court may consider extenuating and mitigating circumstances in evaluating each of those criteria. In any case in which the hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea that may have been entered already shall constitute evidence at the hearing. If the minor is found to be a fit and proper subject to be dealt with under the juvenile court law pursuant to this subdivision, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.~~

~~(3) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.~~

(b) Subdivision ~~(c)~~ (a) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation of one of the following offenses when he or she was 14 or 15 years of age:

(1) Murder.

(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.

(3) Robbery.

(4) Rape with force, violence, or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) A lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) An offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purposes of robbery.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) An offense described in Section 1203.09 of the Penal Code.

(17) An offense described in Section 12022.5 or 12022.53 of the Penal Code.

(18) A felony offense in which the minor personally used a weapon described in any provision listed in Section 16590 of the Penal Code.

(19) A felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Manufacturing, compounding, or selling one-half ounce or more of a salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(21) A violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which also would constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(22) Escape, by the use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 if great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(23) Torture as described in Sections 206 and 206.1 of the Penal Code.

(24) Aggravated mayhem, as described in Section 205 of the Penal Code.

(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(26) Kidnapping for purposes of sexual assault, as punishable in subdivision (b) of Section 209 of the Penal Code.

(27) Kidnapping as punishable in Section 209.5 of the Penal Code.

(28) The offense described in subdivision (c) of Section 26100 of the Penal Code.

(29) The offense described in Section 18745 of the Penal Code.

(30) Voluntary manslaughter, as described in subdivision (a) of Section 192 of the Penal Code.

~~(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 14 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the following criteria specified in subparagraph (A) of paragraphs (1) to (5), inclusive:~~

~~(1)(A) The degree of criminal sophistication exhibited by the minor.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.~~

~~(2)(A) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.~~

~~(3)(A) The minor's previous delinquent history.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.~~

~~(4)(A) Success of previous attempts by the juvenile court to rehabilitate the minor.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.~~

~~(5)(A) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.~~

~~A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth in subparagraph (A) of paragraphs (1) to (5), inclusive, and findings therefore recited in the order as to each of those criteria that the minor is fit and proper under each and every one of those criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of those criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may have been entered already shall constitute evidence at the hearing. If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.~~

~~(d) (1) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing an offense enumerated in subdivision (b).~~

~~(2) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading against a minor 14 years of age or older in a court of criminal jurisdiction in any case in which any one or more of the following circumstances apply:~~

~~(A) The minor is alleged to have committed an offense that if committed by an adult would be punishable by death or imprisonment in the state prison for life.~~

~~(B) The minor is alleged to have personally used a firearm during the commission or attempted commission of a felony, as described in Section 12022.5 or 12022.53 of the Penal Code.~~

~~(C) The minor is alleged to have committed an offense listed in subdivision (b) in which any one or more of the following circumstances apply:~~

~~(i) The minor has previously been found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (b).~~

~~(ii) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang, as defined in subdivision (f) of Section 186.22 of the Penal Code, with the specific intent to promote, further, or assist in criminal conduct by gang members.~~

~~(iii) The offense was committed for the purpose of intimidating or interfering with any other person's free exercise or enjoyment of a right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceives that the other person has one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.55) of Part 1 of the Penal Code.~~

~~(iv) The victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense.~~

~~(3) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing one or more of the following offenses, if the minor has previously been found to be a person described in Section 602 by reason of the violation of a felony offense, when he or she was 14 years of age or older:~~

~~(A) A felony offense in which it is alleged that the victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense.~~

~~(B) A felony offense committed for the purposes of intimidating or interfering with any other person's free exercise or enjoyment of a right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceived that the other person had one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.55) of Part 1 of the Penal Code.~~

~~(C) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang as prohibited by Section 186.22 of the Penal Code.~~

~~(4) In any case in which the district attorney or other appropriate prosecuting officer has filed an accusatory pleading against a minor in a court of criminal jurisdiction pursuant to this subdivision, the case shall then proceed according to the laws applicable to a criminal case. In conjunction with the preliminary hearing as provided in Section 738 of the Penal Code, the magistrate shall make a finding that reasonable cause exists to believe that the minor comes within this subdivision. If reasonable cause is not established, the criminal court shall transfer the case to the juvenile court having jurisdiction over the matter.~~

~~(5) For an offense for which the prosecutor may file the accusatory pleading in a court of criminal jurisdiction pursuant to this subdivision, but elects instead to file a petition in the juvenile court, if the minor is subsequently found to be a person described in subdivision (a) of Section 602, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.~~

~~(6) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.~~

~~(e) A report submitted by a probation officer pursuant to this section regarding the behavioral patterns and social history of the minor being considered for a determination of unfitness shall include any written or oral statement offered by the victim, the victim's parent or guardian if the victim is a minor, or if the victim has died, the victim's next of kin, as authorized by subdivision (b) of Section 656.2. Victims' statements shall be considered by the court to the extent they are relevant to the court's determination of unfitness.~~

SEC. 5. Amendment.

This Act shall be broadly construed to accomplish its purposes. The provisions of Section 4 of this measure may be amended so long as such amendments are consistent with and further the intent of this Act by a statute that is passed by a majority vote of the members of each house of the Legislature and signed by the Governor.

SEC. 6. Severability.

If any provision of this measure, or part of this measure, or the application of any provision or part to any person or circumstances, is for any reason held to be invalid, the remaining provisions, or applications of provisions, shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable.

SEC. 7. Conflicting Initiatives.

(a) In the event that this measure and another measure addressing credits and parole eligibility for state prisoners or adult court prosecution for juvenile defendants shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.

SEC. 8. Proponent Standing.

Notwithstanding any other provision of law, if the State, government agency, or any of its officials fail to defend the constitutionality of this act, following its approval by the voters, any other government employer, the proponent, or in their absence, any citizen of this State shall have the authority to intervene in any court action challenging the constitutionality of this act for the purpose of defending its constitutionality, whether such action is in any trial court, on appeal, or on discretionary review by the Supreme Court of California and/or the Supreme Court of the United States. The reasonable fees and costs of defending the action shall be a charge on funds appropriated to the Department of Justice, which shall be satisfied promptly.

SEC. 9. Liberal Construction.

This Act shall be liberally construed to effectuate its purposes.

65589.4.

(a) An attached housing development shall be a permitted "use by right," as defined in subdivision (i) of Section 65583.2, ~~not subject to a conditional use permit on any parcel zoned for an attached housing development if local law so provides or~~ if it satisfies the requirements of subdivision (b) and either of the following:

(1) The attached housing development satisfies the criteria of Section 21159.22, 21159.23, or 21159.24 of the Public Resources Code.

(2) The attached housing development meets all of the following criteria:

(A) The attached housing development is either: ~~subject to a discretionary decision other than a conditional use permit and a negative declaration or mitigated negative declaration has been adopted for the attached housing development under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). If no public hearing is held with respect to the discretionary decision, then the negative declaration or mitigated negative declaration for the attached housing development may be adopted only after a public hearing to receive comments on the negative declaration or mitigated negative declaration.~~

(i) Located on a site which is identified in the local jurisdiction's housing element inventory described in paragraph (3) of subdivision (a) of Section 65583; or

(ii) Located on a site that has been or will be rezoned pursuant to the local jurisdiction's housing element program described in paragraph (1) of subdivision (c) of Section 65583, and either the rezoning has been completed, or three years has passed after the date that the jurisdiction's housing element was adopted.

(B) The attached housing development ~~is consistent with both the jurisdiction's zoning ordinance and general plan as it existed on the date the application was deemed complete, except that an attached housing development shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the attached housing development site has not been rezoned to conform with the most recent adopted general plan.~~does not contain more dwelling units than were projected by the jurisdiction to be accommodated on the sites described in subparagraph (A) of paragraph (2) of subdivision (a) of this section and any density bonus for which the development is eligible under Section 65915.

(C) The attached housing development complies with applicable, objective general plan and zoning standards and criteria, including design standards, in effect when the attached housing development was determined to be complete.

~~(C) The attached housing development is located in an area that is covered by one of the following documents that has been adopted by the jurisdiction within five years of the date the application for the attached housing development was deemed complete:~~

~~(i) A general plan.~~

~~(ii) A revision or update to the general plan that includes at least the land use and circulation elements.~~

~~(iii) An applicable community plan.~~

~~(iv) An applicable specific plan.~~

~~(D) The attached housing development consists of not more than 100 residential units with a minimum density of not less than 12 units per acre or a minimum density of not less than eight units per acre if the attached housing development consists of four or fewer units.~~

(D~~E~~) The attached housing development is either:

(i) L~~l~~ocated in an urbanized area as defined in Section 21071 of the Public Resources Code or within a census-defined place with a population density of at least 5,000 persons per square mile or, if the attached housing development consists of 50 or fewer units, within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons; or~~.~~

(ii~~F~~) ~~The attached housing development is l~~Located on an infill site as defined in Section 21061.0.5 of the Public Resources Code.

(b) At least 10 percent of the units of the attached housing development shall be available at affordable housing cost to very low income households, as defined in Section 50105 of the Health and Safety Code, or at least 20 percent of the units of the attached housing development shall be available at affordable housing cost to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or at least 50 percent of the units of the attached housing development available at affordable housing cost to moderate-income households, consistent with Section 50052.5 of the Health and Safety Code. The local jurisdiction shall require the developer of the attached housing development ~~shall~~ to provide sufficient legal commitments to the local agency to ensure the continued availability and use of the housing units for very low, low-, or moderate-income households for a period of at least 30 years.

~~(c) Nothing in this section shall prohibit a local agency from applying design and site review standards in existence on the date the application was deemed complete.~~

(c~~d~~) The provisions of this section are independent of any obligation of a jurisdiction pursuant to subdivision (c) of Section 65583 to identify multifamily sites developable by right.

(d~~e~~) This section does not apply to the issuance of coastal development permits pursuant to the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(e~~f~~) This section does not relieve ~~a public agency from complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or relieve~~ an applicant or public agency from complying with the Subdivision Map Act ~~(Division 2~~ (commencing with Section 664107~~3~~)).

(f~~g~~) This section is applicable to all cities and counties, including charter cities, because the Legislature finds that the lack of affordable housing is of vital statewide importance, and thus a matter of statewide concern.

(g~~h~~) For purposes of this section, “attached housing development” means a newly constructed or substantially rehabilitated structure containing two or more dwelling units and consisting only of residential units, but does not include a second unit, as defined by paragraph (4) of subdivision (h) of Section 65852.2, or the conversion of an existing structure to condominiums.

Contra Costa County Board of Supervisors

Subcommittee Report

LEGISLATION COMMITTEE **8.**

Meeting Date:	02/08/2016
Subject:	Request from NACo Regarding Criminal Justice Reform Legislation
Submitted For:	LEGISLATION COMMITTEE,
Department:	County Administrator
Referral No.:	2016-06
Referral Name:	Request from NACo Regarding Criminal Justice Reform Legislation
Presenter:	L. DeLaney **Contact:** L. DeLaney, 925-335-1097

Referral History:

The National Association of Counties (NACo) recently sent information to its public safety committees regarding two pending criminal justice reform bills – the *Sentencing Reform and Corrections Act* (S. 2123) and the *Second Chance Reauthorization Act* (S. 1513). Attached is the legislation for reference.

CSAC is not taking an active position on these measures but wanted to share the information with Supervisors.

Contra Costa County's adopted 2016 Federal Platform includes a policy position in support of the Second Chance Act:

Second Chance Act – The County will support funding for the Second Chance Act, which helps counties address the growing population of individuals returning from prisons and jails. Despite massive increases in corrections spending in states and jails nationwide, recidivism rates remain high: half of all individuals released from state prison are re-incarcerated within three years. Here in California, unfortunately, the recidivism rate is even higher. Yet there is reason for hope: research shows that when individuals returning from prison or jail have access to key treatments, education, and housing services, recidivism rates go down and the families and communities they return to are stronger and safer.

The Second Chance Act ensures that the tax dollars on corrections are better spent, and provides a much-needed response to the "revolving door" of people entering and leaving prison and jail.

Referral Update:

Despite the gridlock that has seemingly become a new norm in Congress, lawmakers are apparently reaching across the aisle to advance major criminal justice reform legislation in both the U.S. Senate and U.S. House of Representatives. Given counties' tremendous role in America's criminal justice system, NACo is closely monitoring these reform measures and working with Congressional staffers and federal officials to ensure that the interests of county governments are fully represented as criminal justice legislation moves through Congress.

Currently, two major pieces of legislation – the Sentencing Reform and Corrections Act (S. 2123) and the Second Chance Reauthorization Act (S. 1513/H.R. 3046) – that support county criminal justice priorities and policies are gathering momentum in Congress. (The Sentencing Reform and Corrections Act, S. 2123 is 286 pages and not attached here. See https://www.congress.gov/bill/114th-congress/senate-bill/2123/text for a copy of the text of the bill.)

NACo has drafted a letter in support of these measures. (*See Attachment A.*)

Below is a brief summary of each measure.

S 2123 - *Sentencing Reform and Corrections Act*

· Permits a court to reduce the mandatory minimum prison term imposed on certain non-violent defendants convicted of a high-level first-time or low-level repeat drug offense.
· Expands safety valve eligibility to permit a court to impose a sentence below the mandatory minimum for certain non-violent, cooperative drug defendants with a limited criminal history.
· Reduces the enhanced mandatory minimum prison term for certain defendants who commit a high-level repeat drug offense, use a firearm in a crime of violence or drug offense after a prior conviction for such offense, or unlawfully possess a firearm after three or more prior convictions.
· Makes the *Fair Sentencing Act of 2010* retroactive to permit resentencing of a convicted crack cocaine offender sentenced before August 3, 2010.
· Creates new mandatory minimum prison terms for: (1) interstate domestic violence that results in a victim's death, and (2) providing goods and services to terrorists, to any person to develop weapons of mass destruction, or to a country subject to an arms embargo.
· Requires the Bureau of Prisons (BOP) to make available appropriate recidivism reduction programming and productive activities to all eligible prisoners.
· Requires presentence investigation reports to contain certain information such as substance abuse history, military service, and veteran status.
· Directs the BOP to issue pepper spray to its officers and employees.
· Makes permanent the pilot program to release nonviolent elderly offenders from prison facilities to home detention and expands eligibility for such release.
· Courts must automatically seal and expunge certain records of juvenile nonviolent offenses. It prohibits juvenile solitary confinement, except in limited circumstances.

S 1513 - *Second Chance Reauthorization Act*

· Amends the *Omnibus Crime Control and Safe Streets Act of 1968* to revise and expand requirements for the DOJ grant program for adult and juvenile offender state and local reentry demonstration projects, including for planning and implementation and for promotion of employment opportunities, and to extend the program through FY2020. Sets forth criteria and priority considerations for DOJ to use in awarding grants.
· Amends the *Second Chance Act of 2007* to extend through FY2020 the authorization of appropriations for grants for: (1) family-based substance abuse treatment, (2) the careers training demonstration program, and (3) the offender reentry substance abuse and criminal justice collaboration program.
· Requires DOJ to conduct annual audits of grant recipients under the Second Chance Act to prevent waste, fraud, and abuse of grant funds. Prohibits nonprofit organizations that hold money in offshore accounts from receiving grant funds.
· Amends the Second Chance Act to: (1) modify and extend through FY2020 grant programs for reentry of federal prisoners into the community, including the program for placing aging offenders in home detention and for offender reentry research; (2) repeal programs under the Act relating to responsible reintegration of offenders, the study of the effectiveness of Depot Naltrexone for heroin addiction, and the satellite tracking and reentry training program; and (3) establish a program for partnering faith-based or community-based nonprofit organizations with prisons to conduct recidivism reduction activities.
· Directs DOJ to coordinate on federal programs, policies, and activities relating to the reentry of individuals returning from incarceration to the community, with an emphasis on evidence-based practices and protection against duplication of services.

Recommendation(s)/Next Step(s):

NACo has provided the letter to Congress here:
http://www.naco.org/sites/default/files/attachments/NACo%20S.%202123%20Letter%201.20.16.pdf.

If Supervisors are interested in signing on, they can fill out the form here: http://www.naco.org/naco-letter
http://www.naco.org/naco-letter-support-sentencing-reform-and-corrections-act-and-second-chance-act.

Attachments

Attachment A: NACo Letter of Support

January 20, 2016

Dear Members of the U.S. Senate and U.S. House of Representatives,

On behalf of the National Association of Counties (NACo), the only national organization that represents America's 3,069 county governments, **we write to express support for S. 2123, the Sentencing Reform and Corrections Act**. Counties play a major role in our nation's criminal justice system, as we own 91 percent of American jails – which collectively house one-third of all incarcerated individuals in the country – and invest $70 billion in criminal justice each year. Counties know firsthand the importance of reforming the criminal justice system, and we commend bipartisan efforts, like S. 2123, that aim to achieve these reforms.

NACo supports measures that aim to reduce sentencing disparity, eliminate unnecessary confinement, establish more rational and appropriate sentencing policies and lead to better management of limited correctional resources. We also support provisions in S. 2123 that would promote the expungement of certain juvenile offenses, prohibit juvenile solitary confinement except in limited circumstances, and increase the instances in which juveniles are eligible for parole. Further, we support pre-release reentry programs featured in S. 2123 that would help incarcerated individuals prepare to reintegrate back into society. These individuals return to their communities with complex health, education, housing and other needs, which, if not addressed, can increase their likelihood of returning to jail or prison. Reentry programs are integral to their successful reintegration into the community.

Of course, reentry programs are pivotal to formerly incarcerated individuals not only prior to their release from correctional facilities, but even more so after these individuals return to their communities. With this in mind, **we hope that you will give consideration and support to the Second Chance Reauthorization Act (S. 1513/H.R. 3406)**, which would reauthorize and improve Second Chance Act programs that provide resources to states, local governments and nonprofit organizations to improve outcomes for individuals returning to communities. Specifically, the program improves the coordination of reentry services and policies at the state, tribal and local levels and funds demonstration grants, reentry courts, family-centered programs, mental health and addiction treatment and employment and mentoring services.

America's counties stand ready to work with Congress to achieve needed reforms to our nation's criminal justice system that will benefit communities across the nation. We commend you for your work on the Sentencing Reform Act and the Second Chance Reauthorization Act and look forward to working with you to advance these measures.

Sincerely,